SCOMM

#27:1

SPECIAL COMMITTEE # 27

INTERIM COMMITTEE ON THE CONSTITUTIONAL CONVENTION 1979-1980

Established as interim committee in 1979, became a joint committee by passage of LR48 (SCR43 am) SLA 1980.

Rep. Brian Rogers, Chairman
Sen. Hohman, Sen. Mulcahy, Sen. Sackett, Sen. Ziegler
Rep. Gardiner, Rep. Hayes

Guy Van Doren, Administrative Assistant

FILES:

1. Miscellaneous information, including this list.
2. Agendas and minutes
3. ConCon Correspondence re: bills, etc.
4. ConCon Correspondence (1979-80)
5. ConCon Correspondence (1980-81)
6. Contract Information/ConCon '80
7. Expenses (Committee)
8. ConCon - Permanent Fund Distribution
9. ConCon Reports - '80 Originals
10. Van Doren Reports - Conventions, Amendments introduced.
11. Bound volume: "Transcripts of hearings held by the Joint Committee on the Constitutional Convention 1980"
12. Envelope of Cassettes. Listed on page 2.
13. Hawaii Information
14. Louisiana Information
15. Texas Constitutional Publications
16. Miscellaneous studies/other state publications.

KHS 10/83

INTERIM COMMITTEE ON THE CONSTITUTIONAL CONVENTION 1979-1980

11 audio-cassettes

TAPE NO.	DATE	SIGNIFICANT INFORMATION....
1	9/24/80	ConCon meeting
2-4	11/7/80	Meeting in New York
5-6	11/16/80 ?	Charles Campbell, Sam Gove Jim Ray, Kathy Ray, Janice May
7	?	Ray, Ray, May - Texas
8	11/12/80	John Wheeler, Hollins, Va.
9	12/9/80	Committee meeting
10	1/10/81	Committee meeting
11	?	Guy Van Doren dictating on convention

KHS 10/83

Interim Committee on Consitutional Convention 1979-1980

List of Publications in Files which are available elsewhere and which, therefore, were not retained in SCOMM #27.

Florida State University Law Review, v. 5, no. 4 (Fall,1977)

Government Union Review, v. 2, no. 4 (Winter, 1981)

National Civic Review, v.69, no.1 (January, 1980)

National Municipal League Publications:

Cornwall, Elmer E., J. and others. Constitutional Conventions: The Politics of Revision, 1974.

Dishman, Robert B. State Constitutions; the shape of the document. 1968.

Grad, Frank P. The State Constitution: its function and form for our time, 1968.

Model State Constitution, 1963, rev. 1968.

Sturm, Albert L. Thirty years of State Constitution-making: 1938 - 1968, 1970.

Wheeler, John P. The Constitutional Convention: a manual on its planning, organization, and operation, 1961.

_____. Salient Issues of Constitutional Revision, 1961

National Municipal League. State Constitutional Convention Studies.

1. Cornwell, Elmer E., Jr. and Jay S. Goodman. The Politics of the Rhode Island Constitutional Convention, 1969.

2. Wolf, George D. Constitutional Revision in Pennsylvania, 1969.

3. Wheeler, John P., Jr. and Melissa Kinsey. Magnificent Failure: The Maryland consitutional convention of 1967-1968, 1970.

5. Meller, Norman. With an Understanding Heart: constitution making in Hawaii, 1971.

6. Faust, Martin L. Constitution Making in Missouri: the convention of 1943-1944, 1971.

8. Gove, Samuel K., and Thomas R. Kitsos. Revision Success: the sixth Illinois consitutional convention, 1974.

9. Fischer, Victor. Alaska's Constitutional Convention, published by University of Alaska Press, 1975.

State Government, v. 52, no. 1 (Winter 1979)

Stewart, William H.,Jr. The Alabama Constitutional Commission. University, Alabama: The University of Alabama Press, 1975.

Sturm, Albert L., comp. A Bibliography on State Constitutions and Constitutional Revision, 1945-1975. Englewood, Colorado: The Citizen's Conference on State Legislatures, 1975.

_____. Trends in State Constitution-Making, 1966-1972. Lexington, Kentucky, Council of State Governments, 1973. (Publ. # RM - 508).

SCOMM

#27:2

Chairman
Rep. Brian Rogers

Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Hayes

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

Pouch Y, Rm. 107
Capitol Bldg.
Juneau, Alaska
99811
(907) 465-3743

Staff
Guy Van Doren
Admin. Asst.

December 15, 1980

To All Members Of The
Constitutional Convention Committee

Enclosed are copies of the minutes of the December 9, 1980 meeting of the Joint Interim Committee on Constitutional Convention.

The next meeting of the Constitutional Convention Committee will be on January 10, 1981, at 10:00 a.m. The meeting will be held in the Beltz Committee Room in the Capitol Building in Juneau.

Hopefully a complete transcription of the outside meetings will be in the mail prior to the meeting. If not, they will be available at the meeting.

Sincerely,

Landa Krossa

Landa Krossa,
Secretary

JOINT INTERIM COMMITTEE ON
CONSTITUTIONAL CONVENTIN

Meeting Minutes
December 9, 1980

The December 9, 1980 meeting of the Joint Interim Committee on Constitutional Convention was called to order at 3:11 p.m. in the Beltz Committee Room located in the Capitol Building in Juneau, Alaska, by Representative Brian Rogers, Chairman.

Present at the meeting were: Representatives Brian Rogers, Joe Hayes and Terry Gardiner, and Senator Ziegler.

Excused from the meeting were: Senators Bob Mulcahy, George Hohman and John Sackett.

Representative Rogers noted that a quorum was present.

Mr. Guy A. Van Doren, Administrative Assistant to the Committee, gave a verbal report of his research efforts in New York, Houston, Virginia and Washington, D. C., and gave a trip log of the same.

Mr. Van Doren gave a verbal report regarding his meeting with various presons involved in the calling of a national constitutional convention. Persons interviewed were representatives from the American Bar Association, the National Taxpayers Association, and staff of the Senate Subcommittee on the constitution. This is a subcommittee of the Senate Judiciary Committee. The main topics of the interviews was the question of whether or not a constitutional convention could be limited or if it had to be unlimited. Most people thought the question would have to be settled by the courts.

Mr. Van Doren stated that all of the experts had stated one of the important things the committee should investigate was the writing of a "Citizen's Guide to the Alaska Constitution". The committee decided without objection that requests for proposals should be advertised for a person or persons to write a "Citizen's Guide to the Alaska Constitution". Proposals are to be received by Janaury 9, 1980.

The committee discussed the creation of a brochure describing the constitution and what is a constitutional convention. Staff was directed to continue work on the written section of the brochure and to publish requests for proposals on the illustrated section of the brochure to be received by January 9, 1981.

Mr. Van Doren made recommendations to the committee regarding availability of recognized experts for committee work. Mr. Van Doren will summarize in written form the qualifications and recommendations of each of the recognized experts.

Chairman Rogers stated that he had received a contract from the University of Alaska for the translation of the Alaska constitution into the Yupik language. The contract is divided into four phases, the cost of $117,000 will be spread out over two fiscal years; the Legislative Affairs Agency has prepared a contract for the first phase and part of the second phase.

The Committee voted unanimously to have staff prepare a resolution to be introduced which would continue the committee through 1981.

There was discussion regarding the issues survey. Chairman Rogers suggested solicitation for proposals to do a public survey of the issues relating to: 1. How the public feels about holding a constitutional convention; 2. What the public feels should be the issues considered at a convention; 3. A federal consitutional convention as it relates to a balanced federal budget. There was no objection to the solicitation for proposals, and staff was directed to submit the requests for proposals for a public survey to the several newspapers throughout the state.

Further discussion of the public survey resulted in the suggestion by Senator Ziegler to include a capitol move question on the list of questions in the survey. Representative Rogers suggested that possibly the Statehood Commission could include questions on the same public opinion survey.

Introduction of legislation was discussed and considered by the committee. Representative Rogers advised the committee that he was directing research work to be done for a bill to be introduced in the 1981 legislative session relating to a constitutional convention. CSHB 723 am S was vetoed by Governor Hammond. A number of corrections relating to the reasons for veto were discussed. Staff was directed to monitor the drafting of a new bill for constitutional convention.

Under old business, the contract with Robert Wagstaff, Attorney at Law, was discussed. The committee had instructed Mr. Wagstaff to terminate his services, and for that reason the committee was provided with a final report. $10,000 had been prepaid to a trust account for legal fees, and the unused portion of that $10,000 will be reimbursed to the committee.

January 10, 1980 was the date set for the next meeting of the Joint Interim Committee on Constitutional Convention. The meeting will convene at 10:00 a.m. in the Beltz Committee Room, Capitol Building, Juneau, Alaska. The proposals received for the brochure, citizen's guide and the public opinion survey will be discussed, as well as draft legislation for the constitutional convention.

There being no further business, the meeting was adjourned on December 9, 1980 at 4:08 p.m.

Landa Krossa, Secretary

CONSTITUTIONAL CONVENTION COMMITTEE

AGENDA ~~December~~ 10, 1979

CONSULTANT REPORTS:

- ~~Irene Reed: pro~~gress report on Yupik translation
- Douglas Pope: constitutional issues - legal analysis
- Guy van Doren: state constitutional conventions in the 1970's ; 1 and 15
- Dr. Victor Fischer: preliminary considerations and arrangements
- Glenda Straube: transcription of Constitutional Review
- George : report on Future Frontiers

PUBLIC COMMENTS:

Fairbanks
Anchorage
Juneau
Other teleconference locations if necessary

COMMITTEE ACTION:

Requests for legislation and resolutions (if necessary)
Continuation of committee through session
Discussion of future projects

OTHER BUSINESS if necessary

JNU: Defects + weaknesses
~~Apportionment~~
Call: Apportionment

Question on ballot in 1982
Legislative call
Call by initiative

→ Apportionment must be dealt with.
1955 schedule in violation
of one-person one-vote
May not be able to defer to local gov't
boundaries

REQUESTS: Doug - Billy Berrier: Draft ~~Call~~
~~w/o apportionment~~

Statutory basis for procedures

amendments submitted one-at-a-time	all voters eligible	— 90 day limit (15 day recess)
→ FRIDAY 11th		— legislative apportionment + 5
→ SATURDAY 12th	NON partisan	— fiscal note (?)
→ SUNDAY 13TH	delegate selection	— location — FAI
		— off year - spring election + fall convention

Resolution - 1980 ballot
Public involvement
Guy - Establishing Joint Con Con Comm
3 H
3 S
1 J -
1 G -
Lt. Gov.

Doug
PRIVACY
STATE / FED RELATIONSHIP
LOCAL PROTECTIONS

#12 Constitutional Convention

(7) State sovereignty; state-fed relationship
7 Election of judges/attorney general
(5) Local control; increase local gov't power
5 Unicameral legislature
(4) Increase legislatie power vs. governor; Separation of Power
3 Protect Environment
3 Legislative apportionment
3 Land status; convert to private
2 Capital move
2 Justice system
2 Education
2 More representatives
2 Fishing regulations

I examples of reinterpretation (Bill of Rights
Civil Rights for Amer Indians
Court interpreters program)

Atty Gen + Judges |||| || ✓
Initiatives |
Limit Spending |
Limit Session |
Capital Move || ✓
Protect Environment ||| ✓
~~Local Govt (local control) ||||~~ ✓
Property Taxes |
Apportionment ||| ✓
Common Property |
Justice System || ✓
Education || ✓
Land use |
Natural resources (max dev't) |
Human Services |
Move representatives || ✓
No disclosure |
Unicameral |||| ✓
Boro system |
Separation of powers (more legislature) |||| ✓
Revenue Mgmt |
Bonding |
Statehood/Statutes for Ak |||| || ✓
Status of U of A |
Long range planning |
Election Reform |
Lands - private ||| ✓

Deregulate |
Lifestyle |
Legislative terms |
Fishing Regs ||
Private higher Ed |
Grand Jury |

(Future Frontiers every 10 years)

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Brian Rogers

MAY 2 6 RECD

Thought You would
be interested in
this material. If
I can be of any
assistance - please let
me know.

Ed Foster

NATIONAL TAXPAYERS UNION

325 PENNSYLVANIA AVENUE, SOUTHEAST WASHINGTON, DISTRICT OF COLUMBIA 20003 TELEPHONE (202) 543-1300

FED. BUDGET BALANCED MAY 26 RECD

NATIONAL TAXPAYERS UNION CONFIRMS COUNT ON 30 STATE LEGISLATURES WHICH HAVE PASSED A RESOLUTION ~~CALLING~~ FOR A CONSTITUTIONAL CONVENTION ON A BALANCED FEDERAL BUDGET AMENDMENT

The 30 state legislatures which have passed balanced budget amendment resolutions are:

Alabama	HJR 227, Act 302	1976
Arizona	SJR 1002, HCM 2003	1979, 1977
Arkansas	HJR 1	1979
Colorado	SJM 1	1978
Delaware	HCR 36	1975
Florida	Sen. Memorial #234, HM 2801	1976,1976
Georgia	Res. Act #93, HR #469-1267	1976
Idaho	HCR 7	1979
Indiana	SJR 8	1979
Iowa	SJR 1	1979
Kansas	SCR 1661	1978
Louisiana	SCR 4, SR 73, HCR 269	1979, 1978, 1975
Maryland	SJR 4 (Original), Md JR 77 (Enrolled)	1975
Mississippi	HCR 51	1975
Nebraska	LR 106	1976
Nevada	SJR 8, SJR 2	1979, 1977
New Hampshire	HCR 8	1979
New Mexico	SJR 1	1976
North Carolina	Resolution 5	1979
North Dakota	SCR 4018	1975
Oklahoma	HJR 1049	1976
Oregon	SJ Memorial #2	1977
Pennsylvania	HR 236	1976
South Carolina	SCR 1024, SCR 670	1978, 1976
South Dakota	SJR 1	1979
Tennessee	HJR 22	1977
Texas	HCR 13, HCR 31	1978, 1977
Utah	HJR 12	1979
Virginia	SJR 36	1976
Wyoming	HJR 12 (Original) JR 1 (Enrolled)	1977

30 out of 50 states

Certified copies of these resolutions are on file at the National Taxpayers Union.

UPDATED: January 10, 1980

Public Attitudes on a Balanced Budget Amendment

Recent polls by the highly respected Gallup organization, the Roper Organization, the New York Times -- CBS News, and the Associated Press -- NBC News indicate overwhelming public support for a constitutional amendment to require a balanced federal budget and a constitutional convention to draft such an amendment.

The questions asked were:

> Roper: "Considering both the possible advantages and possible drawbacks, would you like to see a Constitutional Convention called to consider an amendment to limit federal spending, or wouldn't you be in favor of such a convention?" July, 1979.
>
> Gallup: "Would you favor or oppose a constitutional amendment that would require Congress to balance the federal budget each year - that is, keep taxes and expenditures in balance?" July, 1978, February, 1979.
>
> New York Times - CBS News: "Would you favor or oppose a constitutional amendment requiring a balanced national budget except in times of emergency?" January, 1979.
>
> Associated Press - NBC News: "Would you favor or oppose a constitutional amendment which would require the federal government to balance the budget?" February, 1979.

POLL	FAVOR	OPPOSE	NO OPINION
Roper 1979	65%	22%	13%
Gallup 1979	78	12	10
Gallup 1978	81	11	8
NYT/CBS News	73	16	11
AP/NBC News	70	18	12

The New York Times - CBS News poll also found "that the proposed budget-balancing amendment had a remarkably uniform level of support across the country and demographically." They found that over 70% of those identifying themselves as Democrats, Republicans, Conservatives or Liberals favored such an amendment.

The 1979 Gallup poll asked the people who said they opposed an amendment this question: "Would you favor or oppose such an amendment if provisions were made for emergency expenditures?"

FAVOR	6%
STILL OPPOSE	5
NO OPINION	1

According to Gallup only 5% of those polled oppose such an amendment if provisions are made for emergency expenditures.

Gallup's 1979 demographic breakdown follows on the next page.

CONSTITUTIONAL AMENDMENT TO REQUIRE BALANCED BUDGET

Question: "Would you favor or oppose a constitutional amendment that would require Congress to balance the federal budget each year – that is, keep taxes and expenditures in balance?"

February 2 – 5, 1979

	Favor	Oppose	No opinion
NATIONAL	78%	12%	10%
SEX			
Male	75	16	9
Female	79	9	12
RACE			
White	79	12	9
Non-White	68	15	17
EDUCATION			
College	73	20	7
High School	81	9	10
Grade School	71	8	21
REGION			
East	76	12	12
Midwest	81	10	9
South	77	12	11
West	74	17	9
AGE			
Total Under 30	78	11	11
18 - 24 years	80	11	9
25 - 29 years	75	12	13
30 - 49 years	76	16	8
50 & older	78	10	12
INCOME			
$20,000 & over	78	16	6
$15,000 - $19,999	82	12	6
$10,000 - $14,999	76	11	13
$ 7,000 - $ 9,999	79	8	13
$ 5,000 - $ 6,999	74	10	16
$ 3,000 - $ 4,999	70	11	19
Under $3,000	82	7	11
POLITICS			
Republican	84	9	7
Democrat	76	14	10
Independent	77	13	10
RELIGION			
Protestant	80	12	8
Catholic	76	11	13
OCCUPATION			
Professional & Business	78	18	4
Clerical & Sales	80	8	12
Manual Workers	77	10	13
Non-Labor Force	78	9	13
CITY SIZE			
1,000,000 & over	72	12	16
500,000 - 999,999	74	15	11
50,000 - 499,999	81	12	7
2,500 - 49,999	80	10	10
Under 2,500, Rural	79	12	9
Labor union families	79	12	9
Non-labor union families	77	12	11

BUDGET BALANCING AMENDMENT

	Favor	Oppose	No opinion
LATEST	78%	12%	10%
July, 1978	81	11	8
1976	78	13	9

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

THE NEW YORK TIMES, THURSDAY, DECEMBER 20, 1979

Senate Panel Backs Amendment to Balance Budget

WASHINGTON, Dec. 19 (AP) — A proposed constitutional amendment that would require a balanced Federal budget was approved today by a 5-to-2 vote of a Senate Judiciary subcommittee. It was the first time that the idea had been embraced by any Congressional panel.

The amendment, drafted by Senator Orrin G. Hatch, Republican of Utah, and formally introduced last Friday by Senator Dennis DeConcini, Democrat of Arizona, would allow deficit spending only when authorized by a three-fifths vote of each house, or by a simple majority in times of war.

The recommendation came from the Judiciary Subcommittee on the Constitution, whose chairman, Senator Birch Bayh, Democrat of Indiana, is opposed to any constitutional amendment on the budget process.

Senator Bayh said that he preferred a statutory approach to achieve a balanced budget. He argued that legislative restrictions would be quicker than the long constitutional process. He also expressed fears, as has the Carter administration, that an amendment could "severely limit" the Government's ability to respond to economic recessions.

Procedure for Approval

The DeConcini-Hatch amendment would have to be approved by two-thirds of each house of Congress. The proposal would then have to be ratified by at least 38 states within seven years.

The amendment would also bar the Government from collecting on indirect tax increases as a result of inflation, unless a bill specifically authorizing an increase in that ratio was passed by Congress.

The measure now goes to the full Judiciary Committee, whose chairman, Senator Edward M. Kennedy, Democrat of Massachusetts, has expressed reservations about such a constitutional amendment.

THE WASHINGTON STAR Thursday, December 20, 1979

Senate Subcommittee OKs Amendment To Require Balancing of Federal Budget

By Lance Gay
Washington Star Staff Writer

A Senate Judiciary subcommittee has voted 5-2 in support of a proposed amendment to the Constitution that aims at producing balanced federal government budgets in peacetime.

The vote was the first time the amendment has won approval by any congressional panel, but its sponsors admit it faces an uncertain future.

The amendment was drafted by Sen. Orrin Hatch, R-Utah, and Sen. Dennis DeConcini, D-Ariz.

"For the last half-century, Congress has failed to balance its budget," said Hatch. "Now in the last year or so, 30 states have specifically asked Congress to do something about the problem."

The amendment would require a balanced budget every year, except in wartime. In the event of war, Congress would be empowered to waive the constitutional provision if it is adopted.

Deficit spending would only be permitted in peacetime when authorized by a three-fifths vote of each house.

The measure was formed out of more than 70 resolutions introduced in Congress this year for a balanced budget and is a compromise with those who sought a more restrictive proposal.

The recommendation came from the Judiciary subcommittee on the Constitution, whose chairman, Sen. Birch Bayh, D-Ind., remains opposed to any constitutional amendment of the budget process. Bayh and Sen. Howard M. Metzenbaum, D-Ohio, voted against the proposal, while DeConcini, Hatch, Strom Thurmond, R-S.C., Howell Heflin, D-Ala., and Alan K. Simpson, R-Wyo., supported it.

The proposed constitutional amendment would allow seven years for ratification by at least 38 states, following approval by two-thirds of each house of Congress.

In addition to requiring a balanced budget, the bill would bar the government from collecting on indirect tax increases as the result of inflation. Specifically, it requires that "receipts in any year shall not exceed, as a proportion of the national income, that collected . . . in the prior year," unless a bill specifically authorizing a boost in that ratio is passed by Congress.

The provision effectively would require the government then to reduce taxes in years of inflation.

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

EXCERPTS FROM STATEMENT BY FORMER UNITED STATES SENATOR SAM ERVIN (D-NORTH CAROLINA) TO THE CALIFORNIA LEGISLATURE -- FEBRUARY 15, 1979

I think it is not only important but absolutely essential for the United States to have a balanced federal budget. Deficit financing is fundamentally dishonest. Both a government and an individual ought to have enough honesty to pay their debts as they go and not try to pawn off their debts on some future generation. If they can't succeed in doing that, what they do is inflict upon themselves a terrible inflation which robs them of the value of all they have.

I think it's necessary for the states to call for a constitutional convention to submit an amendment to balance the budget. It's apparent to me, from my experience in Washington, that Congress by itself is going to be very reluctant to submit an amendment requiring a balanced budget. There are too many congressmen and too many demands from constituents who enjoy deficit financing because it enables them to get a whole lot of money out of the empty federal treasury. It's a whole lot easier for Congress to try to give the impression that they are going to give the people something for nothing.

The first safeguard that would absolutely annihilate any danger of a runaway convention would be for Congress to take my bill, which passed through the Senate twice -- the last time by an 84 to nothing vote -- take this bill and pass it. This would put an end to any danger of a runaway convention. In the second place, you've got a safeguard in this method since such a convention could not submit part of a con-

stitutional proposal that would become effective as a part of a Constitution unless it was ratified by 3/4 of the states.

It's also conceivable to me that the people of the states would send to Congress one group of men and send to the constitutional convention called at the insistence of the states an entirely different group of people.

I think it's implied in the Constitution that the only amendment such a convention could submit to the states would be an amendment conforming to what the states had requested of the convention to be called for. And that question would be so decided by the federal courts whenever any litigation arose. These scare tactics are calling up non-existent constitutional and legal ghosts.

I started studying constitutional law after my freshman year at the University of North Carolina way back in 1914 at the insistance of my father who was a lawyer in North Carolina for 65 years. I've been interested in constitutional law ever since and I have made a particular study of it. When I went to the Senate, or at least a short time after I went to the Senate, I was made Chairman of the Senate Subcommittee on Constitutional Rights of the Senate Judiciary Committee and virtually every constitutional question that was brought up in Congress during the years I was there, there were about 20, came to that Committee. So I had to study those subjects. I think the United States has the finest Constitution on the face of the earth. It was correctly described by

William H. Gladstone when he said that "the American Constitution is the most wonderful work ever struck off at a given time by the brains and purpose of man."

I think this one fundamental change, however, must be made in it, and that is to add to it an amendment which will require the federal government to balance its budget and be honest.

WHY THE FEDERAL CONSTITUTION SHOULD REQUIRE A BALANCED BUDGET

By Dr. Neil H. Jacoby, Professor, Graduate School of Management, UCLA

The health of the American economy would be significantly advanced if the U.S. constitution required the Federal budget to be balanced each year, except in emergencies. A constitutional convention should be called to propose such a requirement, which is now written into the constitutions of nearly all the states.

I have been driven to this conclusion by observing the procession of huge Federal deficits in a time of prosperity, the disastrous fall of the dollar in world money markets, and an ominous price inflation that is still out of control.

Among the many causes of inflation, excessive Federal spending financed by expanding the public debt and the money stock is a central factor. Federal deficits in prosperous times like the present are a symbol of American fiscal irresponsibility, widely noted and criticized around the world. Today, the world is awash in unwanted dollars.

During twenty-five of the past thirty fiscal years, 1950 through 1979, the Federal budget has run deficits totalling over $450 billion. It has had surpluses in only five years amounting to $17 billion. What is most alarming is that more than $360 billion of the deficits were generated during the past decade, which, except for the recession of 1975, has been a period of solid U. S. economic expansion. If one includes in Federal expenditures--as one should--the probably uncollectible Federal loans and loan guarantees made outside of the Federal budget, accumulated deficits loom even larger. Significantly,

their huge magnitude is of the same order as the mountainous rise in the Federal debt and in the money stock.

This record shows that Federal government financing has failed to be the balance wheel for the private sector of the economy which was contemplated by J. M. Keynes. Budget surpluses in good years have not offset deficits in poor years. Congress's foot has been on the fiscal accelerator nearly all of the time; rarely on the brake. The Federal budget has for years been an engine of inflation.

Budget balance should be required by the U.S. constitution in order to curb excessive government spending, slow down inflation and restore confidence in the dollar. It is a needed bulwark against the strong bias toward over-spending contained in our system of democratic, representative government. Our system suffers from a disease that can be fatal if not checked. Government spending expands irrationally, mainly because of three factors--pressure group politics, bureaucratic imperialism and, above all, deficit financing. Let us quickly examine each factor.

1. Pressure group politics. Our political representatives naturally satisfy the strong demands of small "special interest groups" for spending programs that benefit them greatly, because their demands are only weakly opposed by the majority who benefit little, if at all, or who pay the bills. The payoff to the politician of meeting the demands of the strong minority outweighs the political costs he incurs by flouting the will of the weak majority. Add to this the familiar phenomenon of legislative log-rolling for reciprocal political benefit, and it is easy to understand why total government spending mounts even higher even though the majority of voters

would oppose a higher total if given a chance. The public is never able to vote directly on the total size of the budget. One of the pressure groups tending to expand government spending is public employee unions whose bargaining power for higher pay and benefits is even greater than in the private sector.

2. Bureaucratic imperialism is a third cause of excessive government spending. The Federal bureaucracy today is better educated, more highly paid, and more activist in philosophy than ever before in our history. Washington has the highest per capita income of any major American City. Bureaucrats are under strong incentive to expand their programs, staffs and budgets, because their pay and their power depend on such expansion. Promotions perversely depend on the number of people supervised and the amount of money spent.

3. Deficit Financing is probably the most powerful cause of excessive government spending, facilitating the operation of preceding factors. It permits Congress and the Administration to offer new benefits to the people without appearing to impose new tax burdens. Of course, those burdens appear later in the cruelest and most unfair kind of tax--inflation. The ability to run deficits enables legislatures and bureaucrats to avoid their primary responsibility--to set priorities on public wants and needs. They simply add the new spending program to the deficit. Small wonder that the prospect of a balanced budget amendment to the Constitution has provoked alarm and opposition along the Potomac.

A constitutional requirement of budget b'ance would impose an essential fiscal discipline upon Congress and the Administration. It would be the same kind of discipline that Proposition 13 in California imposed on State and local governments. History shows that an external force is essential. Governments do not discipline themselves. When it must present a tax bill to the voters concurrently with each new spending program, Congress will find it much easier

to reject new spending. A constitutional requirement of budget balance will reduce government spending as well as insure that spending is responsibly financed. (A constitutional limit on the ratio of spending to the GNP would also be an effective instrument of control.)

How weighty are the arguments against a constitutional requirement of budget balance? The heart of the attack on the amendment is that it would deprive the Federal government of needed flexibility in economic policy. It is argued that, in the event of a serious recession, tax revenues would decline, unemployment benefits and welfare payments would rise, and a deficit would emerge. Government would then be obliged to raise taxes or to cut other spending in order to comply with the constitutional restraint on the budget. Either course of action, critics contend, would worsen the recession.

There are several responses to this argument. First, in the event of a serious recession or other emergency, the constitutional requirement of budget balance could by its own terms, be suspended by a two-thirds vote of Congress and approval of the President. Any recession that was really threatening to become cumulative and to create heavy unemployment would certainly command the necessary political support for suspension.

A second point is that the Federal government has many powerful non-fiscal instruments that it can use flexibly to deal with economic instability. They include monetary actions, income policies, tariffs, quotas and exchange rates, as well as such structural reforms as minimum wage laws and the Davis-Bacon Act. The level at which the Federal budget is balanced can be changed (by concurrent tax and expenditure changes) with counter-cyclical effects. Government could continue to pursue a flexible counter-cyclical policy even with a balanced budget.

A more fundamental response to critics of the balanced budget amendment is that flexible counter-cyclical actions by the government are not really effective anyway. Some prominent economists contend that limits upon our ability to forecast economic changes, and upon our knowledge of the power and timing of economic reactions to public policies, make government's effort to "fine-tune" the economy a source of instability rather than of stability. This group argues that government can make the maximum contribution to stable economic progress by consistently obeying a stable set of fiscal and monetary rules, thus creating stable expectations in the private sector of the economy.

Let us grant that the past record of Federal stabilization policies is spotty. Let us concede that we lack the ability to "fine tune" the U.S. economy in our present state of knowledge. Yet there is evidence that flexible Federal economic policies can improve the performance of the economy. I believe that a constitutional amendment requiring a balanced budget-suspendable in emergencies--does not unwisely reduce the flexibility of Federal actions. The social costs of a modest reduction in fiscal flexibility will be far more than offset by the social benefits of a more efficient and more responsibly-financed Federal government. A heavy blow will be struck against inflation. World confidence in the dollar will revive. The U.S. balance of trade and payments should begin to improve. For these reasons, the resolution merits support.

BIOGRAPHICAL SKETCH OF NEIL H. JACOBY

Now a professor in the Graduate School of Management of UCLA, of which he was the founding dean, Neil H. Jacoby has combined the careers of scholar, administrator, and corporate director. Born in Canada, he holds the B.A. and L.D. degrees from the University of Saskatchewan. In 1938 he received the Ph.D. degree in Economics from the University of Chicago, where he later became Professor of Finance and Vice-President. For the past thirty years he has been at UCLA. He served on President Eisenhower's Council of Economic Advisers during 1953-55, was U.S. Representative in the Economic and Social Council of the United Nations in 1957, headed official missions to India, Laos, and Taiwan during 1955, 1960 and 1965, and was a member of the Federal Pay Board during 1971-73. Jacoby was president of the American Finance Association in 1949, and was on the Executive Committee of the American Economic Association in 1963-66. He has been an organizer or director of several corporations, including one of the largest multinational firms. Author or coauthor of more than fifteen books, including United States Monetary Policy, United States Aid to Taiwan, European Economics--East and West, Corporate Power and Social Responsibility (Macmillan, 1973), Multinational Oil (Macmillan, 1974) and The Business-Government Relationship: A Reassessment (Goodyear Publishing Company, 1975). Just published is his book, co-authored with Professors Richard Eells and Peter Nehemkis, entitled Bribery and Extortion in World Business (Macmillan, 1977). Jacoby is an Associate of the Center for the Study of Democratic Institutions at Santa Barbara and a frequent contributor to The Center Magazine.

GENERAL FEDERATION

JANUARY 1980

CLUBWOMAN

MAGAZINE OF THE WORLD'S LARGEST ORGANIZATION OF WOMEN

GFWC CONVENTION



MEET US IN ST. LOUIS JUNE 1-6

FEDERATION'S ROLE IN OUR ENTERPRISE ECONOMY

FREE

ACTION REPORT

LIMITING FEDERAL SPENDING

WHAT'S THE ISSUE?...

How large must the federal budget be?...Should limitations be made and enforced?...How should deficits, if required, be limited? ...These are just a few of the many questions surrounding the issue of Federal Budgeting. Only once since 1960 has the Federal Budget been balanced. Through good years and bad the deficit has increased. In the fifteen years preceding 1960 the average annual deficit was less than $3 billion. In the period from 1965 through 1978 the average deficit jumped to $23 billion annually. In 1979 the deficit is scheduled at $37 billion...$37 billion the Federal Government will have to borrow to pay its bills.

According to many respected economists, borrowing by the Federal Government, in such astronomical sums, is one of the prime causes of inflation. Citizen movements, as in Proposition 13 in California, have been pressing for tax and/or spending limits at state and federal levels. Twenty-nine states have passed resolutions calling for a Constitutional Amendment and/or a Constitutional convention addressed to the issue of Budget Limitations. Thirty-four states in all would have to pass such resolutions before either of these actions could be taken. The National Conference of State Legislatures reports that fear of federal aid cutoffs in the northeast, midwest and California make passage this year unlikely.

IS IT AN IMPORTANT ISSUE ?

The Federal Budget affects every facet of our nation and all of our people, now and for the years ahead. The average U. S. worker/ taxpayer works more than the first four months of the year just to support federal, state, and local governments, the Tax Foundation says. Tax "Freedom Day" fell on May 11, in (1978), May 1 in 1976, and on April 30 in 1975.

The average worker had to work two hours and 35 minutes in 1975, and two hours and 39 minutes, in an eight-hour day in 1976 just to pay his taxes. In 1978, the average private, non-agricultural industry worker had to work two hours and 48 minutes to pay the 1978 estimated tax take.

The issue of how to limit Federal spending is full of contradictions, however. For example:

*Polls show that the people want a balanced budget, but the people have not conspicuously voted into office those who seem most likely to insist on balanced budgets nor have the people turned out of office those who have consistently voted for our big deficits.

*Many economic experts hold that deficits cause inflation, but while we have had continuous deficits since 1929, we have not had continuous inflation.

*Full employment cannot be achieved without deficits, but we have yet to achieve full employment even with deficit spending.

*The government must have the financial flexibility to incur deficits for long range projects, but there is great skepticism about the ability of the government to manage its deficits in a mannner that contributes to stability. And so it goes, argument and counter-argument.

How Deficits Contribute To Inflation

Over the past decade and a half the national debt has multiplied geometrically, totaling some $350 billion. At the same time, inflation has reduced purchasing power, and interest rates for borrowers have risen sharply.

Federal budget deficits themselves do not create inflation, rather they create the illusion that citizens can receive expanded government services without paying the bill. But somehow, some way, the cost for government programs and services must be borne by someone. To finance these additional commitments, the government prints more money. It must also borrow money from private and public sources. With more money floating around, consumers feel more affluent and extend their purchasing power through installment credit. To keep pace with these accelerating consumer and government money needs, lenders must boost interest rates. The result is cost-push inflation: the more things cost, the higher prices are pushed up by people who can pay more (usually with credit) for those goods.

The products of this deficit-spurred inflation are all negative. Consumers spend money instead of save it, realizing that goods and services will cost more tomorrow than today. Citizen confidence in government erodes as taxes are increased to keep up with the cost of things the government does—defense, roads, schools, etc., or in the absence of tax hikes, government services deteriorate. The value of the American currency declines internationally, so that foreign automobiles and clothing increase in price.

BENEFITS OF A BALANCED BUDGET

Reducing federal spending would not solve inflation per se. It would, however, dampen inflationary expectations on the part of business and consumers. At the consumer level, this would result in reduced spending in anticipation of inflation. At the corporate level it would be reflected in smaller salary increases, wage settlements and price increases. These phenomena together would mean moderate growth at best, and slightly higher unemployment.

But more than psychological benefits would result from a reduced federal spending. For example:

Lower Interest Rates—with the government diverting less money from public and private sources, more money will be availabe for borrowing at lower rates.

Federal Government Under Control—legislation creating new programs and extending current ones could not be enacted without raising taxes or abolishing other programs.

Business Investment Stimulated—Wall Street and Main Street will be able to attract more "small" and "large" investors because people will be looking for long-term gains. Today people must spend their money to avoid losing purchasing power.

IS A CONSTITUTIONAL AMENDMENT THE WAY TO LIMIT SPENDING?

How can Federal spending be limited? One way that is getting more and more attention in Congress and in State Houses across the country is a constitutional amendment to require a balanced federal budget.

Critics of a balanced budget amendment—and they represent the conservative and liberal ends of the political spectrum—cite two principal reasons for their position. First, they contend such an amendment would not be realistic, that it could not take into account the volatile nature of the national—and international—economy. Besides, asks Congressman John J. Rhodes, (R-AZ) "What would you do if the budget weren't balanced? Send everybody in the legislative and executive branches of government to jail?" Second, amendment critics are fearful of a Constitutional convention that would not limit itself to the consideration of the federal budget. They point out that such a convention could recommend sweeping changes in the Constitution, prompting other countries to question the stability of the United States government.

Proponents of a balanced budget amendment scoff at these concerns for the most part. Responding to the first point, they argue balanced budgets could be waived by vote of Congress for specific periods of time. Also, budget deficits could be offset by applying budget surpluses from previous years. On the point of a sweeping Constitutional convention, supporters of an amendment say that the Constitution provides many safeguards to prevent a runaway convention from proposing fundamental changes in the law of the land.

LEGISLATIVE REVIEW- What are Congressional and Government leaders saying about limiting spending?

Twenty-nine states have already passed resolutions calling for a Balanced Budget Amendment.

Recent Congressional action in the House narrowly defeated budget resolution proposals by Rep. Holt (R-Md.) to reduce fiscal 1979 spending levels. Senate passed the so-called Nunn amendment, which coupled spending ceilings with individual tax cuts through 1983. The house instructed its conferees on the tax bill to accept the same language, but after the Administration intervened, the amendment was watered down to non-binding "statement of intent." Roth-Kemp personal tax cuts, without associated spending cuts, were defeated in both houses. A proposal by Senator Danforth (R-Mo.) requiring a surtax to finance "excess" spending growth was defeated in the Senate Finance Committee.

****Former Treasury Secretary Michael Blumenthal**—"The current Congressional budget process provides a fully adequate formal mechanism for controlling spending and the deficit. The real task before us is not to write new statutes and Constitutional amendments, but to use the existing legal machinery to achieve balance in fact. The test of fiscal restraint is not what we say, but what we do."

****Senator Howard H. Baker, Jr. (R-Tenn.) Jr.**—"I have come to the conclusion that a constitutional mandate for a balanced federal budget, except in case of clear national emergency, is necessary and proper."

"I have co-sponsored a Constitutional amendment, proposed by Senator Richard Lugar (R) of Indiana, which states that the federal budget, as set in the Congress' Concurrent Budget Resolution, shall be balanced unless two-thirds of both the House and the Senate vote otherwise."

"While I do not fear another Constitutional convention, I believe the more sensibile and expeditious approach would be for the Congress itself to recognize its own failing and take the strong but necessary measures to put its financial house in order."

****Senator Edmund S. Muskie (D-ME)**—"I believe a fundamental danger exists in any plan to call a new Constitutional convention."

"In the two hundred years since 1776, we have had only one Constitutional convention. That was the one in which James Madison, Benjamin Franklin and their colleagues shaped the system of government we know in America today. I am not eager to expose their work to the prospect of massive revision. No one knows for sure that a new convention would limit itself to the balanced budget issue."

"Constitutional scholars are not at all sure that a convention could be forced to limit its agenda. What would be the outcome? Would the delegates ban abortion or give abortion a specific guarantee? Would they outlaw guns or outlaw gun control? Would they stop forced busing or give forced busing an explicit Constitutional blessing?"

"We have no business taking such chances with the fundamental law of the land. Through wars, depression, impeachment proceedings and an amazing array of changes, this nation has never found it necessary to call a new Constitutional convention. It is not necessary now."

"No Constitutional amendment and no legislative act can be drafted so carefully that it is not susceptible to evasion and circumvention. One option, for example, would simply be to balance the federal budget by separating operating costs from capital investments and counting only the former as subject to a yearly balance. That is what the states do, and if we were to do it in Washington, the budget would be close to balance now. But that kind of budgeting is inappropriate for Washington."

****Senator Henry Bellmon (R-OK)**—Ranking minority member of the Senate Budget Committee has been outspoken in his call for a balanced budget.

"The federal government has become accustomed to spending in the red. We've had only eight balanced budgets since 1934 and only one since 1960. The deficit for this year alone will be over $30 billion and our total national debt will be about $800 billion, equal to $3,600 for every man, woman and child in this country.

"What's really frustrating is that the government, which causes inflation, benefits most from inflation. Because of the progressive tax system, federal revenues increase 1½ percent, when inflation goes up 1 percent. When you receive additional income and move into a higher tax bracket, the government takes a higher percentage and the end result is that your income won't buy as much."

****Congressman James R. Jones (D-OK)**—Is very much in favor of a balanced federal budget, and proposes that the federal budget be limited to 20 percent of the nation's gross national product. Jones is a key member of the powerful House Budget Committee and his bill H.R. 4646 concerning capital cost recovery reflects concern for federal budgeting and tax reform.

****Senators H. John Heinz III (R-Pa.) and Richard Stone (D-Fla.)** have joined in introducing a constitutional amendment to limit federal spending. Simply, this amendment would limit the increase in federal spending to a percentage equal to the percentage increase in the gross national product. If the inflation rate exceeds 3 percent, however, the amendment would apply additional limits on the overall growth of federal outlays.

Stone. "I joined in introducing this amendment because I believed it would put our economy back on the road to prosperity by keeping more money in the hands of those who earn it. This amendment limits the growth of federal spending by setting a ceiling on how much more the federal government will be allowed to spend every year. The formula says that next year's government spending can't grow faster than this year's production, as measured by the gross national product."

A Conclusion

It should be remembered that even if a balanced budget amendment were passed, the federal government could also resort to a number of stratagems to get around any budget amendment. It could, for example:

*Mandate that state and local governments finance programs now supported with federal dollars.

*Use new regulations to shift the cost of certain programs on to the private sector, which already spends an estimated $100 billion a year complying with various government edicts.

*Exclude capital expenditures from the budget.

*Pass on new program costs to future budgets.

*Use tax incentives, loan guarantees, tariff protection or antitrust waivers—instead of direct on-budget expenditures—to accomplish certain economic objectives.

One excellent way to avoid all this is for the White House and Congress to live up to their promises about a lean and austere budget—which, according to the Administration, means a $28.4 billion deficit in fiscal year 1980 and a $300 million surplus in fiscal 1981.

WHAT DOES GFWC SAY ABOUT LIMITING FEDERAL SPENDING?

By resolution at national convention, GFWC has long been on record as being in favor of bringing federal spending more in line with income, as the following resolutions indicate:

1974—RESOLVED, That the General Federation of Women's Clubs urges Congress to:

1. Adopt enforceable spending limits;
2. Adopt the recommendations of the Joint Study Committee on Budget Control to bring about effective Congressional control over spending;
3. Reject bills which require spending beyond the proposed spending limitations.

1978—RESOLVED, That the General Federation of Women's Clubs supports an amendment to the Constitution of the United States which would require a balanced Federal budget.

1979—RESOLVED, That the General Federation of Women's Clubs urges the Government of the United States to pursue a program of realistic economic stabilization including reduced consumption where necessary, with a pay-as-you-go plan of taxation; sound monetary controls; an end to the vicious spiral resulting from the contest between rising wages and rising prices; and the utmost economy in administration.

WHAT CAN YOU DO?

Become a Lobbyist Yourself—Write your Representatives and Senators. Tell them your personal view of the issue; keep it simple; handwritten letters have the greatest impact; state how the issue affects you, your family and your community; avoid form letters; be specific; be constructive; and, ask for a reply.

Duplicate This Report—This ACTION REPORT is placed in the CLUBWOMAN centerfold so it can be removed easily. Duplicate it on a photocopy machine. Distribute it to all your club members. Ask them to study it, and to take ACTION.

Ask Your Local Media To Help—Check with your local newspaper, public and commercial television stations and see if they have taken a stand on the issue of Federal Spending. If not, encourage them to use their voice to inform the public.

Ask Your GFWC Members To Take ACTION Now—The more than 600,000 GFWC club members of the largest organization of women volunteers in the world can have a tremendous impact on the formation of legislative policy concerning Federal Spending, but ONLY if your club studies the issues and takes ACTION!

GFWC Headquarters Wants To Know—How do the members of your club feel about the issue of Limiting Federal Spending and what action will your members take? Write to the FREE PROGRAM and let us have a brief report and your ideas on how GFWC members everywhere can help to support the FREE Program by taking ACTION on the issues covered in the CLUBWOMAN.

Write to: Mrs. Bill G. Williams
GFWC FREE Chairman
P.O. Box 118
Newport, Tenn. 37821

Watch for the next FREE Program ACTION REPORT.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

SCOMM

#27:3

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SCR 9
Title Establishing a special committee on the Constitutional Convention
Requested by _____ Date May 19, 1981

II. FISCAL DETAIL
Agency Affected Legislature
Program Category Affected _____
BRU, Program, or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100	PERSONAL SERVICES		66.3				
200	TRAVEL		6.0				
300	CONTRACTUAL		67[illegible].0				
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	CONTINGENCY		5.0				
	TOTAL		144.3				

FUNDING (Thousands of Dollars)

GENERAL FUND		144.3				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME		3				
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Personal Services
All positions are for seven (7) Mos. and include all benefits.

Contractual
Brochure Illustration $7.0
Brochure Printing and distribution $5.0
Citizens Guide to the Alaska Constitution Printing and Distribution 12.0
Statewide survey on Constitutional questions and the constitution $22.0
League of Women Voters public info work $20.0
Telephone $1.0

IV. DATE _____ PREPARED BY _____
AGENCY _____
PHONE _____

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80)

Fiscal Note Explanation for SCR 9:

Personal Services:

Personal services include one administrative assistant, one researcher and one secretary. At present, all positions will work out of a Juneau office. However, the secretary position may be transferred to Fairbanks.

It must be noted that, should the legislature decide on full time staff, one or more of these positions could be eliminated from the committee's budget.

Staff work will include administration of the committee and committee work, coordination of projects, committee publicity and information, constitutional convention site survey and report, planning committee meetings, independent work on "occasional papers", solicitation of papers from the general public, and arranging for committee functions.

Contractual:

Last year the Legislative Council approved the funding of several projects which had been requested by the Committee. However, due to the fact that the committee was formed almost three months late and that all interim funds lapsed into the Council budget at the beginning of the 12th Legislature, these projects were not completed. They are included in the FY '82 budget and are:

1. Statewide Survey on Constitutional Questions and questions relating to constitutional convenion.

2. Illustration of a brochure on the constitution and explaining the function of a constitutional convention.

Funds are being requested to follow through on two projects begun last year.

(a) Printing and distributing the Citizen's Guide to the Alaska Constitution. This publication was contracted last year and should be ready for printing during the month of July.

(b) Printing and distributing the Brochure on Constitutions and a Constitutional Convention. The text is being written by staff, illustrated by a private contractor, and should be ready during the month of July.

The final large contract is a proposal developed by the League of Women Voters at the request of the Committee which would:

(1) Inform the public of Alaska's constitutional history and present framework, explaining how constitutional changes can be accomplished and acquainting them with the upcoming ballot question; and

(2) To receive from the public their comments, suggestions and questions relating to constitutional issues as they perceive them to be.

The League will perform a totally neutral role of informing and recording during this process.

DRAFT

WHEREAS the Constitution of the State of Alaska has been in effect since statehood; and

WHEREAS the economic conditions of the state and the conditions of life have changed greatly since the adoption of the present constitution; and

WHEREAS the growth of population, industry, and resource development that has occurred and will continue to occur in this state create problems for government which may be difficult to resolve under the present constitution; and

WHEREAS in order for state government to preserve its historic position in our federal system, its basic legal tool must be adaquate to the task; and

WHEREAS any constitutional revision is a complicated task which should not be entered into lightly; and

WHEREAS constitutional revision requires careful and impartial research to evaluate the present provisions in terms of the needs of today as well as tomorrow; and

WHEREAS the inauguration of constitutional amendments or revision is a legislative function which cannot be relinquished under the requirements of the present constitution; and

WHEREAS the electorate of the state will vote in the 1982 general election on whether or not there shall be a constitutional convention; and

WHEREAS the Legislative Council is the body of the Alaska State Legislature;

BE IT RESOLVED by the Alaska State Legislature that upon approval of a Constitutional Convention by the voters of the State of Alaska, the Legislative Council is directed to appoint a Constitutional Convention Commission within thirty days after an affirmative vote on the question of holding a convention to compile information useful to the delegates, undertake studies and research, collect and organize appropriate background materials, and provide for the dissemination of information it compiles so that the Constitutional Convention may function expeditiously and efficiently; and be it

FURTHER RESOLVED that the Legislative Council may appoint, as it deems necessary, legislators, lay citizens and legal experts to the commission (or to aid the commission); and be it

FURTHER RESOLVED that members of the legislature shall receive regular per diem and travel expenses and non-legislative members of the Commission shall receive travel expenses and per diem at the prevailing state employee rate; and be it

FURTHER RESOLVED that the Commission shall expire thirty days following the convening of the Convention

Chairman
Rep. Brian Rogers

Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Hayes

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

Pouch Y, Rm. 107
Capitol Bldg.
Juneau, Alaska
99811
(907) 465-3743

Staff
Guy Van Doren
Admin. Asst.

September 4, 1980

The Honorable Brian Rogers
Chairman,
Special Interim Committee on
The Constitutional Convention
P.O. Box "K" College Branch
Fairbanks, Alaska 99708

Dear Brian:

Enclosed, please find a draft copy of a resolution I drafted relating to a Constitutional Convention Commission. I have no pride of authorship as I drafted it as the beginning of an idea.

Also enclosed is a copy of the letter I sent to recognized authorities on Constitutional revision and the letter from the National Municipal League with the list of people checked off that I sent a letter to. I tried to choose persons in a adjoining geographical area to avoid excess traveling expenses. I would have loved to include Hawaii. I also chose a couple of people who are familiar with Alaska and the Alaska Constitution.

If the Committee decides that the trip is worthwhile, I could also spend time with (1) The National Municipal League (2) Political Scientists at Yale, Harvard, Columbia, Princeton and possibly Northwestern and Chicago; (3) American Political Science Assn.; (4) Instutute of Public Administration of New York; (5) Public Administration Service; (6) Legislative Reference Service-Library of Congress; and: (7) National Taxpayers Assn. These are all in the same area as the other people.

As you probably know by now, Mr. Wagstaff was out of the office until the 8th. I will call him then and let you know the results when we talk again.

I have enclosed an authorization note in order that I will be able to use Landa if it is necessary. She has indicated that she will be able to go to work full time on November 1, 1980 if we need her. She is willing to work on Saturdays or evenings if we need her before November. This is alright with me since I feel that I can handle any typing, unless there is something heavy going on until November. She did indicate that she will attend the meeting we are planning to have in Juneau.

Guess that's it for now. See you in Juneau and will be talking to you shortly.

Hans

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 30, 1979

SUBJECT: Constitutional convention
(Work Order No. 6049)

TO: Representative Brian Rogers

FROM: Richard A. Bradley, Legislative Counsel

Your work order request asks for a resolution establishing a joint committee on a constitutional convention. The responsibility of the committee would be to prepare for the possibility of a constitutional convention subsequent to 1980. Your resolution would seek to clarify "procedures for the selection of delegates, rules of procedure, and procedures for ratification."

The committee would also anticipate issues which could come before the convention and report its recommendations on those issues.

I would prefer to examine the legal framework in which a constitutional convention would meet and determine whether those frameworks are adequate for their purposes since if they are not, as the analysis concludes, then the frameworks are established "by law."

The constitutional article dealing with amendment and revision is Article XIII. Section 1 deals essentially with legislatively proposed amendments. Section 2 authorizes the legislature to call a convention at any time.

Section 3 is the basis of your interst and it provides:

> SECTION 3. If, during any ten-year period a constitutional convention has not been held, the lieutenant governor shall place on the ballot for the next general election the question: "Shall there be a Constitutional Convention?" If a majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period. If a majority of the votes cast on the question

are in the affirmative, delegates to the convention shall be chosen at the next regular statewide election, unless the legislature provides for the election of the delegates at a special election. The lieutenant governor shall issue the call for the convention. Unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including, but not limited to, number of members, districts, election and certification of delegates, and submission and ratification of revisons and ordinances. The appropriation provisions of the call shall be self-executing and shall constitute a first claim on the state treasury.

Comment: The significance of §3 for the legislature is that the Drafters of the constitution sought to make the "call" for the convention as self-enforcing as possible; therefore the language of §3 provides that "the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955," and the provision then makes explicit some of the provisions of the 1955 "call" that the Drafters had in mind. But while the constitution will supply answers if the legislature should fail to provide alternative procedures, the constitution explicitly grants the legislature the prerogative of making those changes.

Accordingly, the legal situation may be fairly summarized:

(1) The legislature may establish by law the elements of the call;

(2) If it does not establish by law the elements of the call, the provisions of the 1955 call will be followed "as nearly as possible;"

(3) No legislation since statehood deals with the elements of the call of a convention as such; accordingly the 1955 law is still the basic framework of the call. [AS 15.50 deals peripherally with a few of the side issues but none of the more critical].

Before addressing the 1955 act and suggesting possible inadequacies in it, one other portion of the constitution needs notice.

Section 4 [of Art. XIII] provides:

> SECTION 4. Constitutional Conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

Comment: The legislature cannot limit the topics to be discussed by the convention. Even if the legislature calls a convention to solve some narrow question, its powers are plenary.

Accordingly, it is appropriate to examine the 1955 call and to determine whether it should be revised "by law." In my judgement, it should. The 1955 "call" is found in Ch. 46, SLA 1955. A copy of Ch. 46 is enclosed with this memorandum for your information.

(1) Delegate selection. Sec. 3 of Ch. 46 establishes the districts from which delegates are selected. The general framework comprehends delegates elected on a district basis, on a regional basis, and on a statewide basis. Apart from the latter, the selection is not altogether dissimilar to the pattern for the election of senators and representatives until the first reapportionment, when senators were elected from districts as well as from the four judicial districts at large. See Art. XIV, §2 at p.165 of the Constitution pamphlet of your Alaska Statutes. Consider, if you wish, a delegate selection procedure under which a delegate would be elected from each constitutional officer's constituency, that is, 40 on a district basis, 20 on a senate district basis and two at large.

(2) Length of the convention. Section 1 provides that the convention should not exceed 75 days for its deliberations with one recess not to exceed 15 days. since the 1955 call did have a time limitation built into it, it seems that such a provision established in general law would not be unreasonable.

The language in Art. XIII, §3 provides that the "appropriation provisions of the call shall be self executing....." I do not read this as giving the convention carte blanche to spend money as it wishes. Rather, I would conclude that the expenditure levels of the call need not themselves be appropriated; failing such an appropriation the convention may spend according to the call.

This matter should be addressed; note that sec. 20 allows the convention $300,000 but then per diem was $20 and "compensation" amounted to another $15 per day. You may wish to reconsider those questions.

(3) Calling the election for delegates. Sec. 5 gives the Governor the responsibility for calling the election. You may wish to reassign the responsibility to the lieutenant governor and otherwise refine the material in §§5-12.

(4) Procedures for ratification. AS 15.50.030 provides that "propositions" proposed by the legislature and by a constitutional convention are to be placed on the first "statewide general, primary, or special election ... held 120 days after the amendment proposed by a constitutional convention.

I note that §30 was not amended when the constitution was amended in 1974 to put amendments proposed by the legislature on the general election ballot; as to those amendments, §30 is clearly unconstitutional. Since the constitution does not specify itself when amendments proposed by a convention will be voted on, technically there is no problem as to those amendments. In my view

§30 does override the provisions of Ch.46 which allows the convention itself to pick the date for the ratification. Sec. 14. But if the policy of the 1974 amendment is accurate, that general elections have better voter turnout and therefore are the preferred election for voting on constitutional amendments, then §30 should be changed.

(5) Rules of procedure. I assume [without having done any research] that the constitutional convention has an inherent right to determine its own rules of procedure.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

January 30, 1979

SUBJECT: Miscellaneous Constitutional Convention Issues (Work Order No. 6056)

TO: Representative Brian Rogers

FROM: Richard A. Bradley
Legislative Counsel

Work Order No. 6056 requested analyses of several issues.

(1) Constitutional convention minutes relating to the amendment process. Enclosed is the index to the Proceedings of the Alaska Constitutional Convention, 1955 - 1956 as it relates to the Amendment and Revision article; also enclosed are the pages described in the Index.

(2) The 1970 Constitutional Convention vote and the reasons for the 1972 vote. The Constitution states that at the end of ten-year periods, if a constitutional convention has not been held during that period, the lieutenant governor shall "place on the ballot for the next general election the question: "Shall there be a Constitutional Convention?" Presumably in response to this direction, the lieutenant governor placed the following language on the ballot in 1970:

> REFERENDUM As required by the Constitution of the State of Alaska, Art. XIII, Section 3 Shall there be a constitutional Convention?

The vote on the question was 34,911 Yes and 34,472 No.

Citizens sued; the basis for the suit was stated by the Supreme Court:

> The basis for the appellees' [plaintiffs'] complaint was that the prefatory language introduced a bias in the election because the prefatory phrase suggested that what was required by Art. XIII, section 3, of the constitution was the convention rather than the referendum.

The Court noted that the vote was close. It further observed:

> The purpose of holding elections is to ascertain the public will, and it is too plain for argument that in such cases that will cannot be told from the ballots, and neither the courts nor the election authorities are authorized to arbitrarily assume that the voters meant something that cannot fairly be ascertained from the ballots themselves. Boucher v. Bomhoff, 495 P.2d 77, 79 [Alaska 1972].

and

> On the basis of our study of the record, we believe that a reading of the questioned ballots leads inescapably to the conclusion that the prefatory language was inherently misleading. The prefatory language suggests that the constitution requires that a constitutional convention be held, when in fact it requires only that a referendum be held on the question of whether there shall be a constitutional convention. The implication of the prefatory language is that a constitutional convention will be held as required by the Alaska Constitution unless the voters reject the holding of a convention . . . . [W]e hold that. . . the inclusion, by the executive officer charged with malconduct within the intendment of AS 15.20.540(1). Boucher v. Bomhoff, supra, at 81 - 82.

(3) Delegate selection for the 1955 convention. Ch. 46, SLA 1955 mandated the selection process. Essentially the procedure called for the selection of the district delegates, regional delegates, and statewide delegates. I suspect that the framework imitated the election process used for election to the territorial legislature and for executive officers of that times. I comment on this in my accompanying memorandum.

(4) Other pertinent information. See my memorandum to you of even date on this subject.

RAB:jdn

Enclosure

TO: SENATOR GEORGE HOHMAN
CHAIRMAN, LEGISLATIVE COUNCIL

FROM: GUY VAN DOREN
ADMIN. ASST. SENATE JUDICIARY COMMITTEE

SUBJECT: INTERIM COMMITTEE ON THE CONSTITUTIONAL CONVENTION "PROPOSAL".

A legislative constitutional study committee would be formed consisting of the chairman of the Legislative Council as an ex officio member, two members of the House of Representatives and two members of the Senate.

Staff for the committee will consist of two persons chosen by either the Legislative Council and/or the Committee and who will serve during the seven month interim period, a person recognized as an authority on the Alaska Constitution, chosen by the Legislative Council or the Committee who will serve for a total of three to four months to assist the staff people, a secretary for drafting the final report who will be employed for the last month or month-in-a-half, and a staff person from the Legislative Council who shall provide assistance as needed and who will act as a liaison person between the Council and the Committee.

In addition, the staff shall utilize the services of the Legislative Division of Research. The Executive and Judicial branches of the state shall each assign a person to act as a liaison person between their respective branches and the Committee.

BACKGROUND

The state constitution was adopted in 1956, before Alaska became a state. A provision of that constitution gives the voters a chance every ten years to decide whether a new convention should be held. The last referendum on the question was in 1972, when a convention was rejected after an earlier favorable vote was nullified by the court.

A new convention opens the whole constitution to revision. It thus provides an opportunity to deal with issues that concern and frustrate some people and groups.

GENERAL PURPOSES

The basic questions before the committee will be:

(1) Which proposals are appropriate constitutional matter?
(2) What can be taken care of by legislative action?
(3) What information is needed by the public before an intelligent vote can be cast in the 1982 convention referendum?
(4) What steps should be taken by the legislature?

The general purposes of the Committee are:

(1) To prepare the general public for an informed and intelligent decision on whether or not to have a constitutional convention.
(2) To identify and define the issues which may require amendments or changes to the state constitution.
(3) To prepare the three branches of the state government for either changes to the constitution by amendment or constitutional convention and to seek imput regarding the ramifications of such changes.

METHODOLOGY FOR COMMITTEE WORK

1. RESEARCH AND ANALYSIS

(A) A detailed look at the constitution as it exists at present.

(B) Research regarding other states which have had a constitutional convention in the last decade and the results and observations of these conventions.
(C) Review of Alaska Constitutional Convention and the 1976 convention delegates reunion and review of the various articles of the constitution.
(D) Review of constitutions in other states.
(E) Review of Uniform State Constitution document
(F) Research and review of any information regarding state constitutions or conventions.

PUBLIC HEARINGS

1. Public hearings conducted in three phases with issue-analysis between each phase.

(A) Phase One: Hearings in *Tok, *Delta Junction, Fairbanks, Anchorage, Kenai-Soldotna, *Homer,*Seward, Glennallen, and Valdez; Late June or early July.

(B) Phase Two: Hearings in Barrow, Kotzebue, Nome, Bethel, Dillingham, and Kodiak; end of Sept. in order that people have returned home .

(C) Phase Three: Hearings in Ketchikan, Sitka, Wrangell, Petersburg, Juneau, Cordova, *Yakutat, Cordova and * Haines; end of October.
*possible hearing sites.

REPORT TO COUNCIL

At a meeting determined by the Legislative Council, the Committee shall report on:

(1) Research regarding the constitution and constitutional convention.

(2) Results of the Public Hearings
(a) Issues identified
(b) Research and analysis of issues derrived from the public hearings
(3) Decisions and recommendations regarding the next steps and specific actions and proposed legislation, including proposed constitutional amendments if applicable.

BUDGET FOR COMMITTEE

Two (2) full time staff administrative assistants for seven (7) months. $3094.40 including benefits	$43,320
Consultant: three (3) to four (4) months at $5,000 per mo.	20,000
Secretary: one (1) to two (2) months at $1,500 per mo incl. benefits	3,000
Travel, per diem, staff and legislators:	15,000
Misc: Supplies, phone, xeroxing, printing	2,000
Report preperation and release to the public sector:	5,000
Contingency:	5,000
TOTAL.....	$93,320

VICTOR FISCHER ASSOCIATES CONSULTING
221 EAST 7TH AVENUE #204 • ANCHORAGE, ALASKA 99501 • (907) 272-2381

December 18, 1979

TO WHOMEVER:

RE: Review of "Issues of Constitutional Change"

You are one of a number of Alaskans selected to receive the enclosed draft paper which examines changes to Alaska's constitution that have been suggested in the past or might be considered in the near future. The paper is part of a study program sponsored by the Alaska Legislature's Interim Committee on the Constitutional Convention to provide preliminary background information for the convention question on the 1982 ballot. The other attached paper discusses the general questions related to constitutional revision. It is sent to you for background and informational purposes.

I would very much appreciate your review of the constitutional issues study. As you will note, the preface provides a brief description of the paper and its contents. Also mentioned there, this draft is strictly preliminary in nature; and all suggestions for revision, expansion, and deletion of material will be very welcome.

Sen. George Hohman and Rep. Brian Rogers, co-chair of the interim committee, contemplate the possibility of publishing this paper as well as other parts of the study series. Your assistance will help to provide a more complete and improved end product. By the way, the committee has not yet received this draft, and it does not purport to represent the views of the committee.

I need to receive your comments and suggestions by January 11, 1980. If you cannot provide them by that date but do intend to submit them later, please drop me a note to that effect or call me.

Many thanks for your assistance, and very best season's greetings.

Sincerely,

Vic gs

Vic Fischer

COMMUNITY PLANNING • RESOURCE MANAGEMENT
DEVELOPMENT • PUBLIC POLICY • ETC

Rep Rogers -

This is your copy

Fiscal Note Explanation for SCR 9:

Personal Services:

Personal services include one administrative assistant, one researcher and one secretary. At present, all positions will work out of a Juneau office. ~~However, the secretary position may be transferred to Fairbanks~~.

It must be noted that, should the legislature decide on full time staff, one or more of these positions could be eliminated from the committee's budget.

Staff work will include administration of the committee and committee work, coordination of projects, committee publicity and information, constitutional convention site survey and report, planning committee meetings, independent work on "occasional papers", solicitation of papers from the general public, and arranging for committee functions.

Contractual:

Last year the Legislative Council approved the funding of several projects which had been requested by the Committee. However, due to the fact that the committee was formed almost three months late and that all interim funds lapsed into the Council budget at the beginning of the 12th Legislature, these projects were not completed. They are included in the FY '82 budget and are:

1. Statewide Survey on Constitutional Questions and questions relating to constitutional convenion.

2. Illustration of a brochure on the constitution and explaining the function of a constitutional convention.

Funds are being requested to follow through on two projects begun last year.

(a) Printing and distributing the Citizen's Guide to the Alaska Constitution. This publication was contracted last year and should be ready for printing during the month of July.

(b) Printing and distributing the Brochure on Constitutions and a Constitutional Convention. The text is being written by staff, illustrated by a private contractor, and should be ready during the month of July.

The final large contract is a proposal developed by the League of Women Voters at the request of the Committee which would:

(1) Inform the public of Alaska's constitutional history and present framework, explaining how constitutional changes can be accomplished and acquainting them with the upcoming ballot question; and

(2) To receive from the public their comments, suggestions and questions relating to constitutional issues as they perceive them to be.

The League will perform a totally neutral role of informing and recording during this process.

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SCR 9
Title Establishing a special committee on the Constitutional Convention
Requested by _____ Date May 19, 1981

II. FISCAL DETAIL
Agency Affected Legislature
Program Category Affected _____
BRU, Program, or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100	PERSONAL SERVICES		66.3				
200	TRAVEL		6.0				
300	CONTRACTUAL		74.0				
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	CONTINGENCY		5.0				
	TOTAL		151.3				

FUNDING (Thousands of Dollars)

GENERAL FUND		151.3				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME		3				
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Personal Services
All positions are for seven (7) Mos. and include all benefits.

Contractual
Brochure Illustration $7.0
Brochure Printing and distribution $5.0
Citizens Guide to the Alaska Constitution Printing and Distribution 12.0
Statewide survey on Constitutional questions and the constitution $22.0
League of Women Voters public info work $20.0
Telephone $1.0

IV. DATE _____ PREPARED BY _____
AGENCY _____
PHONE _____

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80)

Con-2010

FOR YOUR INFORMATION ONLY

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

AND

YUP'IK ESKIMO LANGUAGE WORKSHOP
OF THE UNIVERSITY OF ALASKA

The parties to this agreement are the Legislative Affairs Agency, on behalf of the Legislative Council's Joint Committee on the Constitutional Convention, hereinafter referred to as the "Agency", and Yup'ik Eskimo Language Workshop of the University of Alaska, hereinafter referred to as the "Consultant".

THE PURPOSE OF THIS AGREEMENT is to provide the Agency with professional services to translate the Constitution of the State of Alaska into the Yup'ik language.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

(A) The Consultant shall provide work consisting of Phase I (Attachment I). (1) A paraphrase of the Constitution of the State of Alaska for use by translators. Phase II, Paragraphs A through E (Attachment 1), (2) training of two primary translators and six secondary translators.

(B) The Consultant shall provide on or before 3/15/81 a detailed budget for completion of Phase III and IV (see attachment I).

CLAUSE II - PERIOD AND DATES OF PERFORMANCE

(A) The work under this contract shall be performed between December 15, 1980 and December 31, 1981.

(B) This contract may be terminated by either party upon written notice to the other.

(C) Unless extended by written agreement, this contract expires on December 31, 1981.

CLAUSE III - PROJECT DIRECTOR

The Project Director shall be Representative Brian Rogers, acting on behalf of the Joint Committee on the Constitutional Convention.

CLAUSE IV - COMPENSATION AND METHOD OF PAYMENT

(A) For the work specified in this contract, the Consultant shall be compensated at the rate of $60,000 (Sixty Thousand Dollars). It is understood that additional funding will be needed to complete Phase II, III and IV (Attachment I) during FY81 and FY82.

(B) The Consultant shall be reimbursed for travel and other expenses authorized in advance by the Project Director, except that per diem shall be paid at prevailing State rates, and all air travel shall be reimbursed on the basis of coach class fares.

(C) Billings may be submitted by the Contractor monthly, and should note thereon work accomplished to date.

(D) Total payments under this contract, including expenses shall not exceed $60,000 (Sixty Thousand Dollars).

CLAUSE V - OFFICE SPACE, EQUIPMENT, CLERICAL SUPPORT

Office space, equipment and clerical support of the Consultant that will be necessary to carry out his obligations under this contract shall be supplied by the Consultant at no cost to the Agency.

CLAUSE VI - RECORDS, DOCUMENTS, AUDIT

The Consultant shall maintain accurate records, including detailed time records, as may be required by the Project Director. The records are subject to inspection by the Agency or the Project Director at all reasonable times. All documents, reports and writings generated as a consequence of work done under this contract shall become the property of the State of Alaska and, on completion of the work or at the termination of this contract, shall be delivered to the Project Director.

CLAUSE VII - REPORTS

The Consultant shall keep the Project Director informed as to the progress of the work performed under this agreement and shall provide progress reports as specified by the Project Director.

CLAUSE VIII - ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties of this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated below.

CONSULTANT

LEGISLATIVE AFFAIRS AGENCY

11/3/81

YUP'IK ESKIMO LANGUAGE WORKSHOP Date
OF THE UNIVERSITY OF ALASKA
PAT O'ROURKE, Chancellor
UA Community College System

2/6/81

M. R. CHARNEY Date
EXECUTIVE DIRECTOR

Accepted:

11/10/81

REP. BRIAN ROGERS Date
Chairman, Joint Committee on
the Constitutional Convention

Approved as to form:

11/13/81

BILLY G. BERRIER Date
AGENCY LEGAL COUNSEL

PROPOSAL TO TRANSLATE THE CONSTITUTION OF THE STATE OF ALASKA INTO CENTRAL YUP'IK

Summary: The goal of this project is to increase understanding of the principles of Alaskan government by the Yup'ik speaking public, and to facilitate communication between legislators and their constituents. To this end, the state constitution will be both translated and thoroughly annotated. To reach both the literate and non-literate public, the resulting document will be recorded on cassette tape as well as produced in a written form. Representatives from each Yup'ik dialect area will be involved, to ensure maximum intelligibility. These representatives will be trained in translation as part of the project. In the process, they will so discuss the meaning of the constitution with a number of consultants. When they have reached full understanding of the document and are satisfied with their translation, they will return to their respective villages to explain and discuss the constitution with people and to serve as resource persons for constitutional study groups (such as high school social studies classes).

PHASES IN COMPLETION OF THE PROJECT

PHASE I

The first phase in producing any translation consists in making a paraphrase of the original that is accessible to the translator (susceptible of translaton). This may involve modifying or simplifying grammatical constructions and substituting familiar vocabulary for technical terms.

In the case of the constitution, there is a high proportion of technical vocabulary and legalistic grammar. The person who writes the paraphrased version must have an excellent command of English and will need frequent access to a legal consultant and a legal dictionary. Ideally, the translator himself/herself performs this task; there are few translators available at this time, however, who combine all the skills required. Given this situation, it is proposed that someone other than the translators (perhaps a person with some legal training) be contracted for the job.

This person will research state Supreme Court cases and other sources, as necessary, to reach an accurate understanding of the constitution. Annotations to the English document will be appended at this time. The writer will also consult with the translators to clarify any passages/words that are difficult to understand or interpret. Throughout the translation process, this person will be available to explain sections of the constitution, based on his/her understanding of the English document.

Phase II

(A) The second phase involves training two primary translators and six secondary translators (representing different dialect areas), and undertaking the translation itself.

(B) It is important to note that there has been no formal translator training programs in the Yukon-Kuskokwim Delta (except for short, occasional and inadequate court interpretor training sessions, which have, in any case, reached only a handful of people). The Yup'ik area faces a serious shortage of people skilled in technical translation and interpretation. There are no glossaries of governmental, legal, and other technical terminology in translation. There is, in short, no standarized Yup'ik vocabulary with which to discuss constitutional issues. The necessary vocabularly can be generated, and translators can be trained, but such a process takes a large commitment of both time and money.

(C) A major benefit of this project to the Yup'ik people would be the development of a small group of trained technical translators. Hopefully, the project would begin to draw attention to the serious need for an ongoing translator/interpretor training program to meet the demands for mutual understanding between Yup'ik people and the non-yup'ik doctors, lawyers, legislators and other personnel who so often serve the area. At present, both minor and major misunderstandings arise because of mis-translations of important issues and documents. It is generally (and incorrectly) assumed that anyone who is bilingual can function as a translator. This means that untrained people serve in situations almost as complicated as those faced by diplomatic interpretors/translators, who require extensive training and general education, years of experience, and a high degree of technical expertise in the subject to be translated.

(D) The most competent and relevant source of translator-trainers for this type of work is found in Canada. Here, the government of the Northwest Territories has supported a professional corps of translator/interpretors, trained specifically for government translation (English/Eskimo), for five years. The corps is headed by Aimo Nookiguak, himself an Inuit. Members of the corps are trained by Peter Bait, a linguist with special expertise in translator-training, Donna Laing, who works with translator/interpretors to improve their English skills, and Rhoda Mouteritnak, who concentrates on Eskimo language skills. In conjunction with Yup'ik consultant-trainers, including current Yup'ik Language Center staff, these three people would be able to conduct excellent training sessions in the Bethel area. They have been contacted and would be willing to do this.

(E) A three-week intensive training session is proposed. During this time, the original and modified English versions of the constitution will be studied and discussed, and translators will learn how to approach difficult passages. A common understanding of the document will be reached, as well as some agreement on the translation of recurring technical terms.

(F) After the training session, the six secondary translators will return to their villages. The two primary translators will begin to translate the constitution, consulting with the English writer and other Yup'ik Language Center staff as necessary.

(G) When they have translated approximately half of the document, there will be another workshop with the secondary translators in Bethel. The translators will discuss the work completed to date and modify word choices, etc., until the translation is uniformly accepted. The secondary translators will return home with copies of the partial translation. Working individually, they will then make any necessary adjustments for their dialect areas.

(H) When the primary translators have completed the second half of the translation, there will be a similar workshop to finalize the language of the document. Again, the secondary translators will return home to note dialectical variations, as needed.

PHASE III

The third phase will involve typing, printing, and recording the final copy of the translation. The primary translators will be responsible for proofreading the print-ready copy and making cassette recordings of the entire translation. Both the written version and cassette recordings will be accompanied by explanations to clarify the meaning of the constitution to the layman.

PHASE IV

The final phase of the project will be the distribution of the tapes and written texts to the public. Each secondary translator will distribute the material in his/her dialect area, and will be available to discuss the constitution with interested people.

Note: It is assumed that the goal of this project is an understandable translation of a difficult document, rather than a translation which will be necessarily be able to be quoted verbatim in a court of law.

Submitted by Phyllis Morrow, Coordinator
Yup'ik Language Center
KCC
Box 368
Bethel, Alaska 99559

Peter Metcalfe & assoc.
211 Dixon Street Juneau, Alaska 99801 (907) 586-6293

March 24, 1981

Representative Brian Rogers
Chairman, Joint Committee on the
Constitutional Convention
Pouch V
Juneau, Alaska 99811

Dear Brian:

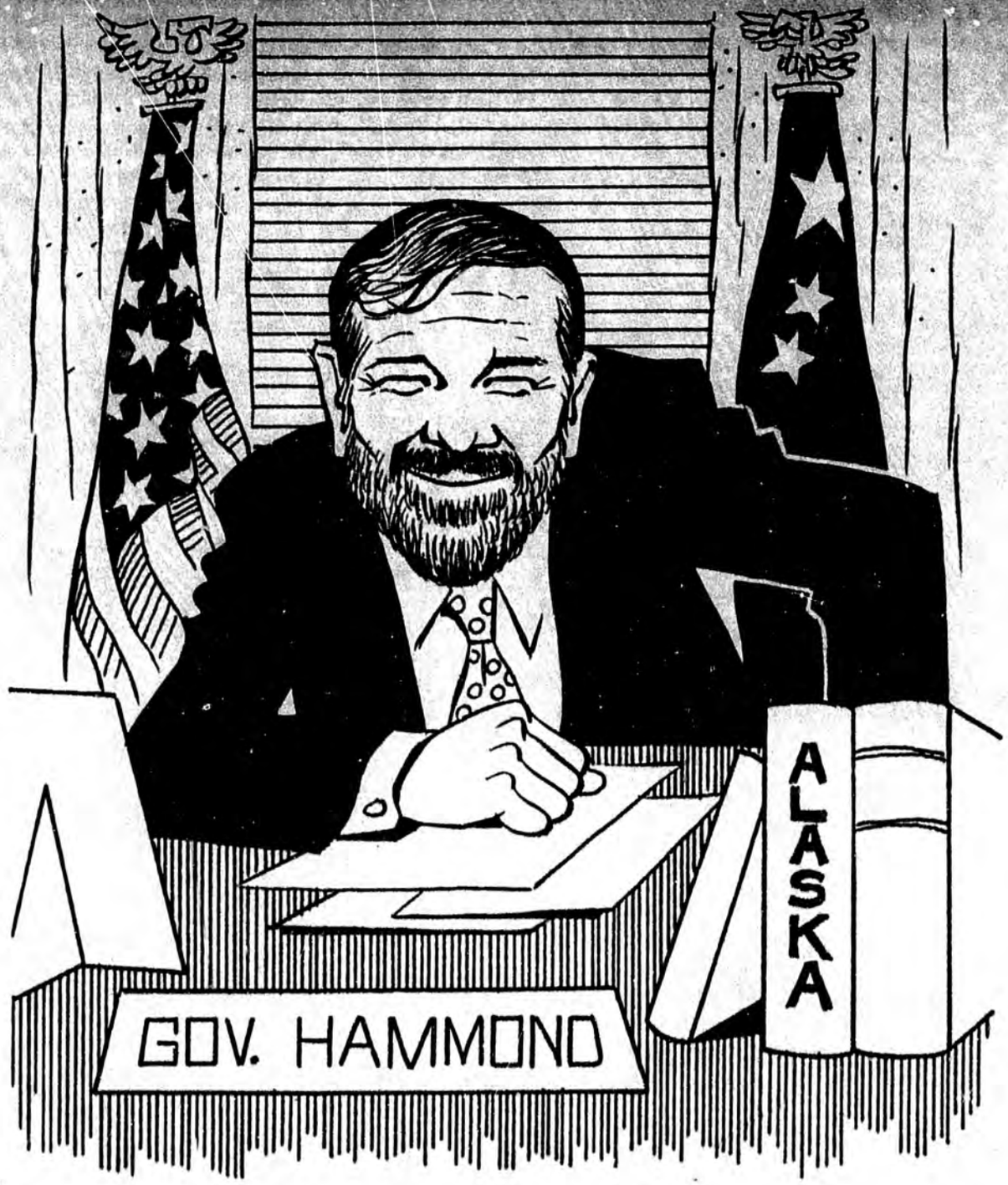
Shortly after your committee accepted my proposal to produce the constitutional convention brochure I made the mistake of informing my associates at Today's Graphics that I had won acceptance from the committee. Since then I have been plagued with inquiries about when a contract will be signed. I've talked to Guy Van Doren several times and he has indicated various problems, including budgetary, that are holding up the project.

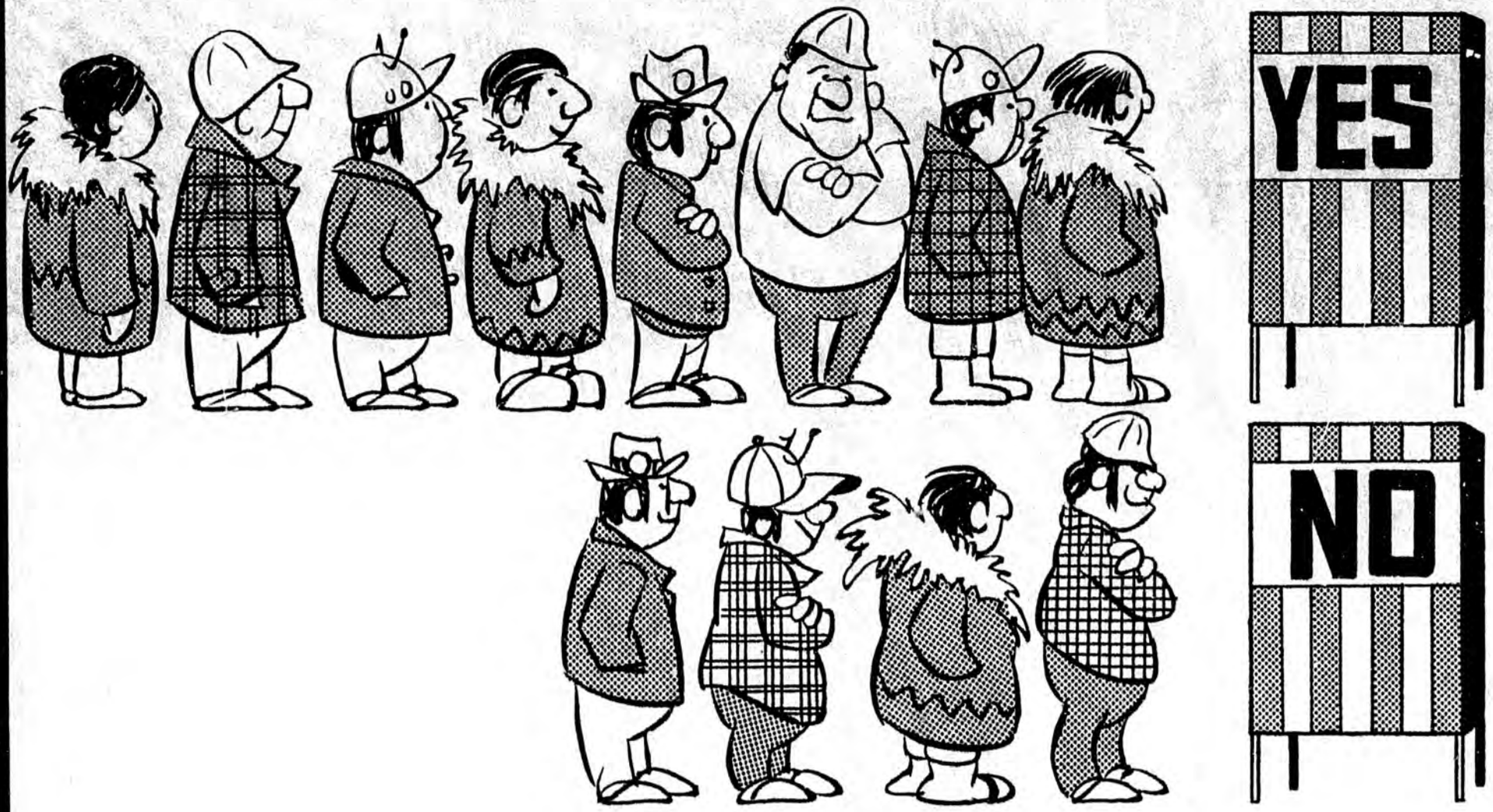
From my perspective it would be to the advantage of this particular project to start sooner rather than later. The problem at the moment is that we may be losing one of the staff artists within a couple months. Bob Bledsoe rendered the caricatures I've included with this letter. He is planning on leaving for a job in New York City sometime in late May. I feel he is ideally suited to illustrate the brochure, and would be disappointed to lose him before this project gets under way. Although our ... artists are most capable of drawing amusing caricatures I am especially taken with Mr. Bledsoe's style.

If there are any problems related to the contract process that I could help with I would be glad to lend my services. I've just completed a contract negotiation with the Tlingit-Haida Central Council involving a very complex project. The contract we signed was very comprehensive, and could serve as a model.

Sincerely:

Peter Metcalfe


GOV. HAMMOND
ALASKA


YES
NO

WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

REPRESENTATIVE
BRIAN ROGERS
Alaska State Legislature

HOME:
BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907) 456-2037

soc.

293

30 March 1981

Peter Metcalfe & Assoc.
211 Dixon Street
Juneau, Alaska 99801

Dear Pete,

Thank you for your letter of March 24th regarding a contract for production of a brochure on the constitutional convention.

As you probably know, the funds for this contract have been "frozen" by the Legislative Council, at least for the time being. I will bring it up again at the next meeting and try to break the ice but before that happens, obviously nothing can be done to begin the project. I hope we can get moving in time for you to have the services of Mr. Bledsoe because I share your appreciation for his artwork.

Thanks again for your efforts, however, and please stay in touch with me on this one. I hope to have some concrete news shortly.

Sincerely,

Rep. Brian Rogers

BR/vb

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Pers + Cont

DOUGLAS POPE
Attorney

Law Offices
912 West Sixth Avenue
Anchorage, Alaska 99501
(907) 272-6225

Box 27
Hope, Alaska 99605

April 14, 1981

Honorable Brian Rogers
State Representative
Pouch V
Juneau, Alaska 99801

Re: Contract with Joint Committee on the Constitutional Convention

Dear Representative Rogers:

The purpose of this letter is to acknowledge that my contract with the joint committee on the constitutional convention, through the legislative affairs agency, is terminated. You will be receiving some final memos within a few weeks.

Sincerely,

Douglas Pope

DP:ef

GUY A. VAN DOREN

P.O. Box 41 Douglas, Alaska 99824 (907) 364-3442

July 2. 1980

The Honorable Brian Rogers
Box "K" - College
Fairbanks, Alaska 99708

Dear Brian:

Enclosed, you will find the material we discussed over the phone. Also enclosed is a draft copy of a consultant contract which I have put together.

Last year, my contract was a flat $20,000 for the interim period. This year, I have patterned the contract on either an hourly basis or daily basis, and will keep track of my time. I feel that the amounts are not unreasonable, since Vic Fischer's contract last year called for fifty dollars an hour or two-hundred-fifty dollars per day whichever was less. By doing some rough calculations, I've figured that if I work every working day for the maximum hours and, including the time I have already worked, the total amount will not even exceed the $20,000 figure of last year. I probably will not even have to work that much, but that depends upon what is decided in the way of projects. As you can see, I've averaged about five hours per day so far.

As to the time I've already spent, I realize that you have not authorized any work. However, preliminary work had to be done, including identifying and writing to recognized authorities on Constitutional revision, review and researching our last years' report as well as the new material which has come in from other states, and getting things ready for this year. If you, or the committee, feel that the work should not be paid for, since I did it on my own, I'll just accept it as a donation to the state and let it go. Also, if you want to change anything, that's O.K. with me. I've done the work and it will be a head start when we decide what to do. I actually have a lot more research to do to keep me busy and to make the committee successful, plus, I enjoy the work. I think you know I will do a good job.

By-the-way, the administrative offices of Legislative Affairs are now located next to me, (Senator Colletta's office) and they will be able to verify the time I've spent working, if there is any questions. Also, Senator Ray and his staff know I've been hard at it.

Whatever you decision, please keep me posted on your plans and the plans for the committee.

Regards,

Guy

Guy A. Van Doren

Dear Brian:

I thought I would review the memo to Governor Hammond from the A.G.'s office re. he recommendation to veto CSHB 723 amS. The reasons are: (1) Provide a background for drafting a new enabling act, and (2) identify the problems with the bill, not only from the A.G., but also problems I ave identified.

Section 3. As the A.G. stated, a government entity may not deny equal access to a governmental forum based on content alone. In Alaska Gay Coalition v. Sullivan, 578 P.2d 951 (Alaska 1978) the Supreme Court unanimously ruled that by denying the Alaska Gay Coalitions' name and purpose to be included in the Anchorage Blue Book, the City of Anchorage violated the public forum doctrine, the first amendment of the United States Constitution, and the equal protection clause. Since the election pamphlet is a government controlled forum for the general election, materials relating to the election may not be prohibited from being included in the phamphlet.

I am not even sure why this section was included in the bill.

Section 5. Based on the cases cited, Bradner v. Hammond, 553 P. 2d 1 (Alaska 1976) and Buckley v. Valeo, 424 US 1 (1976) (Appointments to federal elections commission), I understand the objections of the Governors' staff relating to the legislative appointments of members of the Alaska Constitutional Convention Commission. While other states have mandated that the legislature appoint some members of a commission, and HB117, introduced in 1971 by Terry Miller, contained a provision that some commission members be appointed by the legislature, the Commission is not a law-making body, rather, it will be established to facilitate and prepare for the convention, should one be called.

In Bradner v. Hammond, the court stated that under the constitution, "the governor shall be responsible for the faithful execution of the laws" and declared that the governor " has the power to appoint subordinate executive officers to aid him in carrying out the laws of Alaska." If anything, the commission should probably be under the auspicies of the Lt. Governor after its' creation. Although the legislature may feel that they have the power to appoint members of the commission, due to the the extensive powers delegated by the constitution to the Governor, the Governors' staff is probably correct.

The second part of section 5 in the memo, relating to dual office-holding needs a little explanation.

I researched all of the Boards and Commissions in existence at present, and found that at least 12 Boards or Commissions have legislative members. A newly created Board this session, also has legislative membership. In questioning the A G's office and, from my own interpretation of the constitutional provision relating to dual office holding, I believe that at least six of of the Boards or Commissions are unconstitutionally constructed. While legislative members are not in the position for profit, they are in a position to formulate policy and carry out provisions of law which is in conflict with the constitution. Legislators have also been appointed without regard to the one year provision for creating positions and allowing legislators to serve in those positions. The Alaska Commission on Post Secondary Education is a good example of the problem. It seems, in the past, that the Department of Law has chosen to ignore these problems, but didn't in the case of CSHB 723 amS.

The remainder of the objections is basically drafting problems and as a result of hurry-up legislation. As you may know, we circulated the bill through our committtee due to the lateness of the hour. Had I had more time to review the bill and had we had at least one hearing in the Senate, some of those errors would have come to light. I am suprised that they wern't caught in House Judiciary. I am as guilty, since I only looked the bill over a coupleof times. I've learned my lesson which is, that even if we are in a time crunch, I will closely review each piece of legislation before it leaves any committee I'm working with.

There are several other areas I would like to talk to you about relating to the filling of vacancies, and conducting the election which are based on my research of other states' enabling legislation, but I will discuss those in person when we meet.

I have talked to Rod Pegues who will probably draft a governor's bill on organization of the Constitutional Convention and he has agreed tohat we can work together if the chairman of the interim committee agrees, or we can just do our own bill.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811

AND

GUY A. VAN DOREN DBA-DOUGLAS RESEARCH
P.O. BOX 41
DOUGLAS, ALASKA 99824

The parties to this agreement ar the LEGISLATIVE AFFAIRS AGENCY, hereinafter referred to as the "AGENCY," on behalf of the Alaska State Legislature's Special and Interim Committee on the Constitutional Convention (as authorized by SCR 43 am, 1980), hereinafter referred to as the "COMMITTEE," and GUY A. VAN DOREN, DBA DOUGLAS RESEARCH," hereinafter referred to as the "CONSULTANT."

THE PURPOSE OF THIS AGREEMENT IS TO PROVIDE SPECIALIZED RESEARCH, CONSULTING, AND ADMINISTRATIVE SERVICES TO THE COMMITTEE.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

The Consultant shall, as directed by the Committee Chairman, provide the Committee with specialized research, consulting, and administrative services relating to the Constitution and Constitutional Convention, including but not limited to:

-- assisting in developing, coordination, and pursuing a study of Constitutional matters and constitutional conventions.

-- undertaking research as directed by the Chairman

-- assisting in the analysis of information gathered

-- preparation of reports

-- scheduling and preparation of public hearings

-- analysis and final report of public hearings

-- preparation of legislation if requested by the Chairman

-- other duties as assigned by the Chairman

Work performed under this contract shall be conducted in a timely and efficient manner, and deadlines shall be adhered to as set by the Chairman.

CLAUSE II - PERIOD OF PERFORMANCE

A. The period of this contract shall be retroactive to June 9, 1980, and terminate on January 9, 1981, unless extended by written agreement or terminated in accordance with paragraph B of this clause.

B. This contract may be terminated by written mutual agreement.

CLAUSE III - COMPENSATION AND METHOD OF PAYMENT

A. Payment for work performed under this contract shall be at the rate of Twenty-Five Dollars (25.00) per hour or One Hundred and Fifty Dollars ($150.00) per day, whichever is less, to be paid before the last working day of each month for work carried out between the 15th day of the preceding month and the 15th day of the current month. On or before the 10th day of each month, the Consultant shall submit a statement of time worked to the Chairman for approval. Payment for approved time worked shall be made by the Agency. Total compensation for work performed under CLAUSE I of this agreement shall not exceed Twenty-Five Thousand Dollars ($25,000).

B. The Agency shall furnish travel expenses at coach fares and per diem expenses at prevailing state employee rates, long distance telephone charges related to business of the Committee, clerical support, and equipment necessary to carry out the work designated in Clause I of this agreement, subject to the approval of the Chairman.

C. Office space shall be provided by the Consultant.

D. No other employee benefits are allowed the Consultant

CLAUSE IV - CHAIRMAN

The Chairman for the Special and Interim Committee on the Constitutional Convention is the Honorable Brian Rogers.

CLAUSE V - RECORDS AND PROGRESS REPORTS

The Consultant shall keep the Chairman informed as to the progress of work performed under this contract and shall provide written progress reports as specified by the Chairman.

CLAUSE VI - RECORDS, DOCUMENTS, AUDIT

The Consultant shall maintain accurate records, including detailed time records, as may be required by the Agency. The records are subject ot inspection by the Agency at all reasonable times. All documents, reports, and writings produced in the course of the work performed under this contract are, upon delivery to the Agency or to the Committee, or at termination of this agreement, the property of the Agency and are in the public domain; provided that the Consultant will have the right to use any such materials for purposes of writing about or discussing the issues.

CLAUSE VII - ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties to this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated below.

CONSULTANT:

GUY. A. VAN DOREN Date
DBA DOUGLAS RESEARCH
BUS. LIC. #_____
IRS #_____

LEGISLATIVE AFFAIRS AGENCY:

MYRTON R. CHARNEY Date
Executive Director

APPROVED

REPRESENTATIVE BRIAN ROGERS Date
Chairman, Special and Interim
Committee on the Constitutional
Convention.

APPROVED AS TO FORM:

BILLY G. BERRIER Date
Agency Legal Counsel

PRESIDENT
Robert H. Rawson
VICE PRESIDENTS
Stephen K. Galpin, Fairfield, CT
James L. Hetland, Jr., Minneapolis
George L. McGonigle, Houston
William F. Quinn, Honolulu
Terry Sanford, Durham, NC
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Executive Committee & National
Conference on Government
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W. H. Roberts, Dallas
Harvey C. Russell, Purchase, N.Y.
Frank P. Sebree, Kansas City, MO
Joseph F. Turley, Boston
E. Robert Turner, Boulder
John R. Vella, San Francisco
Fay H. Williams, Indianapolis

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John C. Wyckoff III, Memphis

William N. Cassella, Jr., Executive Director
William G. Andersen, Jr., Assistant Director
Joan A. Casey, Director, Library/Publications
Page Elizabeth Bigelow, Staff Associate
Marion A. Kelly, Administrative Assistant
Gerald N. Hardy, Field Consultant
Peter L. Shaw, Field Consultant
Troy R. Westmeyer, Field Consultant
William K. Woods, Field Consultant
Frank P. Grad, Counsel

A Citizens' Organization for Better Government • Founded 1894

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Sponsor of

[redacted]

86th Annual Conference—Houston—November 15-18, 1980

July 9, 1980

Mr. Guy A. Van Doren, Consultant
Interim Constitutional Convention Committee
Pouch Y Room 107 Capitol Building
Juneau, Alaska 99811

Dear Mr. Van Doren:

In reply to your letter of June 23, we are sending the names of several individuals with whom you may wish to correspond in connection with your work for the constitutional convention committee. This is by no means an exhaustive list, but all have played important parts in revision efforts as authors, consultants and/or delegates.

John E. Bebout, Box 441, Wellfleet, Massachusetts 02667, 617-349-3546, has been associated with revision efforts since the successful move to adopt a new constitution in New Jersey in the 1940s, and was a major consultant to the Alaska convention.

George D. Braden, 302 Hudson Avenue, Albany, New York 12210, 518-436-0145, has been involved in revision efforts in Connecticut, New York, Illinois and Texas, and has co-authored books on the Illinois and Texas constitutions.

George E. Campbell, Rose, Nash, Williamson, Carroll, Clay and Giroir, 720 West Third Street, Little Rock, Arkansas 72201, 501-375-9131, was a delegate to the 7th Arkansas Constitutional Convention and was executive secretary of the Constitutional Revision Study Commission.

Elmer E. Cornwell, Department of Political Science, Brown University, Providence, Rhode Island 02912, 401-863-2825, was co-author of The Politics of the Rhode Island Constitutional Convention and Constitutional Conventions: The Politics of Revision.

Samuel K. Gove, Director, Institute of Government and Public Affairs, University of Illinois, Urbana, Illinois 61801, 217-333-3340, was a member of the commissions preparing for and implementing the results of the 6th Illinois Con-

Con, and co authored Revision Success: The Sixth Illinois Constitutional Convention.

Richard Kosaki, Department of Political Science, University of Hawaii at Manoa, Porteus 640, 2424 Maile Way, Honolulu, Hawaii 96822, 808-948-8357, authored materials on the 1978 Hawaii Constitutional Convention.

Norman Meller (address and phone same as Kosaki) wrote With an Understanding Heart: Constitution Making in Hawaii and served as a consultant to the Pacific Trust Territories constitution making effort.

James F. Ray, 8834 Honeysuckle Trail, Austin, Texas 78759, 512- 345- 3108, was executive director of the Texas Constitutional Revision Commission and the Constitutional Convention.

Albert L. Sturm, Center for Public Administration and Policy, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, 703-961-5133/5830, is author of a book on the Michigan Constitutional Convention, of numerous articles on revision, of Thirty Years of State Constitution Making, 1938-1968, and of the annual constitutional developments summary in the NATIONAL CIVIC REVIEW and the Book of the States.

John P. Wheeler, Hollins College, Hollins, Virginia 24020, 703-362-6000, directed the League's State Constitutional Studies Project in the 1960s and authored The Constitutional Convention: A Manual on Its Planning, Organization and Operation, and co-authored Magnificent Failure: The Maryland Constitutional Convention of 1967-1968.

The League's executive director, William N. Cassella, Jr., participated in the Alaska Constitutional Review Conference held in Fairbanks in 1976. He is also in close touch with Victor Fischer of Anchorage, who is the author of the League-sponsored study Alaska's Constitutional Convention.

We will be grateful if you can send us copies of materials prepared by your committee to add to our extensive library collection on constitutional revision in all the states.

We trust this list will be useful to you, and please feel free to call on us if we may be of assistance to you.

Sincerely yours,

Joan A. Casey
Director
Library/Publications

GUY A. VAN DOREN

P.O. Box 41 Douglas, Alaska 99824 (907) 364-3442

DATE	HOURS	WORK PERFORMED
6/9/80	5	Met w/ Brian Rogers, Geo. Hohman, worked on Reviewing Con Con books
6/10/80	6	Reviewed 1979 Reports, Set up office, arranged phone service Review Books.
6/11/80	7.5 full day	Review books, Drafted letters to Revision experts for final typing
6/12/80	6	Set up printing for 1979 Reports (50 copies) review work, spoke w/ Sen Ziegler
6/13/80	6	Met w/ Sen Hohman, Review Books from other states
6/16/80	5	Met with Judge Stewart, distribute reports, review books.
6/17/80	5	Prepared office for interim work, review books.
6/18/80	2	General work + Mailed out reports to committee members.
6/19/80	5	General work, library research, mail reports, research working
6/20/80	4	General work, research work, drafted letter to National Municipal League
6/23/80	5	Drafted letter + Mailed letter + Materials to Brian Rogers. Hawaii Conv. Research
6/24/80	5	Review Governors veto of Con Con bill, research on court cases.
6/25/80	5	Same as above plus Hawaii + Montana enabling legislation
6/26/80	4	Same as above
6/27/80	5	Same as above plus preparing report for Brian Rogers.
6/30/80	5	preparation of Contract, same as above

I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT: Guy A. Van Doren DATE 6/30/80

TOTAL THIS PAGE 80.5 hrs. total due 73 hrs @ $25.00 per hr $2825
1 full day at $150.00 150
2975

July 21, 1980

Dear Brian:

Pardon the handwritten letter but I just don't feel like typing.

I'm pretty discouraged since I checked again with Mert and none of the leadership has appointed any committee members.

There is a Council meeting August 1st in Anchorage and Senator Ziegler suggested we have an organizational meeting, but with no members, how can we? I can't even attend the meeting unless George Hohman O.K.s it.

I wanted very much to continue with the committee and as you know committed myself to work on it, but with no income I've got all my creditors on my back. I managed to get a little work landscaping the Seaview Bldg. last week, but not enough to matter much. I can only hope to be compensated for the hours I've already worked and hope either the committee gets formed or something comes up otherwise my credit rating will be zilch.

I'm sorry to cry the blues to you since I know it's not your fault and your involved in a tough campaign but I needed to sound off to someone.

Enclosed you will find a list of the people the National Municipal League

sent at my request. If we ever get started I will contact these people if you or the committee are interested.

Guess I'll end this gloomy letter and hope to be in a better frame of mind next time.

Regards

Guy

I am still usually in the office mornings

Parks Contracts
CON CON

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

December 19, 1980

Representative Rogers
1335 Hayes Street
Fairbanks, Alaska 99701

Dear Brian:

Enclosed is the contract for the Yup'ik Language Workshop. I'm sorry that it took so long, but I just received the information about the work to be performed under the contract. I've also enclosed a letter from Phyllis Morrow. In her letter she asks several questions that I don't feel that I can answer.

Please sign and have the people at the Workshop sign and then return to me. If you need any further assistance with this contract, please do not hesitate to let me know.

Best regards,

Janelle Parker

Janelle Parker
Special Assistant to
the Executive Director

Enclosure

YUP'IK ESKIMO LANGUAGE WORKSHOP
KUSKOKWIM COMMUNITY COLLEGE
P. O. BOX 368 BETHEL, ALASKA 99559

December 12, 1980

Ms. Janell Parker
Legislative Affairs Office
Pouch Y
Juneau, Alaska 99811

Dear Ms. Parker:

Thank you for your call yesterday, concerning the translation of the state constitution into Yup'ik. In response to your question, we should be able to complete all of Phase I and a portion of Phase II by the end of June, 1981, assuming that I can begin drawing on the funds by January.

Specifically, the modified English version will be written, the translators will be trained, and the primary translators will have finished 1/4 to 1/3 of the initial translation. This should be possible given both the time available and the $60,000 appropriation you mentioned.

I wonder if you might be able to answer a few of my questions. In the event that any funds remain unexpended at the end of the fiscal year, will we be able to carry them over into the following year? Also, do you know how the funds will be administered? When I spoke to Brian Rogers and George Hohman in October, the plan was to administer them through Pat O'Rourke's office (Community Colleges, Rural Education and Extension). I thought there was a slight possibility, however, that they might be handled through Kuskokwim Community College.

Also, I will need about twenty copies of the Alaska constitution. Are they available through your office? If not, I would appreciate your passing my request on to the appropriate person or office.

Thank you very much.

Sincerely,

Phyllis Morrow

Phyllis Morrow, Coordinator
Yup'ik Language Center

PM/eg

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
Juneau, Alaska 99811

AND

GORDON HARRISON & ASSOCIATES
1621 Wilton Road
Tacoma, WA 98465

The parties to this agreement are the Legislative Affairs Agency, on behalf of the Legislative Council's Joint Committee on Constitutional Convention, hereinafter referred to as the "Agency", and Gordon Harrison & Associates, hereinafter referred to as the "Consultant".

THE PURPOSE OF THIS AGREEMENT is to provide the Agency with professional services in preparation of a citizen's guide to the Alaska Constitution.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

The Consultant shall provide the Agency with a written "Citizen's Guide to the Alaska Constitution" as detailed in Attachment I.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE

(A) The work under this contract shall be performed between January 12, 1981 and July 31, 1981.

(B) This contract may be terminated by either party upon written notice to the other.

(C) Unless extended by written agreement, this contract expires on July 31, 1981.

CLAUSE III - PROJECT DIRECTOR

The Project Director shall be Representative Brian Rogers, acting on behalf of the Joint Committee on Constitutional Convention.

CLAUSE IV - COMPENSATION AND METHOD OF PAYMENT

(A) For the work specified in this contract, the Consultant shall be compensated $16,500 (Sixteen Thousand Five Hundred Dollars).

(B) The Consultant shall be reimbursed for travel to include two round trips between Seattle and Juneau, per diem shall be paid at prevailing State rates, and all air travel shall be reimbursed on the basis of coach class fares.

(C) Billings may be submitted by the Contractor monthly, and should note thereon work accomplished to date. 50% of said compensation shall be held for completion of final report.

(D) Total payments under this contract, including expenses shall not exceed $19,000 (Nineteen Thousand Dollars).

CLAUSE V - OFFICE SPACE, EQUIPMENT, CLERICAL SUPPORT

Office space, equipment and clerical support of the Consultant that will be necessary to carry out his obligations under this contract shall be supplied by the Consultant at no cost to the Agency.

CLAUSE VI - RECORDS, DOCUMENTS, AUDIT

The Consultant shall maintain accurate records, including detailed time records, as may be required by the Project Director. The records are subject to inspection by the Agency or the Project Director at all reasonable times. All documents, reports and writings generated as a consequence of work done under this contract shall become the property of the State of Alaska and, on completion of the work or at the termination of this contract, shall be delivered to the Project Director.

CLAUSE VII - REPORTS

The Consultant shall keep the Project Director informed as to the progress of the work performed under this agreement and shall provide progress reports as specified by the Project Director.

CLAUSE VIII - ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties of this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated below.

CONSULTANT

Gordon Harrison 1/29/81

GORDON HARRISON & ASSOCIATES Date

IRS ID # 571-56-7771

Accepted:

Brian Rogers 2/2/81

REP. BRIAN ROGERS Date

JOINT COMMITTEE ON CONSTITUTIONAL CONVENTION

LEGISLATIVE AFFAIRS AGENCY

M. R. CHARNEY Date

EXECUTIVE DIRECTOR

Approved as to form:

BILLY G. BERRIER Date

AGENCY LEGAL COUNSEL

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
Juneau, Alaska 99811

AND

LEAGUE OF WOMEN VOTERS
911 R Street
Anchorage, Alaska 99501

The parties to this agreement are the Legislative Affairs Agency, on behalf of the Legislative Council's Joint Committee on Constitutional Convention, hereinafter referred to as the "Agency", and the League of Women Voters, hereinafter referred to as the "Consultant".

THE PURPOSE OF THIS AGREEMENT is to provide the Agency with professional services to give Alaska public information about a state constitutional convention.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

The consultant shall plan a series of public informational meetings and workshops designed to increase public awareness of the procedures for calling a state constitutional convention, the meaning of the 1982 ballot question concerning the holding of a convention, and Alaska state constitutional issues. The consultant shall use information prepared by the joint committee and may prepare additional information for public dissemination.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE

(A) The work under this contract shall be performed between February 1, 1981 through December 31, 1981.

(B) This contract may be terminated by either party upon written notice to the other.

CLAUSE III - PROJECT DIRECTOR

The Project Director shall be Representative Brian Rogers, acting on behalf of the Joint Committee on Constitutional Convention.

CLAUSE IV - COMPENSATION AND METHOD OF PAYMENT

(A) For the work specified in this contract, the Consultant shall prepare a detailed budget for each task. Payment in advance for each task when approved by the Project Director.

(B) The Consultant shall be reimbursed for travel and other expenses authorized in advance by the Project Director, except that per diem shall be paid at prevailing State rates, and all air travel shall be reimbursed on the basis of coach class fares.

(C) Total payments under this contract, including expenses shall not exceed $5,000 (Five Thousand Dollars).

CLAUSE V - OFFICE SPACE, EQUIPMENT, CLERICAL SUPPORT

Office space, equipment and clerical support of the Consultant that will be necessary to carry our their obligations under this contract shall be supplied by the Consultant at no cost to the Agency.

CLAUSE VI - RECORDS, DOCUMENTS, AUDIT

The Consultant shall maintain accurate records, including detailed time records, as may be required by the Project Director. The records are subject to inspection by the Agency or the Project Director at all reasonable times. All documents, reports and writings generated as a consequence of work done under this contract shall become the property of the State of Alaska and, on completion of the work or at the termination of this contract, shall be delivered to the Project Director.

CLAUSE VII - REPORTS

The Consultant shall keep the Project Director informed as to the progress of the work performed under this agreement and shall provide progress reports as specified by the Project Director.

CLAUSE VIII - ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties of this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated below.

CONSULTANT

Jean N. Hassi Pres. 2/2/81
LEAGUE OF WOMEN VOTERS Date
IRS ID # 92 6000 4632

Accepted:

2/6/81
REP. BRIAN ROGERS Date
JOINT COMMITTEE ON CONSTITUTIONAL CONVENTION

LEGISLATIVE AFFAIRS AGENCY

M. R. CHARNEY Date
EXECUTIVE DIRECTOR

Approved as to form:

BILLY G. BERRIER Date
AGENCY LEGAL COUNSEL

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

PROPOSAL

Writing a Citizen's Guide to the Alaska Constitution

Submitted to

Joint Legislative Committee on the Constitutional Convention

by

[redacted]

January, 1958

PROPOSAL

Introduction

This proposal is submitted in response to the Request for Proposals from the Joint Legislative Committee on the Constitutional Convention for writing a citizens' guide to the Alaska constitution. My general approach to the task and my qualifications for undertaking it, as well as a proposed schedule and budget, are presented below.

Approach

As a layman's guide to the state constitution, this publication must be clearly and simply written. But it must do much more than paraphrase constitutional text in sentences that are simple, short, active and unadorned. The booklet must provide historical context for each constitutional section; it must point to major political issues; and it must explain controversy that has arisen over the interpretation of disputed provisions. Readers of this guide should learn what the constitutional convention delegates hoped to achieve with each section; why they chose the words they did; and how the legislature and courts have given form and substance to their language. For example, only when the reader knows what the delegates sought through borough government, how local areas have responded to the opportunity and

requirement to form boroughs, and how the Local Boundary Commission and Alaska Supreme Court have interpreted the constitutional mandates, will he be fully acquainted with this important aspect of Article X.

That this guide should be easily readable does not require it to be artless. Nor does it require that complex and subtle issues be shunned. Complexity and subtlety animate the subject, and without them the guide would be flat, tedious, and little-used. Clearly, the challenge of this publication is to present a comprehensive view of Alaska's constitution in language that is uncomplicated yet legally precise, and in a style that is direct yet imaginative and resourceful.

Before writing anything for publication, an author should have a good idea of who his readers will be. I think the Committee should give careful consideration to the likely readers of this guide before writing begins. This effort will help define the content and characteristics of the final product. For example, it seems to me that important potential groups of readers are students at the high school and college level; in-coming legislators and their staff; and members of civic organizations such as the League of Women Voters. We can presume that the interest of this audience will be keen, and the level of intellectual sophistication high. Thus, these readers will be dissatisfied with a primer that is targeted for a less well educated readership and is overly superficial as a consequence.

Another potential group of users may be people other than lawyers who are interested in researching some aspect of the state constitution or constitutional history. Therefore it seems appropriate for the primer to

contain an annotated bibliography of material on Alaska statehood and the constitutional convention (including Proceedings of the Alaska Constitutional Convention), as well as opinions of attorneys general and the Alaska Supreme Court that address basic constitutional issues (the latter would be selective of the extensive annotations found in the constitution published with the Alaska Statutes).

I have read A Citizen's Guide to the Texas Constitution by George D. Braden, and I find it a useful example of a state constitutional primer. Especially valuable are the author's frequent contrasts and comparisons with other state practices, and his introductory discussion of constitutions and their functions. However, it seems to me that the main narrative of an Alaska version of this book would be altogether different because the constitutions of the two states are so fundamentally dissimilar. Indeed, it was the nightmare of a Texas constitution that the Alaska convention delegates sought to avoid. Alaska's constitution is much more like that of the United States in its brevity and resiliency. Mr. Braden's task was to bring a measure of coherence to a hopelessly fragmented, incomplete, scrambled, detailed, and unreadable document. The author of Alaska's guide begins with a short, concise, intelligible constitution, and his task is to explain the origin, intent, and implementation of those few deliberate words. Also, the tone of Mr. Braden's work is commendatory. The author of Alaska's guide should not evaluate the constitution, either explicitly or implicitly.

It is my understanding that Mr. Braden will be a consultant to this project. I suggest it would be helpful to the author of this publication

to have the advice of others as well. I propose that the Joint Committee appoint a formal editorial advisory group. In addition to Mr. Braden and the Committee staff, the group might include one or more lawyers with knowledge of the constitution (perhaps assistant attorneys general in Juneau) and a local person or two outside state government representing potential user groups (a teacher, librarian, civic activist, etc.) This editorial committee would be helpful to the author at the outset of the project in discussing such matters as outline, format, readership, etc. The members of this committee would later review the draft manuscript, and at that time they will be better able to evaluate the success of the product than had they not participated in discussions of what it aimed to accomplish, and how.

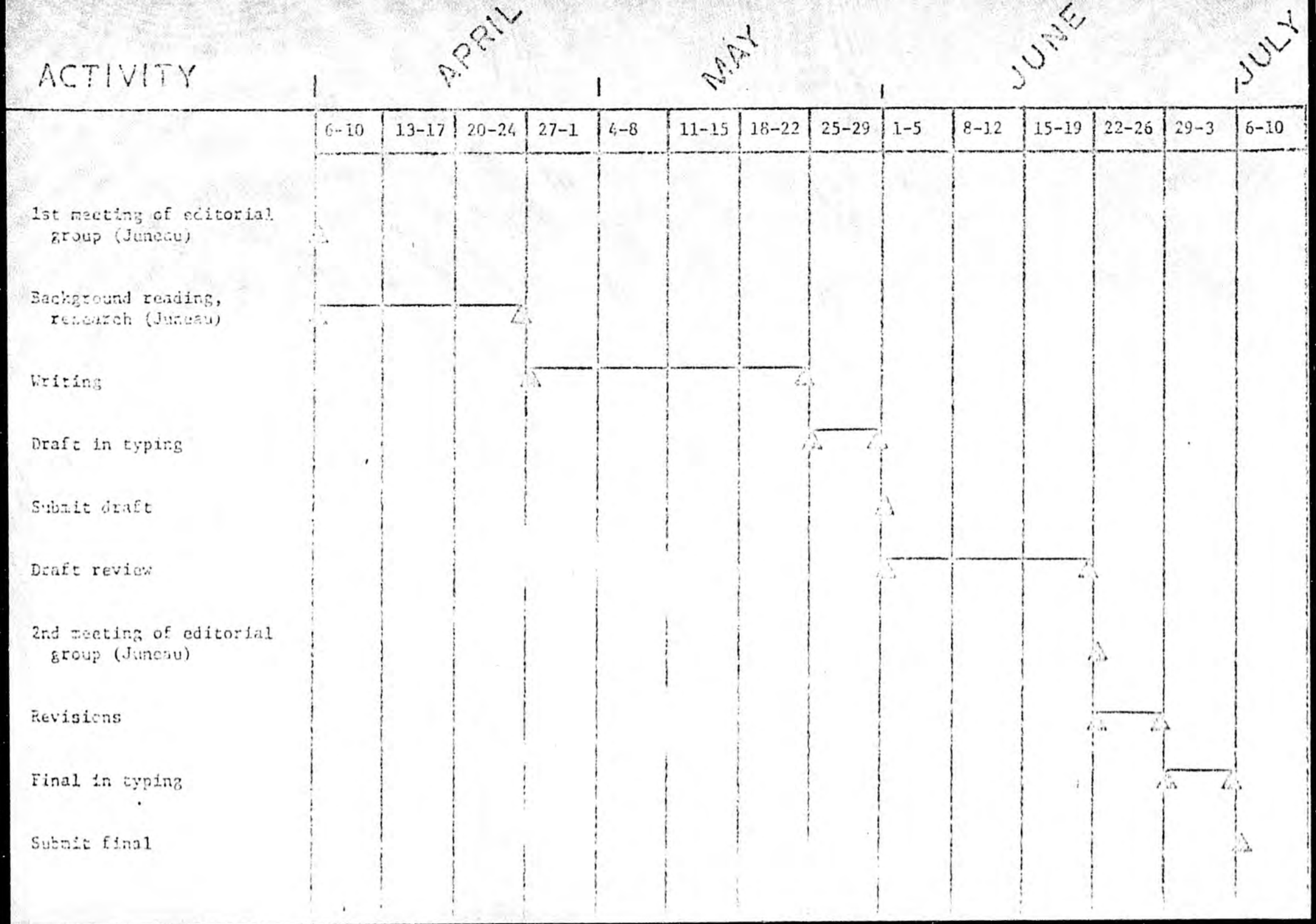
Schedule

I am proposing the schedule in Figure 1 to take advantage of the fact that my wife and I plan to reside in Juneau during April, 1981. If another schedule is more convenient for the committee I will attempt to accommodate it. However, to do so would not allow me as much time to work in the Alaska State Library, and it would require increased travel and per diem expenses.

According to the schedule I have proposed, work would begin on April 6 with a meeting of the editorial group. I would spend approximately three weeks immediately thereafter engaged in background reading and research. During this period I would work in the state historical and law libraries in Juneau where I would have access to the Proceedings and AG and Supreme Court opinions. Also, in Juneau I would have access to lawyers and other people knowledgeable of the daily workings of the constitution.

FIGURE 1

SCHEDULE



A draft would be submitted for review on June 1, and a final product on July 6.

Qualifications

I hold advanced degrees in both journalism and political science; I have had substantial exposure to the state constitution and constitutional issues; and I have had extensive writing and editorial experience. My resume summarizes much of this experience. In addition, however, I have written several corporate annual reports and other publications. Currently I am assisting Northwest Alaskan Pipeline Company design and prepare a publication that is, in effect, a citizen's guide to the gasline project in all of its technical, organizational, and regulatory dimensions. While at the University of Alaska, I worked closely in an editorial role with Victor Fischer while he was writing Alaska's Constitutional Convention.

During the past year I have been involved in a major effort with other consultants to review for the U.S. Fish and Wildlife Service federal on-shore oil and gas leasing in Alaska and the environmental effects of on-shore petroleum operations. I wrote major sections of the final technical report [illegible] historical, and administrative issues. Also, I [illegible] that is designed to [illegible] industry, [illegible] and potential environmental [illegible].

You may [illegible] Co., [illegible] (2[illegible]);

Mr. Peter Hanley, Dames and Moore, Anchorage (279-0673); Mr. Kent Wohl, U.S. Fish and Wildlife Service, Anchorage (276-3800, ex. 503); and Mr. Victor Fischer, Anchorage (272-2381).

Budget

Figure 2 presents a budget for the project of $18,190. If the Committee provides typing from dictaphone tapes, the budget is $17,190.

FIGURE 2

BUDGET

LABOR		
Professional	320 hrs @ $50/hr	$16,000
Secretarial	40 hrs @ $25/hr	1,000*
EXPENSES		
Travel	2 RT Seattle-Juneau @ $325	650
Per diem	4 days Juneau @ $85/day	340
Xerox		100
Telephone, Postage		100
		$18,190

*This expense may be omitted if the secretarial staff of the Committee types the draft and final from dictaphone tapes. In this case, the budget is $17,190.

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

SCOMM

#27:4

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

VICTOR FISCHER ASSOCIATES CONSULTING
221 EAST 7TH AVENUE #204 • ANCHORAGE, ALASKA 99501 • (907) 272-2381

November 5, 1979

TO: Brian Rogers

FROM: Vic Fischer

SUBJECT: Constitutional Convention issues

I ran across the enclosed March 25, 1970 letter to the State Senate in the process of rummaging through my papers. I assume the same thing went to the House.

Interesting to note that every item I suggested for Legislative action has been taken care of since 1970. At the same time, I was rather wrong in my expectation about the November referendum, though lack of support probably did characterize opinions of those I spoke to.

INSTITUTE OF SOCIAL, ECONOMIC AND GOVERNMENT RESEARCH

UNIVERSITY OF ALASKA
COLLEGE, ALASKA 99701

March 25, 1970.

Hon. President and Members of
the Senate
Alaska State Legislature
Juneau, Alaska 99801

Gentlemen,

I have recently been giving extensive attention to the Alaska State Constitution, its current adequacy and insufficiences, and the need and alternatives for making changes. Having discussed some of these matters with individual members, I would like to take this opportunity to summarize a few pertinent conclusions. The views expressed are strictly my own and do not necessarily represent those of my employer or associates.

In general, the constitution does not require major overhaul or revision. Many troubles that are perceived by people actually do not have the basis in the constitution, but rather in state or local action or inaction. What problems exist are limited and can best be handled by amendment. Thus a constitutional convention, if held now, would be unnecessary and premature, could potentially cause more problems than it would solve, and would lead to a big waste of taxpayers money. Discussion with people around the state indicate that very few will at the November referendum support the holding of a new constitutional convention. WRONG!

While there need not and should not be a constitutional convention, some amendments are needed and should be presented to the voters. A number of amendments are now pending before the legislature; a few of these have been acted on by the respective houses. I would like to comment on those amendments that I personally consider worthy of serious consideration.

One-house Legislature (CSHJR 63). As a member of the constitutional convention, I favored the bicameral legislative system. The U.S. Supreme Court's one man - one vote decision eliminated the principal argument in favor of the two-house system, since both houses now have the same basis of representation. The checks-and-balances argument has never been very impressive, since it reflects upon the inability of the legislature to manage its affairs properly. The legislative process in Canadian provinces and elsewhere has fairly well indicated that a single house can legislate well, given well designed rules and procedures. Major arguments advanced for a one-house legislature are a better system of legislative representation, less waste and duplication, and provision of a better base for legislative deliberation and action.

There is much interest in unicameralism among the state's knowledgeable citizens. However, few expect the legislature to put the amendment on the August ballot, since it is rather difficult to conceive of a legislature taking the initiative to change itself. Some people feel, as Ted Stevens concluded a few years ago, that the only way to resolve this matter is by constitutional convention not subject to legislative restriction. While I personally have not come around to a position favoring a single house legislature, I do believe that the legislature should put the proposed amendment on the ballot for the people to decide whether they prefer to have a bicameral or unicameral legislature.

The Executive. Changing the name of "Secretary of State" to the "Lieutenant Governor" is of course quite an innocuous proposal. On the other hand, election of the Attorney General is very basic to the concept of the constitutional approach to the exercise of executive power. It would change the function of the Attorney General from that of legal advisor to the Governor and the executive branch to that of public watchdog or state ombudsman. I believe that if the latter is the objective, then a new office should be created for this purpose, probably under legislative or joint executive-legislative jurisdiction. I do not, however, believe in the election of the Attorney General, just as I do not think the U.S. Attorney General or a city attorney should be elected.

Judiciary. Provision for selection of the Chief Justice certainly appears to be called for. Is it necessary, however, to amend the constitution for this purpose? There is nothing in the constitution that would require that the Chief Justice be appointed by the Governor. Article IV appears to be wide open for establishment of a rotation method or provision for selection of the Chief Justice by other justices of the Supreme Court. Could such a procedure not be established under rule-making power of the Supreme Court?

Suffrage and Elections. Lowering the voting age to 18 is, of course, an excellent step. We should also proceed to eliminate the requirement to read or write the English language as a prerequisite to voting (SJR 40 and HJR 51). While the existing constitutional provision may not affect too many people, those who are disenfranchised are Alaska Natives, and there is certainly no rationale or excuse for this.

Natural Resources Article. The only important amendment here concerns Section 15, prohibiting the creation of an exclusive right of fishery. In order to permit the legislature to deal effectively with the problem of unrestricted entry, and the resultant economic and social hardships, provision emphasizing fisheries development and permitting the establishment of certain fisheries rights needs to be made. (This would be similar to the manner in which Section 13 makes special provision regarding water rights, thus modifying Section 3 which deals with common use).

PLEASE REPLY BY AIRMAIL

Permanent Fund. Constitutional amendments are proposed for both the natural resources and the finance and taxation articles for the establishment of permanent funds. There are many arguments for and against establishment of a permanent fund that is beyond the jurisdiction of the legislature. Aside from questioning the economic desirability of locking up these monies, I definitely do not favor putting any such monies beyond the reach of Alaska's people acting through their elected legislators. This issue was thoroughly analyzed by discussion groups during the Legislative Council's Conference on the Future of Alaska, and virtually everyone agreed that while special funds may have to be established, these should be subject to legislative jurisdiction and be administered within the executive branch.

Local Government. The only amendment proposed to the local government article would eliminate the requirement that assemblymen representing a city be members of the city council (HJR 30). While much has been said about the problems and ills of local government in Alaska, a study just concluded shows that these ills do not derive from the constitution, and this conclusion is borne out by the lack of other amendments. This study does point out that the one constitutional change worthy of consideration with respect to local government is the one proposed by HJR 30. I would suggest, however, that rather than changing the language of the second sentence, Section 4 be amended by deleting the second and third sentences altogether. There is no reason, now that boroughs and assemblies exist, for the constitution to specify the composition of the assembly; in this connection, note Section 8 dealing with the city council.

In summary, I believe that any significant problems we have with the state constitution would be taken care of by the legislature proposing amendments dealing with the voting age, elimination of the suffrage requirement of reading or writing English, revision of fisheries provisions, and elimination of the specifics as to representation on the borough assembly. In addition, I believe the voters should be given an opportunity to choose between a unicameral and a bicameral legislature.

I appreciate any consideration you may give to these opinions and suggestions. I would be happy to discuss them in greater detail if you so desire.

Sincerely,

Victor Fischer
Director, ISEGR

VF/sef

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

UNIVERSITY OF ALASKA

MEMORANDUM 3/27/79

TO: George Hohman, Guy Van Dorn

FR: Vic Fischer

RE: Constitutional review

Here are some preliminary thoughts about followup to my February 19 letter to Bob Ziegler regarding possible legislative review of constitutional revision issues. Bob wrote me that you have the ball, and I would be most happy to work with you and pursue some possible courses. I appologize for not being able to respond sooner to Guy's call. Even now, my response is strictly preliminary; am typing this myself (as you will note!) so I can think as I write... Am going out of state today and will return April 6. After that will be glad to work on this further.

General purpose

A referendum will be held at the 1982 general election to decide whether to hold a constitutional convention. It is suggested that the legislature take a look at pending constitutional revision questions and determine what, if any, preparation should precede the 1982 referendum.

Background

The state constitution was written and approved by the voters prior to Alaska becoming a state in 1959. The constitution provides that voters have a chance to decide every ten years whether a convention should be held to revise the constitution. A convention call was approved by a slim margin in 1970; however, in 1972 voters decided against a convention after the supreme court voided the first referendum on the basis of improper wording of the proposition.

Lack of a convention has not meant that the constitution remained unchanged. Many amendments have been considered, and quite a few have been presented to the electorate for ratification. Generally, voters have supported changes recommended by the legislature.

In 1982, the holding of a convention will again be on the ballot. The question is whether (1) voters should be afforded adequate information and discussion of the issues before making a decision and (2) any important pending issues of public concern could and should be resolved regardless of whether a convention call is approved.

There was relatively little discussion of issues prior to the 1970 referendum. The League of Women Voters and a few other groups mounted limited campaigns, but that was all. In view of the importance of the constitution and the powers of revision that a constitutional convention has, it is important that a decision be made by a well-informed electorate.

Possible strategies

Assuming that we agree that the question of calling a constitutional convention should be approached in a careful and intelligent manner, a variety of ways might be pursued:

- o Establishment of a constitutional study or preparatory commission. Many states have used this device to prepare for conventions or to study issues before a decision on holding one is made. Such commissions can take a variety of forms, usually including public members and frequently members of the legislative, judiciary, and executive branches of the state. While costs of this approach depend on the mission and size of a commission, I am sure they would amount to several hundred thousand dollars. May be way to go, later.

- o Contract with someone (eg, ISER) or assign someone (eg, Atty Gen'l, LAA) to research the issues. Fine, but would lack public involvement, might be questioned as to representativeness and objectivity.

- o Interim legislative committee. At this point, this is probably the most reasonable way to go. It would permit careful exploration and appropriate research, combined with the judgement of a representative group.

Questions and issues to be addressed

The current stage could be conceived as a preliminary exploration. It should be directed toward decisions as to direct legislative action to revise the constitution (via amendment or legislatively-called convention) prior to the 1982 referendum and initiation of any broader public education program. Time exists for both as a folowup on the current effort. Here are some of the matters that might be addressed by a legislative group:

What issues is the public concerned about that might be subjected to constitutional action? (Aside from old ones like electing judges and the attorney general, they might include a number that have recently given rise to strong feelings and frustrations: right-to-life vs. abortion choice, capital move, getting land to the people, limiting legislative sessions and salaries, limiting taxes on certain industries or classes, etc.) (See attachment of 11-29-78 for some more potential items.)

Which of these issues are appropriate constitutional matter, which legislative? What should the legislature do about them, if anything? Which might be taken care of through better public understanding? Which require and justify constitutional change?

Can legitimate constitutional changes be taken care of through amendments initiated by the legislature?

Does a convention appear needed, desirable? If yes, what steps should be taken to prepare for it and the call that precedes it? If not, what should be done about that?

(1) Research and analysis
(2) public involvement
(3) decisions about next steps, specific actions.

Research and analysis

This principally entails a look at the constitution as it has been amended, examination of newly arisen or foreseeable constitutional problems, analysis of issues raised during committee's work, etc., etc., and staff support for the legislative group.

Public involvement

This is the key. The decision about whether to have a convention will be made in '82 by the voters. The effort should see how the people view the issues, what they feel about the constitution and need for a convention, what type of informational or educational programs might be useful to defuse some of the more emotional issues, etc.

Ideally, the committee would combine this exploration with the giving of information to the people. I would not carry either too far. This should be viewed as an initial effort only.

I believe it important to take this exploration and analysis out of Juneau. The committee or some of its members should probably cover all parts of the state. Possibly the Alaska Public Forum could be enlisted to help with provision of information, organizing discussions, and obtaining feedback. Some polling might be appropriate.

Organization (am running out of time, so will just skim along ...)

You probably know better than I what would be most appropriate, but I'll whip out a few thoughts.

I'm not sure whether getting a committee with non-legislative membership would be useful or necessary at this stage. That might well slow organization. If one were to decide to have a full-fledged, out-front, public-oriented commission at a later time to spearhead an educational program, that would be the time for public members.

Who from within the legislature should be on it -- you better decide that.

The group would need some kind of staff. Possibly existing legislative staff can do the work, or someone could be put on for this purpose.

You might want to commission some specific papers and analyses: Tom Stewart, John Havelock, Tom Morehouse, Vic Fischer, etc.

The 1976 convention delegates reunion in Fairbanks was accompanied by a review of the various articles of the constitution. A transcript of the sessions dealing with each article could be invaluable as a point of departure. This might cost $2,000-3,000.

PLEASE REPLY BY AIRMAIL

CRAFTSMAN & MET PRESS • CALL 682-8800

Tom Stewart is an invaluable resource. I have talked to him, and he is most willing to help put this all together. As you know, Tom authored the 1955 convention act, managed the preparatory studies, and served as secretary of the convention. He was in on the early discussion that led to my letter to Bob Ziegler. Do contact Tom if you need any help now or later.

I will be back in the office April 6. May be in Juneau following week; only problem is that I have to be in Anchorage Wednesday the 11th.

This, by the way, is not a project of ISER. We are not trying to promote anything. Strictly an individual undertaking.

I would personally be very interested in having a role in this whole thing; nothing specific in mind at this point. (I may be quitting the university this summer and would then be more available, though could work with you through institute as well.)

Am off... Best personal regards

WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

REPRESENTATIVE
BRIAN ROGERS
Alaska State Legislature

HOME:
BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907) 456-2037

June 25, 1980

Governor Jay S. Hammond
Pouch A
Juneau, Alaska 99811

Dear Governor Hammond:

Yesterday I received word that you have vetoed CSHB 723 am S, the Constitutional Convention Procedures Act. I am disappointed that you chose to exercise your power of veto on this legislation at this time, since I expect the issues surrounding the possible convention to become more volatile and politicized as the 1982 ballot question draw near.

The June 16 memorandum from Attorney General Wilson Condon does point out several defects in the legislation, most of which could have been corrected by the revisor. I would like to take issue with his contention that preparations for the convention are an exercise of executive powers alone. A constitutional convention is unique to Alaska government in that neither the executive, legislative, nor judicial branches of government perform the functions -- a constitutional convention is a power of the people. It is most similar to, and replaces in part, the legislative power to submit constitutional amendments to the voters. As such, preparations for a convention are little different from preparations for a legislative session, which are a legislative and not an executive function.

The legislature is currently involved in preparations for a possible 1982 affirmative vote by the people calling a convention. In 1979, the legislative council established an interim committee to begin planning; HB 723 was one result of that committee (other reports on constitutional conventions of the 1970s, proposed Alaska constitutional amendments, the Hawaii convention of 1978, convention apportionment, and major Alaska constitutional issues are available from the committee). This session the legislature passed SCR-43am establishing a joint committee of the legislature to examine matters pertaining to the organization and conduct of constitutional conventions in Alaska. As the chairman of that committee, I would like to invite you or any person you may designate to join with the legislative joint committee to continue preparations for a possible convention. The committee will reintroduce the convention procedures act next year, and would appreciate advance notice of any problems you and your staff may have next time.

Thank you for your consideration.

Sincerely

Brian Rogers

Representative Brian Rogers

cc: Sens. Hohman, Ziegler, Sackett
Reps. Gardiner, Phillips, Parker

465-3600

June 16, 1980

The Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: CSHB 723 am S
(constitutional convention)
Our File: J-88-094-80

Dear Govenor Hammond:

At your request, we have reviewed CSHB 723 am S, relating to a constitutional convention. It has several problems, and we recommend that you veto it.

The third section denies space in the election pamphlet to those in favor and to those opposed to holding a constitutional convention. It is the rule in Alaska that once there exists a government-controlled forum for the dissemination of ideas, the government cannot deny equal access to that forum based on content alone. Alaska Gay Coalition v. Sullivan, 578 P.2d 951 (Alaska 1978). This provision is unconstitutional, and therefore is invalid.

Second, section 5 (new AS 15.50.101) provides for an Alaska Constitutional Convention Commission and for six of its nine members to be appointed by and from the legislature, two to be appointed by the governor, and one by the chief justice.

The commission's function is to prepare for a constitutional convention should one be called. While it is not an everyday experience, it merely calls for the execution of a law. That putting on a convention is a rare event does

not make it an exercise of the law-making power or an exercise of the judicial power. Planning, preparing and setting up a convention does not involve the enactment of legislation or the adjudication of legal disputes. It is, as the division of governmental powers goes, an executive function.

Under the Alaska Constitution, it is the governor who is assigned to carry out the law. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). To that end, he is vested with the power to appoint subordinates to assist him in carrying out the law. This power of appointment is shared by the legislature solely to the extent prescribed by the constitution. Id. Accordingly, the bill's provisions for appointments to the commission by the legislature and the chief justice are unconstitutional. Cf., Buckley v. Valeo, 424 U.S. 1 (1976) (appointments to federal elections commission).

Moreover, article II, section 5 of the constitution prohibits legislators from holding any other office or position of profit. Employment by or election to a constitutional convention is expressly excluded from the prohibition. The existence of this narrow exclusion leads to the conclusion that all other offices and positions of profit are included within the prohibition. Begich v. Jefferson, 441 P.2d 27 (Alaska 1968). The commission is patently not within the terms of the exclusion. Accordingly, the bill's provisions for the appointment of legislators to the commission are also unconstitutional.

The provisions for filing for election to the convention do not prescribe with what office or official the declaration is to be filed. See proposed sections 15.50.170 and 15.50.180. They do require notices of withdrawal to be received by the lieutenant governor, and one may infer that the declarations are to be filed with him as well.

Section 15.50.180(c) makes a cross reference to subsection (a) when a reference to paragraph (a)(1) is really intended. One of the co-revisors of statutes advises that, if the bill becomes law, this error can be corrected editorially.

Section 15.50.200 provides for placing the names of persons "who have been properly nominated for delegate on the special election ballot." The problem with this is that there are no nominations. The name of any qualified person who files will go on the ballot. There is no nominating petition, no run-off election, and no primary election. Election is by plurality. The result is that the delegates

may represent a minority of the state's or district's electorate. While that is legal, it may not be very good policy.

Section 15.50.240 provides for filling vacancies with the candidate for the seat who got the next highest number of votes. The problem with this arrangement is that the person so elected could very easily be anathema to the majority of the voters in the district (or the state). Again, while this may not be illegal, it seems like bad public policy.

The authorization in proposed AS 15.50.290(a) for the lieutenant governor to make an appropriation for convention expenses if the legislature fails to do so is expressly provided for by article XIII, section 3, of the constitution. (Incidentally, sec. 290(a)'s reference to sec. 70(a) is in error since sec. 70 is not divided into subsections; this will be called to the attention of the co-revisors of statutes.)

There appear to be no other problems with the bill, but those mentioned more than suffice to require a veto. Enactment of a bill with the legal defects and policy shortcomings of this bill cannot be justified. The election on the question will not occur until November 1982. That leaves ample time in which to enact a better bill.

Yours very truly,

Wilson L. Condon
Attorney General

WLC/RWP/lm
cc: The Hon. Terry Miller
Lieutenant Governor

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99811

Senate

CHAIRMAN
SENATE JUDICIARY COMMITTEE
WESTERN CONFERENCE - COUNCIL OF STATE GOVERNMENTS

VICE CHAIRMAN
SENATE RULES COMMITTEE

MEMBER
SENATE STATE AFFAIRS COMMITTEE
SENATE COMMITTEE ON COMMITTEES
LEGISLATIVE COUNCIL
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

June 21, 1980

Representative Brian Rogers
Box K College Branch
Fairbanks, Alaska 99708

Dear Brian:

For your planning and scheduling purposes, I will be unavailable for meetings between July 15th and July 22nd, the first 10 days of September and the last weekend of that month and the entire month of November.

It's quite likely we'll have a Legislative Council meeting in Anchorage on August 2nd and, if so, perhaps we can synchronize at that time.

Regards.

Robert H. Ziegler, Sr.

RHZ/pkz

GUY A. VAN DOREN

P.O. Box 41 Douglas, Alaska 99824 (907) 364-3442

June 23, 1980

Representative Brian Rogers
P.O. Box "K"
College Branch
Fairbanks, Alaska 99708

Dear Brian:

Since the Governor has veoted the Constitutional Convention bill, I thought I would get a copy of the memo to you right away. Also enclosed is a copy of the reports from last year in case you do not have yours. I've sent a copy to Ziegler and will send copies to other members when they are appointed. I had 50 more copies made.

Although the committee has not been officially appointed or funded, I've been doing quite a bit of preparatory work including setting up the office, setting up a reference library, drafting letters to send to recognized constitutional revision authorities, and reading of source materials. Most of the work must be done in order that I will not be behind the power curve when the actual committee is formed.

We've lost Land, at least until October, as she had to find a job. She has become the executive secretary to Ray Paddock, Tlingit-Haida President, until his term expires in October. She will be available after that to travel and do the committee work required. I can do the administrative work and typing unless you want to make other arrangements.

I don't know when Tillion, Gardiner, and Hohman are going to officially appoint the members, but hope it will be soon as I'm anxious to get started and am going to be financially hard-put if something doesn't happen pretty soon. I did not look for any othe work since I thought everything on the committee was pretty much "go".

Hope you had a successful "Solstice". If you need to contact me, I'm at 465-3743 or3745, during the day and 364-3442 during the evening.

Hope to hear from you soon.

Regards to all,

Guy

Guy A. Van Doren

letter 6/25

GUY A. VAN DOREN
P. O. Box 41
Douglas, Alaska 99824

June 10, 1980

The Honorable Clem V. Tillion,
President of the Alaska Senate
P. O. Box 373
Homer, Alaska 99603

Dear Clem:

I met with Representative Brian Rogers on Saturday, June 7, and Monday, June 9, following adjournment. We would appreciate your making appointments to the Constitutional Convention Committee as soon as possible.

As you are well aware, Senator Ziegler has agreed to serve on the committee and we contacted Senator Sackett, who would definitely like to be appointed to serve on the committee. As far as the third member, I guess we don't have any suggestions, but have discussed Senators Mulcahy and Sturgulewski.

As far as we can determine, Representative Gardiner will be appointing Representatives Rogers, Parker and Phillips.

When you make your decision, please forward the names to Mert Charney, Brian Rogers and me.

Please use the above address for me; Brian Rogers' address is P. O. Box K, College Branch, Fairbanks, 99708.

Thanks, Clem! As soon as the appointments are made we can get started on our projects. Have a nice summer.

Regards,

Guy

Guy A. Van Doren

GAVD:lk

cc: Senator Ziegler
Senator Sackett
Senator Hohman
Representative Rogers

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99811

Senate

CHAIRMAN
SENATE JUDICIARY COMMITTEE
IMMEDIATE PAST CHAIRMAN
WESTERN CONFERENCE - COUNCIL OF STATE GOVERNMENTS

VICE CHAIRMAN
SENATE RULES COMMITTEE

MEMBER
SENATE STATE AFFAIRS COMMITTEE
SENATE COMMITTEE ON COMMITTEES
LEGISLATIVE COUNCIL
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

June 6, 1980

The Honorable Clem V. Tillion
Alaska State Senate President
Halibut Cove, Alaska 99603

Dear Clem:

With some reluctance, I promised Brian Rogers that I would serve on the Constitutional Convention Interim Committee, if appointed.

I probably know as much about it as most people, and I will endeavor to make as many meetings as I can, should you appoint me.

What time did the 8:00 p.m. plane leave?

Catch you later,

Robert H. Ziegler, Sr.

RHZ:lk

ALASKA

STATE LEGISLATURE

MEMORANDUM

12/18/79

TO: Glenda Straube

FROM: Deborah Gazaway, Juneau LTN

SUBJECT: Teleconf. on 12/10/79, Constitutional Convention, 'Internal Committee Meeting'

Good morning. Enclosed you will find a list of the people who participated in the teleconference on 12/10. I am forwarding the list to you with the hope that it may be of some use. Have a merry Christmas!

Deborah

SIOUX FROM MAXINE

THE FOLLOWING ARE PRTICIPANTS OF THE CONST. CONV. TELE-CONF WORK SHOP:
on 12/10/79

REP. BRIAN ROGERS, CHAIRMAN, FAIRBANKS, PH 479-7692
GWENDA STRAUBE, AIDE, FAIRBANKS, PH 479-7692
DOUGLAS POPE, 912 W 6TH, ANCHORAGE, 99501 PH 272-6225
GUY VAN DOREN, BOX 41, DOUGLAS, AK 99801 PH ?
IRENE REED, CHAPMAN BLDG, U OF A, FBX 99701 PH 479-7874
VIC FISCHER, 221 E 7TH #204, ANCHORAGE 99501 PH. 272-2381
MICHAEL CAREY, BOX 1859, FBX 99707 PH 452-3446

OBSERVORS:

THOMAS B STEWART, SUPERIOR CT, POUCH U, JUNEAU, 99811 PH 465-3420
SUSAN FISHER, DAILY NEWS-MINER, BOX 710, FBX 99707, PH 456-6661
NATHAN SOURS, INTERN DAILY NEWS MINER, BOX 710, FBX 99707, PH 456-6661
IRENE PEYTON, BOX 80588, FBX. 99707, PH 479-2864
PATRICIA SHIELDS, LEAGUE OF WOMEN VOTERS, 4486 STANFORD DR. FBX 99701
PHONE 479-2587
SUE JONES,,,,,,,,,," " " " 318 SLATER DR, FBX 99701, PH452-5946

UNIVERSITY OF ALASKA
Institute of Social and Economic Research
707 "A" St., Suite 206
Anchorage, Alaska 99501
Phone (907) 278-4621

February 19, 1979

Rep. Charlie Parr, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Charlie:

The purpose of this letter is to suggest that you and your committee undertake or sponsor a preparatory effort for the 1982 referendum on calling a constitutional convention.

As you remember, the voters approved a convention call in 1970 by a rather slim margin. That referendum was voided by the Supreme Court because of improper wording of the ballot. Voting on the issue again on November 7, 1972, voters rejected the proposition. In accordance with the constitution, Alaska voters will be asked at the November 1982 general election whether a convention should be held. (Unless, of course, the legislature earlier called a constitutional convention, in which case there would be no referendum in 1982).

A conference held in Fairbanks in October 1976 to review the state constitution 20 years after it was written and first approved concluded that a general revision of Alaska's constitution was not needed, although some issues were deemed to deserve further pursuit and possible change. Most convention delegates, legislators, and others who were present felt that a new convention was not to be desired as it would open the whole constitutuion to unneccessary tinkering and possible massive revision. In general, most conferees concluded that the constitution was adequate for our time and the foreseeable future.

Recently, however, concern has been expressed that frustrations and special interests could result in approval of a convention call in 1982. There is fear that this could be brought about by a variety of issues: moving the capital, right-to-life vs. abortion choice, limiting legislative salaries, getting free land to the people, establishing limitations on taxes and state expenditure, electing judges, electing the attorney general, and others. The concern is that agitation on such issues may bring about a convention oriented toward individual causes other than being concerned with general governmental structure and constitutional integrity.

Those who have thought about this potential problem feel that it is important to defuse possible single-issue pressures. This can be done at least in part by giving the voters an opportunity to be heard before frustrations and emotions overflow, dealing with such issues insofar as possible via the legislative process, and, as appropriately, giving the public a chance to vote on specific constitutional amendments proposed by the legislature. An overall key element, of course, is voter education on what the constitution is and is not, and what the implications might be of holding a convention. If, in the end, a constitutional convention is held, it would hopefully be the result of action by an informed electorate or, if deemed appropriate, by the legislature calling a convention.

Preliminary discussions have led to the conclusion that this matter needs to be approached slowly and carefully so as not to exacerbate the potential problem. An interim study undertaken jointly by the Senate and House Judiciary Committees could explore the situation further and possibly develop a strategy for dealing with the 1982 referendum. The committees might sponsor some specific studies and opinion surveys, hold some public hearings, and delve into both some of the real and the perceived problems that might be dealt with through constitutional change.

One question that such a joint investigation might deal with is whether to move toward a more visible and more active preparatory phase after the next legislative session. This could be accomplished through creating a constitutional study commission which might go through a broad public review and participation process. It might also propose that some specific constitutional amendments could be placed before the voters in 1980 or 1982 to take care of any real problems and, thus, demonstrate that necessary changes can be dealt with without constitutional convention. Or it might be concluded that the best thing is to let the whole business lie quietly on the premise that all will turn out all right without legislative initiative.

I would be glad to pursue all this further with you and your committee, should you so desire. You might also wish to discuss this with Judge Thomas B. Stewart, who was instrumental in preparing for and managing the 1955-56 convention and has participated in some of our recent discussions. I am addressing the same letter to Sen. Robert Ziegler of the Senate Judiciary Committee.

My very best personal regards.

Sincerely,

VF:la

Victor Fischer
Professor

cc: Rep. Hugh Malone
Rep. Brian Rogers

PLEASE REPLY BY AIRMAIL

GUY A. VAN DOREN

P.O. Box 41 Douglas, Alaska 99824 (907) 364-3442

June 15, 1979

The Honorable Terry Miller
Lt. Governor, State of Alaska
Office of the Lt. Governor
Pouch AA
Juneau, Alaska 99811

Dear Lt. Governor Miller:

The Constitutional Convention Committee of the Alaska State Legislature respectfully invites you to attend a one hour televised community forum meeting in the town of Bethel on June 27, 1979. The meeting will begin at 6:00 P.M. and should finish at approximately 7:00 P.M.

The purpose of the meeting is to explain what the Constitutional Convention Committee functions will be, give a brief history of the constitution, its drafting and subsequent amendments, explain why the question of holding a convention must appear on the ballot, and to seek input from the people of the Kuskokwim area regarding constitutional questions as well as to answer their questions.

I would assume, you as Lt. Governor, would present a brief history on the first time the question of holding a convention appeared on the ballot and the resulting problems, as well as answering any questions regarding future balloting of the question.

Transportation: Anchorage-Bethel..Daily 7:25am and 7:00pm. Bethel-Anchorage Daily 9:20am and 8:55pm. I assume most of the people attending the meeting will travel to Bethel on the 7:25 a.m. flight on the 27th, and return on the 9:00a.m. flight on the 28th, however, since the meeting is due to be over around 7:00, I see no reason why a person couldn't plan to depart on the 8:55 p.m. flight on the night of the 27th.

Persons attending the meeting will be Senator George Hohman, Representative Brian Rogers, and perhaps Rep. Representative Jack Fuller. Staff and consultants will include Vic Fischer, Doug Pope, Mark Wittow, and myself. If you have any other questions you may contact me either at the above phone number or at 465-3743. Since you are going to Anchorage, you might try to contact Senator Hohman at the Legislative Information Office 238-3668 and discuss the forthcoming meeting with him.

Am looking forward to seeing you in the near future.

Regards,

Guy A. Van Doren
Consultant, Constitutional Convention Committee

MEMORANDUM

SUBJECT: September meeting of Constitutional Convention Committee

TO: Brian Rogers

FROM: Glenda Straube gl

DATE: September 5, 1979

Guy Van Doren called yesterday. He stated that it doesn't look like George Hohman can come to Fairbanks between Sept. 10th and 14th. Also Hohman doesn't want public hearing at this time in his own district. (This is confidential). Guy is checking to see how much money is left in the budget, so that hearings in other parts of the state may be held if we have enough. Guy is available from the 10th to 14th, but prefers the 11th or 12th.

Guy will be calling me again Thursday morning to establish the date of your meeting with him, so let me know your answer ASAP. Any other messages to relay to him?

POUCH V
JUNEAU, ALASKA 99811
(907)465-4928

[illegible]
FAIRBANKS, ALASKA 99708
(907)456-2037

BRIAN ROGERS

Alaska State Legislature

June 19, 1979

Hon. Jay Rabinowitz
Chief Justice, Supreme Court
604 Barnette St.
Fairbanks, AK 99701

Dear Chief Justice Rabinowitz:

The Alaska State Legislature has established an interim committee to prepare for the 1982 Constitutional Convention referendum. The purpose of the committee is to develop a strategy for dealing with that referendum, including:

a) Specific studies and research regarding the original Alaska Convention;

b) Proposed amendments which have been before the legislature since statehood;

c) Interviews with delegates to the original constitution;

d) Holding public hearings throughout the state giving the public background on a constitutional convention, establishing pros and cons of calling a convention and soliciting their idea regarding either a convention or proposed constitutional amendments;

e) Developing legislation for either the call to convention or constitutional amendments.

The committee has established a liason with the Executive branch through Lt. Governor Terry Miller and we feel judicial branch involvement is also essential. We would respectfully request that you authorize a member of the court system who is familiar with the constitution and the constitutional convention to act as a liason with the committee and to assist in interim work on a part-time basis.

Please feel free to contact me for more information about the committee, timing of work, or anything else you might need.

Thank you for your time.

Sincerely,

Representative Brian Rogers
Co-Chairman
Constitutional Convention Committee

CONSTITUTIONAL CONVENTION COMMITTEE

AGENDA December 10, 1979

CONSULTANT REPORTS:

Irene Reed: progress report on Yupik translation
Douglas Pope: constitutional issues - legal analysis
Guy van Doren: state constitutional conventions in the 1970's
Dr. Victor Fischer: preliminary considerations and arrangements
Glenda Straube: transcription of Constitutional Review

PUBLIC COMMENTS:

Fairbanks
Anchorage
Juneau
Other teleconference locations if necessary

COMMITTEE ACTION:

Requests for legislation and resolutions (if necessary)
Continuation of committee through session
Discussion of future projects

OTHER BUSINESS if necessary

1456 Turner
Ftks, Ak 99701

Hello Brian:

I heard the last few minutes of the Town Crier tonight, tried to call in but was unable to get through. I would like a Constitutional Convention as soon as possable.

I have always thought three branches of government was at least one too many. The problems we have with government are structural. The Executive Branch should be done away with. The legislature should serve full time and the bureaucracy moved into the legislative branch. Those who make the law should have to implement it. As the full time legislature breaks itself down into committees, the committee members replace the top bureaucrats in the former executive dept. For example if the Labor & Management committee had 7 members, they would replace the top 7 bureaucrats in the Dept of Labor and run the labor dept on a day to day basis, set policy, make regualtions, etc. The legislature could come together every year or two years as a committee of the whole to consider passing or repealing laws. Terms of office could be staggered to insure that a majority of the committee was experienced. Terms of office limited to two terms of 2 to 4 years. This will make government more responsive, and more economical to operate. A part time legislature(bicameral or unicameral) simply cannot combat a full time executive branch as is supposed by the three branch system. Full time legislators who operated the bureaucratic machinery would need less staff, staff attorneys, fewer studies contracted out, etc etc. They would be the the policy makers in fact as well as in law. A two branch system easily meets the "republican form" requirement of Article 4 of the Constitution of the U.S.

There is always the Bill of Rights to protect the minority & individuals from the tyranny of the majority and the legislature.

A full time legislature can react to emergency as quickly as an executive consulting with his bureaucracy. The legislative committee system was adequate to free the thirteen colonies. The true replubicans on the federal convention refused to sign the

Constitution because it had no Bill of Rights. [illegible] intrisically empty as dividing the governments power could not protect the individual. There is no need for an executive elected or appointed by the legislative, all that is needed is a chairman of the committee of the whole. No need for a judicary committee since full time legislators will quickly learn what is and is not legal or constitutional and those issues are proper subjects for debate of the committee of the whole.

An equal and independant judicary with judges elected OR appointed by hte jury to "referee" a particular case. This can be made practical.

I agree with very little in the Alaska Constitution and hope to see meaningful changes. The taxing power carries with it all other power, one of the major defects of the present constitution is that the limits of that power are not specified. The Bill of Rights must specify that it is superior to and operative against every clause in the body of the constitution or it is not a bill of rights at all.

My research indicates that as a practical matter most written constitutions amount to little more than 'rule from the grave.' There is enough talent in Alaska to do without the outside experts which attended the last one. I would rather trust the job to a dozen bar flys on 2nd avenue than to the Brookings Institute or any other group of experts. American Constitutions always purport to be made by the people but they never have been, and the ratifiers usually do not understand fully what they are voting on. The second defect is easy to rectify but what of the first?

I did'nt hear the whole program, if this was suggested, I loudly second it. I also question the commonwealth theroy. 'Things' are done for the 'good' of the whole and government, we are told, is founded on the will of the people. This is simply *might makes right* restated wherein the ballot replaces the bullet. There is no one more qualified to run government than the majority, but I do not consent to be governed by the majority or anyone else. And the majority has no business complicating my life with their laws however *good* it may be for them. Hope you can go public with these issues as much as possable between now and the convention.

Dean Farris

Dean Farris

VICTOR FISCHER ASSOCIATES CONSULTING
221 EAST 7TH AVENUE #204 • ANCHORAGE, ALASKA 99501 • (907) 272-2381

November 5, 1979

TO: Glenda Straube, Interim Constitutional Convention
Fairbanks Office

FROM: Vic Fischer

SUBJECT: 1955-56 Constitutional Convention Archives

Your August 31, list seems fairly comprehensive. The first item; Minutes of Convention, should cover two different items: The Six Volume Proceedings published by the Alaska Legislative Council in 1965 and the Journal. The proceedings are the verbatim record of what transpired on the floor of the convention. The Journal covers daily actions of the convention and consists, I believe, of two or three mimeographed volumnes. Both items should be in the files. If not, they should be obtainable from the Legislative Affairs Agency in Juneau.

There should also be the Three Volumne "Constitutional Studies" prepared on behalf of the Alaska Statehood Committee for the Alaska Constitutional Convention by Public Administration of Chicago.

There are a a number of other items that are probably not too important, such as "The Handbook for Delegates to the Alaska Constitutional Convention" also prepared by PAC. You might check the foot-notes in my book for similar references. Quite likely, these items are already somewhere in the files of the archives or of the Skinner Collection on the main floor of the library.

I assume your item II. C. refers to the "A Handbook on Alaska Regionalism" prepared by George Rogers. It was not by, from, or for the Legislative Council, whatever credit needs to be should be cited to the office of the Governor.

Regarding your last foot-note, you might also take a look at Bartlett's Key-note Address in Volumne Six of the Proceedings. It has some fabulous stuff about avoiding exploitation of Alaska's resources by outside interests. (Bartlett's, by the way, was <u>The</u> Key-note Address. Gruening gave some extemporaneous comments at the opening session of the convention, and these are in Volumne One of the Proceedings; his speech on colonialism was presented subsequent to the opening of the conference. The issue of exploitation and Colonialism was of course of the really basic reasons behind the Statehood movement).

I look forward to seeing the transcriptions you are making.

WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907)465-4925

HOME:
BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907)456-2037

BRIAN ROGERS

Alaska State Legislature

May 13, 1979

TO: Senator George Hohman
FROM: Representative Brian Rogers
RE: Constitutional Convention committee

Enclosed is a rough interim budget and proposed schedule for the interim committee on the constitutional convention. I think it's important that we meet in early June to work out the plans for the interim and to approve consultant contracts, etc.

I'd suggest we meet either in Anchorage the first week of June or in Fairbanks the second week, at your convenience. Please give me a call in Fairbanks (456-2037) after May 19th to work out details.

I look forward to working with you during this interim.

INTERIM COMMITTEE ON THE CONSTITUTIONAL CONVENTION

MAY
- Committee planning
- Arrange consultants
- Draft consultant contracts

JUNE
- First meeting:
  - Work plan for interim
  - Approve budget
  - Approve consultant contracts
- Analysis of constitutional reunion
- Constitutional convention materials located

JULY
- No meeting
- Analysis of constitutional amendments offered in legislatures
- Interview constitutional leaders - Egan, etc.

AUGUST
- Second meeting:
  - Review progress on contracts
  - Review reunion, convention, interview materials
  - Plan hearing schedule
- Draft call for convention
- Begin polling re convention vote

SEPTEMBER
- Hearings: Interior, Northwest, Yukon/Kuskokwim
- Consultant interim reports due

OCTOBER
- Hearings: Southeast, Southcentral
- Begin drafting legislation, report

NOVEMBER
- Meeting: review legislation in progress
  review committee report

DECEMBER
- Meeting: approve legislation for intriduction
  approve final report
  final consultant reports due

JANUARY
- Present legislation, report to council & legislature

INTERIM COMMITTEE ON THE CONSTITUTIONAL CONVENTION

100	**PERSONAL SERVICES**			
	Administrative Assistant	(Fbks,7 mos.)	14700	
	Secretary	(Fbks,5 mos.)	7500	
	Secretary	(Jnu, 2 mos.)	3000	
			25200	
		+benefits10%	2520	
				27720
200	TRAVEL & PER DIEM			
	Staff & consultant travel & per diem		8000	
	Legislators travel & per diem		7000	
				15000
300	CONTRACTUAL			
	Consultants			
	-Convention, reunion analysis		20000	
	-Constitutional issues analysis		15000	
	-Legal analysis		10000	
	Contingency		5000	
	Office expenses		2000	
				52000
400	COMMODITIES		500	
				500
500	EQUIPMENT		0	
				97220

Constitutional Convention Committee
610F Gruening Building
University of Alaska
Fairbanks, Alaska 99701

December 11, 1979

Fairbanks Office Supply
320 2nd Avenue
Fairbanks, Alaska 99701

TO WHOM IT MAY CONCERN:

The Constitutional Convention Committee of the Alaska STate Legislature has purchased items from your store and is now currently renting a Lanier transcribing machine.

There has been some mix-up in the billing situation. The Labor and Management Committee of the Legislature has been receiving our bills.

In the future, when billing for these expenses please check the invoice and if it has the name of the Constitutional Convention Committee or my personal name on it, please send the bill to: Legislative Affairs Agency, Accounting, Pouch Y, Juneau 99811. Be sure to let them know the name of the committee.

I hope that we can straighten out this problem. If you have any questions, please call me at 479-7692.

Sincerely,

Glenda J. Straube

Glenda J. Straube
Administrative Assistant

Constitutional Convention Committee
610F Gruening Building
University of Alaska
Fairbanks, Alaska 99701

Con Con

Leo Wheadon
Supply
Legislative Affairs Agency
Pouch V
Juneau, Alaska 99811

Dear Mr. Wheadon:

The following is a list of the inventory for our office here in Fairbanks. Rep. Rogers will be discussing the use of the office here with President Barton and quite possibly we will store this furniture here on campus.

(1)	Hon. 30x60 double pedestal desk	31-05060
(1)	Hon. 30x60 secretarial desk	31-05061
(1)	Hon. 30x60 secretarial return	31-05062
(1)	Hon. 48" metal bookcase	31-05063
(1)	Hon. 4-drawer file cabinet	31-05064
(1)	Black plastic wastebasket	31-05065

If there are any questions regarding this inventory, I can be reached through Rep. Roger's Juneau office after January 8.

Sincerely,

Glenda J. Straube

Glenda J. Straube
Administrative Assistant

VICTOR FISCHER ASSOCIATES CONSULTING
221 EAST 7TH AVENUE #204 • ANCHORAGE, ALASKA 99501 • (907) 272-2381

December 18, 1979

TO WHOMEVER:

RE: Review of "Issues of Constitutional Change"

You are one of a number of Alaskans selected to receive the enclosed draft paper which examines changes to Alaska's constitution that have been suggested in the past or might be considered in the near future. The paper is part of a study program sponsored by the Alaska Legislature's Interim Committee on the Constitutional Convention to provide preliminary background information for the convention question on the 1982 ballot. The other attached paper discusses the general questions related to constitutional revision. It is sent to you for background and informational purposes.

I would very much appreciate your review of the constitutional issues study. As you will note, the preface provides a brief description of the paper and its contents. Also mentioned there, this draft is strictly preliminary in nature; and all suggestions for revision, expansion, and deletion of material will be very welcome.

Sen. George Hohman and Rep. Brian Rogers, co-chair of the interim committee, contemplate the possibility of publishing this paper as well as other parts of the study series. Your assistance will help to provide a more complete and improved end product. By the way, the committee has not yet received this draft, and it does not purport to represent the views of the committee.

I need to receive your comments and suggestions by January 11, 1980. If you cannot provide them by that date but do intend to submit them later, please drop me a note to that effect or call me.

Many thanks for your assistance, and very best season's greetings.

Sincerely,

Vic gs

Vic Fischer

Constitutional Convention Committee
610F Gruening Building
University of Alaska
Fairbanks, Alaska 99701

December 20, 1979

Norman Cohen
P. O. Box 3-3908
Anchorage, Alaska 99501

Dear Mr. Cohen:

I'm sorry that it took me so long to get this information together for you, but I've been extremely busy in preparation for the upcoming legislative session.

I searched through the minutes of the Constitutional Convention concerning natural resources. I have enclosed the pages that involved this article, other than those which only included changes in style and drafting.

Also enclosed are three student papers concerning the natural resources workshop during the Constitutional Review in 1976.

You had stated that you already had the material from Report 8 and 8A of Volume 6 of the Constitutional Convention procedures, so I have not included these.

I hope this will be helpful in your research.

Sincerely,

Glenda J. Straube

Glenda J. Straube
Administrative Assistant

POUCH V
JUNEAU, ALASKA 99811
(907)465-4925

BOX R - COLLEGE
FAIRBANKS, ALASKA 99708
(907)456-2037

BRIAN ROGERS
Alaska State Legislature

Con Con

December 5, 1979

The Honorable Thomas B. Stewart
Presiding Judge, Superior Court
Alaska State Court System
Pouch U
Juneau, Alaska 99811

Dear Judge Stewart:

In response to our request, Chief Justice Rabinowitz has designated you to be the Court's liason to the Constitutional Convention Committee.

A meeting of the committee will be held on Monday, December 10 beginning at 10 A.M. We will meet at the Legislative Information Office at 101 College Road in Fairbanks. Oral reports will be given by Doug Pope, Vic Fischer, and Guy Van Doren. Senator George Hohman, co-chair of the committee, will be participating also.

Your attendance at this meeting would be helpful as we will be discussing the constitutional guidelines of the call to the convention and the convention itself. If you are unable to attend the Fairbanks meeting, you might participate via the Legislative Information Network in Juneau. For more information, you can reach me at 479-7692.

Sincerely,

Brian Rogers

Rep. Brian Rogers
Co-Chair, Constitutional
Convention Committee

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99811

Senate

CHAIRMAN
SENATE JUDICIARY COMMITTEE
IMMEDIATE PAST CHAIRMAN
WESTERN CONFERENCE - COUNCIL OF STATE GOVERNMENTS

VICE CHAIRMAN
SENATE RULES COMMITTEE

MEMBER
SENATE STATE AFFAIRS COMMITTEE
SENATE COMMITTEE ON COMMITTEES
LEGISLATIVE COUNCIL
WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE

July 25, 1980

The Honorable Clem Tillion
The Honorable Terry Gardiner
Alaska State Legislature

Gentlemen:

Legislative Resolve 48 calls for the appointment of a seven-person committee to delve into state constitutional convention matters. The President is to appoint three Senators; the Speaker is to appoint three Representatives. In addition, Senator Hohman, wearing his Legislative Council chairman hat, is to appoint the seventh member.

We are rapidly running out of time within which to do the type job we ought to do and want to have done. If these appointments were to be made immediately, we could have our organizational meeting in Anchorage on the afternoon of August 1st or in the morning of the 2nd. This would coincide with the Legislative Council meeting shceduled for the 1st.

Guy Van Doren, my administrative assistant, has indicated he is ready, willing and able to serve as administrative assistant for the interim constitutional convention committee. If we do organize in Anchorage, perhaps he should attend said meeting. If you concur, will one of you please notify Guy, perhaps through Myrt Charney, that he is on the payroll and to make plans accordingly. Also, Landa Krossa has been tentatively selected as committee secretary; she advises me she can make the Anchorage meeting if requested so to do.

It is my understanding that Clem will probably appoint Senator Sackett and myself as two of the three Senate members and that Terry has contemplated appointing Representatives Rogers and Parker as two of his appointees.

I fear that if we don't move with alacrity, we might as well abandon the project. That would be a shame, for I am of the positive opinion that the work we do in the next few months will stand us in good stead in the years to come.

Regards,

3

Corr Con

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

C
Reimer
Gamble
B-D'innocente
H-Harter
I-Marshall
K-Therrien
M-Helms
K-Palczer
B-Rochford
H-Lance

August 19, 1930

MEMORANDUM

TO : Representative Brian Rogers
Representative Joe L. Hayes

FROM : M. R. Charney, Executive Director M.R.C.

SUBJECT: Joint Interim Committee - Constitutional Convention

Speaker Gardiner has requested me to notify you that he has appointed each of you, as well as himself, as the House members to the Joint Committee examining matters pertaining to Constitutional Conventions, established by SCR 43 am (Legislative Resolve No. 48) in the last session.

At this time, I have yet to receive the three appointments from President Tillion or the one appointment from the Council Chairman.

Representative Rogers has been designated by the Speaker to serve as Chairman of the House members.

Funding for the joint committee was appropriated to the Legislative Council and will be made available by the Chairman when all appointments are made.

cc: Sen. George H. Hohman, Jr.
Sen. Clem V. Tillion
Rep. Terry Gardiner
Sen. Bill Ray
Richard G. Berg

PRESIDENT
Richard M. Rosenau

VICE PRESIDENTS
Stephen K. Galpin, Fairfield, CT
James L. Holland, Jr., Minneapolis
George L. McGonigle, Houston
William F. Quinn, Honolulu
Terry Sanford, Durham, NC
Marjorie R. Spear, San Diego

Carl H. Pforzheimer, Jr., Chairman
Executive Committee & National Conference on Government
Wilson W. Wyatt, Chairman of the Council
Frank E. Curley, Treasurer

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Rex M. Ball, Oklahoma City
Terrell Blodgett, Austin
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Allen J. McDowell, Lincoln
Howard D. McMahan, Fort Worth
Cecil Morgan, New Orleans
James A. Norton, Cleveland
John B. O'Hara, Philadelphia
Roy H. Owsley, Louisville
William T. Patrick, Jr., New York
Thelma Press, San Bernardino
William L. Randall, Milwaukee
Ray T. Reed, Jr., Wichita
Arlyne E. Reichert, Great Falls, MT
Jeanne Richman, Scarsdale, N.Y.
George Romney, Bloomfield Hills, MI
Victoria Schuck, Washington, D.C.
William W. Scranton, Scranton, PA
Murray Seasongood, Cincinnati
William F. Taggart, East Brunswick, N.J.
Marjorie L. Taylor, Wichita
Cecil H. Underwood, Huntington, WV
Richard C. VanDusen, Detroit
David I. Wells, New York
Stanley J. Winkelman, Detroit
John C. Wyckoff III, Memphis

William N. Cassella, Jr., Executive Director
William G. Andersen, Jr., Assistant Director
Joan A. Casey, Director, Library/Publications
Page Elizabeth Bigelow, Staff Associate
Marion A. Kelly, Administrative Assistant
Gerald N. Hardy, Field Consultant
Peter L. Shaw, Field Consultant
Troy R. Westmeyer, Field Consultant
William K. Woods, Field Consultant
Frank P. Grad, Counsel

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86th Annual Conference—Houston—November 15-18, 1980

Name for Con Con

July 9, 1980

Mr. Guy A. Van Doren, Consultant
Interim Constitutional Convention Committee
Pouch Y Room 107 Capitol Building
Juneau, Alaska 99811

Dear Mr. Van Doren:

In reply to your letter of June 23, we are sending the names of several individuals with whom you may ~~wish to correspond in connection~~ with your work for the constitutional convention committee. This is by no means an exhaustive list, but all have played important parts in revision efforts as authors, consultants and/or delegates.

John E. Bebout, Box 441, Wellfleet, Massachusetts 02667, 617-349-3546, has been associated with revision efforts since the successful move to adopt a new constitution in New Jersey in the 1940s, and was a major consultant to the Alaska convention. ✓

George D. Braden, 302 Hudson Avenue, Albany, New York 12210, 518-436-0145, has been involved in revision efforts in Connecticut, New York, Illinois and Texas, and has co-authored books on the Illinois and Texas constitutions. ✓

George E. Campbell, Rose, Nash, Williamson, Carroll, Clay and Giroir, 720 West Third Street, Little Rock, Arkansas 72201, 501-375-9131, was a delegate to the 7th Arkansas Constitutional Convention and was executive secretary of the Constitutional Revision Study Commission.

Elmer E. Cornwell, Department of Political Science, Brown University, Providence, Rhode Island 02912, 401-863-2825, was co-author of The Politics of the Rhode Island Constitutional Convention and Constitutional Conventions: The Politics of Revision. ✓

Samuel K. Gove, Director, Institute of Government and Public Affairs, University of Illinois, Urbana, Illinois 61801, 217-333-3340, was a member of the commissions preparing for and implementing the results of the 6th Illinois Con-

Con, and co authored Revision Success: The Sixth Illinois Constitutional Convention.

Richard Kosaki, Department of Political Science, University of Hawaii at Manoa, Porteus 640, 2424 Maile Way, Honolulu, Hawaii 96822, 808-948-8357, authored materials on the 1978 Hawaii Constitutional Convention.

Norman Meller (address and phone same as Kosaki) wrote With an Understanding Heart: Constitution Making in Hawaii and served as a consultant to the Pacific Trust Territories constitution making effort.

James F. Ray, 8834 Honeysuckle Trail, Austin, Texas 78759, 512- 345- 3108, was executive director of the Texas Constitutional Revision Commission and the Constitutional Convention.

Albert L. Sturm, Center for Public Administration and Policy, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, 703-961-5133/5830, is author of a book on the Michigan Constitutional Convention, of numerous articles on revision, of Thirty Years of State Constitution Making, 1938-1968, and of the annual constitutional developments summary in the NATIONAL CIVIC REVIEW and the Book of the States.

John P. Wheeler, Hollins College, Hollins, Virginia 24020, 703-362-6000, directed the League's State Constitutional Studies Project in the 1960s and authored The Constitutional Convention: A Manual on Its Planning, Organization and Operation, and co-authored Magnificent Failure: The Maryland Constitutional Convention of 1967-1968.

The League's executive director, William N. Cassella, Jr., participated in the Alaska Constitutional Review Conference held in Fairbanks in 1976. He is also in close touch with Victor Fischer of Anchorage, who is the author of the League-sponsored study Alaska's Constitutional Convention.

We will be grateful if you can send us copies of materials prepared by your committee to add to our extensive library collection on constitutional revision in all the states.

We trust this list will be useful to you, and please feel free to call on us if we may be of assistance to you.

Sincerely yours,

Joan A. Casey
Director
Library/Publications

Chairman
Rep. Brian Rogers

Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Hayes

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

Pouch Y, Rm. 107
Capitol Bldg.
Juneau, Alaska
99811
(907) 465-3743

Staff
Guy Van Doren
Admin. Asst.

September 4, 1980

As required by the Alaska State Constitution, the question of whether or not there shall be a Constitutional Convention in Alaska, will be on the ballot in 1982.

In light of the fact that all students of constitutional revision emphasize pre-planning of a Constitutional Convention, the Alaska State Legislature has created a Special Interim Committee on the Constitutional Convention. As can be seen by the enclosed resolution, the Committee is charged with examining matters pertaining to the organization and conduct of Constitutional Conventions.

In 1954, Thomas B. Stewart, now Judge Stewart, spent over a month seeking information and advice from nationally recognized authorities in the field of government and constitution-making.

The current committee is contemplating the same type of information-gathering and has chosen me to carry out that task. Your name has been suggested by the National Municipal League.

The purpose of this letter is to furnish you with the draft work which has been completed to date and to solicit tentative dates on which you would be available for a meeting with me. I intend to be traveling during the month of October and possibly the first part of November. As soon as I have received the dates you will be available and the available dates of others recommended by the League, I will set up firm appointments by telephone.

Please advise me as soon as possible if you are interested in such a meeting and convenient dates.

I look forward to meeting with you in the near future.

Sincerely,

Guy A. Van Doren
Administrative Assistant,
Special Interim Committee on the Constitutional Convention

August 30, 1980

Robert H. Wagstaff
912 West Sixth Ave.
Anchorage, Alaska 99401

Re: Contract with Joint Committee on a Constitutional Convention.

Dear Bob:

The purpose of this letter is to state, on behalf of Rep. Rogers, the stages of work to be performed for the Joint Committee and to confirm the understanding on hiring an assistant.

Researching and preparing a memorandum on the issues surrounding cash distribution of state revenues to residents is the first item. It is the desire of Rep. Rogers that the time and expenses for this item not exceed $8,000.00 without further approval. After the State Supreme Court rules in the tax and permanent fund dividend cases, Rep. Rogers will advise you whether to proceed with further research and preparation of memoranda. At present, it is his intent that any time and expenses incurred for researching that supreme court decision shall not exceed an additional $8,000.00 without prior approval.

It is understood that you will hire a law clerk to assist you. Compensation for a clerk shall not exceed $40.00 per hour.

Sincerely,

Douglas Pope

DP:mec

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 5, 1980

MEMORANDUM

TO : Representative Brian Rogers

FROM : Senator George H. Hohman, Jr.
Chairman, Legislative Council

SUBJECT: Legislative Council 1980 Interim Committee -
"Joint Constitutional Convention Committee"

As Chairman of the Legislative Council, I am appointing you as the Project Chairman of the Joint Constitutional Convention Committee under the auspices of the Council. Members of your committee are Representatives Terry Gardiner, Joe L. Hayes and Senators Robert H. Ziegler, John Sackett, Bob Mulcahy and George H. Hohman, Jr.

In accordance with legislative action, your committee has been given a budget of $143,000. Please coordinate with the Administrative Services Division in establishing criteria for proper control of State funds.

In addition, I have appointed Senator Ray as Chairman of an Interim Project Oversight Committee. Their task shall be to review the progress of all interim activities and to act on all funding requests.

I would also appreciate you keeping Mr. Charney informed with copies of your periodic reports to the Oversight Committee in order that public access may be maintained.

cc: Rep. Terry Gardiner
Rep. Joe L. Hayes
Sen. Robert H. Ziegler, Sr.
Sen. John Sackett
Sen. Bob Mulcahy
Sen. George H. Hohman, Jr.
Sen. Bill Ray

OFFICIAL TESTIMONY

of

Timothy Dove

to the

Interim Constitutional Convention Study Committee

an

Interim Committee of the Legislative Council

Before the Legislature takes any steps toward calling a constitutional convention, public inquiries should be made of the present constitution: "What's good about it?", "What's wrong with it?", "What changes are needed?", "Why should we have a constitutional convention, anyways?".

How many people are aware of the power of the state over the individual as imbodied by our present constitution? Did you know that the constitution compels the creation of borough governments in areas where boroughs were not wanted by the residents? Fairbanksans twice voted down the formation of the borough, yet the courts still forced it down their throats. Did you know that even though a majority (59%) voted for the Beirne Homestead Act, the Supreme Court ruled that the people do not have the constitutional authority to dispose of state land? And did you know that the present constitution creates the most powerful, dictatorial governor in the country? His power to appoint is staggering: Supreme Court Justices, law enforcement officials, various regulatory department heads, Airport Managers, Commissions ad nauseam, etc, etc. He and his Commissioner of Natural Resources have deliberately strangled the economy of Alaska. His Supreme Court finds it "constitutional" if the government wants it (boroughs), and "unconstitutional" if the people want it (homesteading). The judges then claim "sovereign immunity" - they can't even be voted out!

I am for a constitutional convention which will take the power out of the hands of a few and give it back to the people. I am for a constitution which will abolish the centralized, state-planned economy in favor of a free market based on private ownership of land and resources.

However, I do not yet hear a hue and cry of the people for a constitutional convention. They have not yet deduced the relationship between our present economic stagnation and our constitution. Therefore, until and unless the people of Alaska call for a constitutional convention to get government off their backs, I must stand resolutely against a convention planned and organized by the Legislature. The power brokers at such a convention would only give themselves still more power. A constitution should be the will of the people, and until they are for it and involved in it, the plans of others to call a convention should be thwarted.

In the meantime let's put the question before the voters on the 1982 ballot, as required by the present constitution.

Timothy A. Dove
12-10-79

cc: Editor, Daily News-Miner
Rep. Dick Randolph

SCOMM

#27:5

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

M E M O R A N D U M

TO: Wilson Condon, Attorney General

FROM: Sen. Vic Fischer

DATE: Feb. 26, 1981

SUBJ: Constitutional Convention

Your assistance is requested in clarifying how legal and policy issues on this subject can be resolved.

PREPARATORY COMMISSION

The Senate State Affairs Committee has considered SB 165, providing standby legislation in case Alaska voters approve a constitutional convention in the 1982 referendum or at a subsequent time. The bill is essentially the same as HB 723 approved by the Legislature last year but vetoed by the Governor.

The Governor's veto was based on the composition of the preparatory commission, which was to have included appointees of the Governor, Speaker of the House, President of the Senate, and Chief Justice of the Supreme Court. The appointive structure was seen as a violation of the separation of powers concept.

SB 165 does not include provision for a preparatory commission so as to avoid raising the appointment method issue. We now have the option of amending SB 165 to include provision for a preparatory commission, dealing with the matter in separate legislation to make SB 165 "veto proof", or making no provision for convention preparation. The latter course is to me extremely undesirable, as experience has shown that lack of adequate preparation can lead to disastrous constitutional conventions.

Based on the scheduling of a convention established by SB 165 in case of a positive convention vote by the people, a preparatory commission would have to be activated as soon as possible after the referendum to assure that preparatory work is carried out in timely fashion. Therefore, necessary legislation has

to be enacted by this Legislature, preferably during this session.

State Affairs Committee discussion brought out the opinion that a constitutional convention is the highest legislative process of the people of the state. Neither the executive, legislature, or judiciary can limit the scope of this law making process.

At the same time, someone has to provide for the constitutional convention preparatory process. Our question now is who should be involved in doing that.

It appears clear that the Legislature could establish a preparatory commission, with appointments made by the House Speaker, Senate President, or others within the Legislature.

The Legislature could also provide for a commission, the members of which would be appointed by the Governor.

My main question is whether you would find any kind of joint executive-legislative- appointment legally acceptable, particularly in view of the constitutional convention being essentially a legislative function. I pose the question because of my belief that a convention preparatory commission performs a crucial function and that its composition is most important to an effective preparatory process.

I would very much appreciate your comments and suggestions on this issue at the very earlies time.

Sen. Vic Fischer

/lf

cc: Sen. Rodey, Chair, Judiciary Committee

Rep. Rogers, Chair, Constitutional Convention Committee

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 10, 1981

Hon. Vic Fischer
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Constitutional convention
preparatory commission
Our file: J-66-557-81

Dear Senator Fischer:

You have asked whether we can find any kind of joint executive-legislative appointment of a commission to prepare for a constitutional convention to be legally acceptable. We regret to advise that we cannot.

There are at least two cases, each of which includes a compelling dissent, which hold that a legislator's serving as a delegate to a constitutional convention is not holding a dual office. Harvey v. Ridgeway, 450 S.W.2d 281 (Ark. 1970); Bd. of Supervisors of Elections v. Attorney General, 229 A.2d 388 (Md. 1967). Both cases ignore the case authority in their own and other states in arriving at their decisions. Accordingly, neither is persuasive. Our own court takes a broad view on what is an office. Larson v. State, 564 P.2d 356 (Alaska 1977). And the cases uniformly hold that an office is "'a public charge or employment, the duties of which are prescribed by law, and he who performs the duties is an officer.'" State v. Dunn, 496 S.W.2d 480, 490 (Tenn. 1973), quoting from State v. Bratton, 253 S.W. 705 (Tenn. 1923). See also Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976); Begich v. Jefferson, 441 P.2d 27 (Alaska 1968)(prohibition against dual-office holding literally applied). The Alaska Constitution expressly makes employment by or election to a constitutional convention an exception from the prohibition against legislators' holding dual office. Alaska Const., art. II, § 5. In Begich, the court stated that these (and other) express exceptions in the constitution necessarily result in the prohibition's extending to all other offices. 441 P.2d at 30-33.

It might be argued that legislative appointees to the preparatory commission are employees of the convention.

03-C6LH

However, while the legislature is empowered to made provision for the convention, "by law," Alaska Const., art. XIII, § 3, the constitution does not make an exception for the legislature to appoint either its members or its agents to be the officers or employees of the convention or for either to serve on a commission appointed by the legislature in whole or in part. Absent constitutional provision to the contrary, the chief executive is the appointing authority for those charged with carrying out a law. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Either on an informal basis or on a basis formalized by law, resolution, or interbranch agreement, the agencies of the two branches -- including duly established permanent or ad hoc interim committees -- can certainly cooperate in studies and gathering information to prepare for a convention. So too, the legislature, through existing or duly established interim committees can study the needs for constitutional reformation. But the legislature cannot write a public law and then appoint a commission of its own members or agents to carry it out. Book v. State Office Bldg. Comm'n, 149 N.E.2d 273 (Ind. 1958).

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: Rodger W. Pegues
Rodger W. Pegues
Assistant Attorney General

RWP/pjg

Alaska State Legislature

Senate

State Affairs Committee

Official Business

Vic Fischer, Chairman
Mike Colletta, Vice-Chairman
Brad Bradley
Dick Eiason
Terry Stimson

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4954
(907) 465-4955

M E M O R A N D U M

TO: REP. BRIAN ROGERS

FROM: SENATOR VIC FISCHER VF

DATE: MARCH 4, 1981

RE: Constitutional Convention bill

Sec. 44.90.020(d) specifies that the convention shall meet for not more than 90 days but may recess for 15 days. It is not clear in the section whether the 15 days would come out of the 90 or could be in addition. You might wish to clarify this while the bill is in Senate Judiciary or on the House side.

cc: Sen. Pat Rodey

Alaska State Legislature

Senate

State Affairs Committee

Official Business

Vic Fischer, Chairman
Mike Colletta, Vice-Chairman
Brad Bradley
Dick Eason
Terry Stimson

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State Capitol
Juneau, Alaska 99811
(907) 465-4954
(907) 465-4955

M E M O R A N D U M

TO: SENATOR PAT RODEY

FROM: SENATOR VIC FISCHER

DATE: MARCH 4, 1981

RE: SB 165, Constitutional Convention

The Judiciary Committee will shortly receive CSSB 165, providing for a Constitutional Convention in case voters approve a call at the 1982 or a subsequent referendum. I would like to bring several items to your attention.

Similar legislation was enacted last year but vetoed by the Governor due to composition of the proposed preparatory commission. Brian Rogers suggested we get the basic enabling legislation enacted and deal with the preparatory commission separately.

My preference is to include the commission as part of the basic convention legislation, though not at the expense of jeopardizing the measure. I have therefore requested the advice of the Attorney General on commission composition that might be acceptable to the Administration; see attached memo of February 26.

I would suggest that you proceed with CSSB 165 without the preparatory commission. If we get something back from Will Condon in time for inclusion by your committee, fine. Otherwise we can deal with the matter in the House, if we all conclude that we can attach the appropriate provisions to the bill. In lieu of that we will proceed with separate legislation after hearing from Condon.

The second issue I would like to bring to your attention pertains to a fiscal note. The Division of Elections provided us with a fiscal note that showed no expenditures in FY '81 and '82, with $1.1 million in FY '83, $1.2 million in FY '84. These amounts would cover costs of special elections for delegate selection and ratification of any amendments or revisions proposed by a

convention, if one were held. The fiscal note is predicated on a positive vote on issuing a convention call.

Both Brian and I feel very strongly that the Constitutional Convention bill now under consideration has no costs that would result from its enactment. Any costs would be ascribable to the convention referendum itself, but not CSSB 165. If the people approve a convention call total costs will be far in excess of $2.6 million. If the people reject a convention, there is no cost whatsoever. In either case, it's the action of the people on the referendum and not legislative action on the current bill to which costs should be ascribed. Accordingly, CSSB 165 carries a zero fiscal note from the State Affairs Committee.

In view of the zero fiscal note, both Brian and I feel that referral to Finance Committee is unnecessary. We will deal with that when the bill comes out of your committee.

Third is an issue that just occurred to me. It might be good to add a provision to the bill that the lieutenant governor include a fiscal note for the convention in the election pamphlet for the election at which the constitutional convention question is put to the voters. The fiscal note should cover costs of delegate election, the convention itself, ratification election, and other expenses ascribable to a convention if one were held. Unless an authoritative figure is given, we are liable to have a big argument over potential expenses of a convention...If you concur, Judiciary might add such a provision.

Thanks for your consideration of these issues.

cc: Rep. Brian Rogers

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

M E M O R A N D U M

TO: Wilson Condon, Attorney General

FROM: Sen. Vic Fischer

DATE: Feb. 26, 1981

SUBJ: Constitutional Convention

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I would very much appreciate your comments and suggestions on this issue at the very earlies time.

Sen. Vic Fischer

/lf

cc: Sen. Rodey, Chair, Judiciary Committee

Rep. Rogers, Chair, Constitutional Convention Committee

TO: Senator Rodey, Chairman
and
All Members of the Judiciary Committee

FROM: Constitutional Convention Committee
Guy A. Van Doren, Administrative Assistant

SUBJECT: Information Packet Re: Joint Committee on Constitutional Convention

HISTORICAL PERSPECTIVE:

Alaskans wrote and approved their state constitution two years before Congress granted statehood to Alaska. A constitutional convention with 55 (the number of members who drafted the United States Constitution in 1787) elected citizens met in what is now known as Constitution Hall on the campus of the University of Alaska a few miles west of Fairbanks, on November 8, 1955, and adjourned February 6, 1956. The voters ratified the work of the convention by a two-to-one margin in a special referendum April 24, 1956.

> Article XIII, Section 3, provides, "If, during any ten-year period, a constitutional convention has not been held, the Lieutenant Governor shall place on the ballot for the next general election the question: 'shall there be a constitutional convention?' If a majority of the voters cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period. If a majority of the votes cast on the question are in the affirmative, dele-

gates to the convention shall be chosen at the next statewide election, unless the legislature provides for the election of the delegates at a special election. The Lieutenant Governor shall issue the call for the convention. Unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including, but not limited to, number of members, districts, election and certification of delegates, and submission and ratification of revisions and ordinances. The appropriate provisions of the call shall be self-executing and shall constitute a first claim on the State Treasury."

In 1970, the voters, by a slim margin, approved a convention call; however, that referendum was voided by the Supreme Court because of improper wording of the question on the ballot. Voting on the issue again on November 7, 1972, the voters rejected the proposition. In accordance with the constitution, Alaska voters will be asked at the November 1982 general election whether or not a convention should be held.

CURRENT STATUS:

A conference held in Fairbanks in October 1976 to review the state constitution twenty years after it was written and first approved, concluded that a general revision was not needed,

although some issues were deemed to deserve further study and possible change. Most delegates to the original convention -- legislators and others who attended the conference -- felt that a new convention was not necessary and, if there were to be a convention, it would open the whole constitution to unnecessary tinkering and possible massive revision since Article XIII, Section 4, Powers, states, "Constitutional Conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention." (Emphasis added).

In general, most conferees concluded that the constitution was adequate for our own time and in the foreseeable future.

Although there has not been a convention since statehood, the constitution has been changed over the years. Approximately 250 resolutions to amend the constitution have been introduced in the legislature since the first session of the first legislature. Of those 250, 23 have passed both houses of the legislature and have been placed before the public. Sixteen of those have been ratified by the voters and have become part of the constitution. Generally, voters have supported changes recommended by the legislature.

Recently, certain issues have surfaced which supporters feel can only be solved through changes in the constitution at a constitutional convention. These issues have been introduced many times in the legislature but have not passed both houses. Supporters feel they would receive fairer consideration by non-partisan convention delegates. These issues include:

1. Election of judges — Introduced 5 times
2. Election of Attorney General — Introduced 18 times
3. Length of session — Introduced 23 times
4. Unicameral Legislature — Introduced 13 times

New issues have surfaced which supporters feel necessitate changes the constitution. These issues include:

1. Right-to-live vs. abortion choice;
3. Capitol move;
4. Land distribution;
5. Limitations on taxes and expenditures.

Any of the above issues could bring about a convention oriented toward individual causes rather than one concerned with general governmental structure and constitutional integrity.

To:

1. Assure that the public will be given a chance to express their feelings on the above, and other issues, will be informed

on the pros and cons of calling a convention, and will be appraised of alternative methods of achieving the goals;

2. Provide a plan and develop material relating to the Alaska Constitution, Constitutional revision and a constitutional convention;

3. Insure successful and well planned convention should one be called.

The Joint Committee on the Constitutional Convention was formed during the interim period of 1979.

In 1979 the committee solicited work from various instate consultants relating to constitutional conventions, issues, proposed amendments, the calling of a constitutional convention.

In 1980, the Legislature felt that the work of the committee was important enough to continue the committee. During the 1980 interim, the committee decided to accomplish certain tasks. Unfortunately, the committee which was originally scheduled to begin its work in the month of June, was not even formed until August 29, 1980, three months late. Because of the delay, the committee was not able to accomplish all of the goals it had set for itself.

The major undertaking of the committee during the 1980 interim was to meet with recognized experts on constitutional conventions, revision and issues. From those meetings came invaluable advice on conventions, preparation for, holding of and post convention work. Changes and issues relating to the Alaska constitution were also discussed.

The transcripts of those meetings have been edited and reproduced and have led to various "occasional papers" being developed by staff to outline various provisions of constitutional convention planning and revision.

The committee has engaged the services of a person to write "A Citizen's Guide to the Alaska Constitution", which will be useful to both people in government and the public at large even if the voters do not approve the calling of a convention. This guide will be published during the 1981 interim. It has begun the work of translating the Alaska constitution into the Yupik lnaguage in order that some 15 to 20 thousand people can read the constitution in their "first" language.

The committee is planning on distributing a pamphlet to explain the Alaska constitution, constitutional revision, and the functions of a constitutional convention and has entered into a contract with the League of Women Voters to provide materials

and conduct meetings with the public to discuss issues of revision, the constitution and or a constitutional convention.

THE FUTURE:

As mentioned earlier, in 1980 the committee began its work three months late. There are only twenty months before the people of the state must decide on the very important question of whether or not to call a convention. The committee feels that it is imperative that as much information on the constitution and a convention, as possible, should be distributed to the public prior to the vote and that preparation for a convention should continue in the event the electorate votes for calling a convention. Every person involved with constitutional revision and conventions the committee met with, stressed the importance of preparatory work.

In the event the people do not approve the calling of a convention, the materials gathered will undoubtably be useful in the future. Prior to the work of the committee, no work had been done relating to preparation for a convention.

You have all received a brief outline of the plans for the committee separate from this memo, but I am including the proposed schedule in order to refresh your memory.

[illegible] FOR [illegible]
FOR JOINT COMMITTEE ON CONSTITUTIONAL CONVENTION

1981 Session

1. Adopt enabling and procedures act.
2. Continue Joint Committee (adopt resolution).
3. Complete Citizen's Guide.
4. Complete brochure.
5. Conduct public opinion survey.
6. Yupik translation (Phases I & II).
7. Possible pre-information work by League of Women Voters.

1981 Interim

1. Publish "Citizen's Guide" and brochure.
2. Public information begins - Committee and League of Women Voters.
3. Convention site survey.
4. Committee public hearings.
5. Prepare constitutional amendment package(?).
6. Solicit public papers and print same.
7. Yupik Translation completed (Phases II & III).

1982 Session

1. Contingent appropriations for convention.
   (a) Planning and election
2. Adoption of amendment package (?).
3. Convention logistics planning begins.

1982 Interim

1. Convention logistics planning.
2. Public information program.
   (a) begin drafting materials
   (b) committee hearings.
3. If affirmative vote, begin choosing preparatory staff.

November 1982

Vote by the people.

1983

1. Appropriation for convention.
2. Convention drafting manual completed.
3. Temporary rules preparation.
4. Election of Delegates (May).
5. Delegate studies materials ready.
6. Convention logistics completed.
7. Solicit and prepare lists of staff and consultants available for convention to use.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 6, 1981

SUBJECT: Appointments to Constitutional Convention Committee of the legislature which may be established under SCR 9 (Work Order Number 12-0980)

TO: Senator Vic Fischer

Representative Brian Rogers

FROM: Richard A. Bradley
Legislative Counsel

You have asked my opinion as to the implications of the failure or refusal of the chief justice, the lieutenant governor, or the governor to make appointments authorized under SCR 9 to a joint committee of the legislature concerned with the organization and procedures of a constitutional convention.

In my view there will be no substantial effect. The committee would have whatever power the committee would otherwise have.

If any effect occurs at all, it will be because the vacancies may cause quorum or similar procedural questions.

RAB:ljb

February 14, 1981
224 Nerland Hall
Fairbanks, Alaska
99701

Represenative Brian Rogers
Pouch V
Juneau, Alaska 99811

Dear Represenative Rogers,

I am writing to commend you on your article in this week's All-Alaska Weekly, where you addressed the subject of Alaska's next Constitutional Convention. Speaking not only for myself but also for the members of the Farthest North Political Science Union at the University of Alaska, I would like to thank you for sparring some discussion and interest in this very important matter.

At this time the FNPSU is arranging for lectures and seminars to be held on the campus of UAF which will discuss such issues as the next Constitutional Convention. On behalf of FNPSU, I would like to invite you to be a guest speaker before our club and all interested persons on the subject of the next Constitutional Convention. We can arrange such a visit according to your schedule and upon very short notice. We of course realize that your time is very precious, and therefore we regard this invitation as an open one, to be accepted or refused as is convenient for you.

For your information, there are many students here who are interested in the idea of the Convention, but who are woefully ill-informed about both Alaska's Constitution and the first Convention. This fact bears upon your suggestion in your article that Alaska's citizens are in danger of having a second Convention without being even minimumally prepared for it. Therefore, it seems not only reasonable but vital that there be increased publicity and governmental promotion of the pertinent law, issues, Legislative actions and circumstances under which our next Convention will be held. To help in this regard, the FNPSU of the University of Alaska-Fairbanks offers to provide such research, promotion, and manpower as we can which will help Alaskans prepare for the Convention.

Please contact me, Scott Sterling, care of the above address, for any further discussion and information which may help both you and us in our efforts regarding the next Convention. Your concern and attention is deeply appreciated.

Sincerely, Scott A. Sterling

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

REPRESENTATIVE
BRIAN ROGERS
Alaska State Legislature

BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907) 456-2037

23 February 1981

Scott A. Sterling
224 Nerland Hall
Fairbanks, Alaska 99701

Dear Mr. Sterling,

Thank you for your letter of February 14th regarding my work with the Constitutional Convention Committee.

I would be happy to speak with your group on this subject whenever I am in Fairbanks. At this time, however, I do not know when that may be as we are still in the process of making the Legislative schedule and any time I may have to travel is still unknown to me.

I will keep your name handy, however, and contact you whenever I know I am coming to Fairbanks.

Thank you again for contacting me and for your interest in the subject. There is little else I can think of that will shape the future of our state more that the outcome of a Constitutional Convention if the voters should choose to have one. Now is the time to think about the situation and prepare ourselves. Your interest at this time is comforting.

Thanks again for writing. I'll be in touch.

Sincerely,

Rep. Brian Rogers

BR/vb

JOINT COMMITTEE ON CONSTITUTIONAL CONVENTION

Minutes of Meeting of February 7, 1981

The February 7, 1981 meeting of the Joint Committee on Constitutional Convention was held in the Butrovich Committee Room Capitol Building, Juneau, Alaska.

Members Present:

Representative Brian Rogers, Chairman
Representative Terry Gardiner
Senator Bob Mulcahy
Senator John Sackett
Senator Robert H. Ziegler, Sr.

Members Absent:

Senator George Hohman
Representative Joe Hayes

Also Present:

Gordon Harrison, Consultant
George Braden, Consultant
Guy A. Van Doren, Administrative Assistant
Landa Krossa, Secretary

Chairman Rogers called the meeting to order at 10:07 a.m.

The committee discussed the two proposals for the statewide survey. After general discussion, Representative Gardiner moved to renegotiate with both proposers to obtain a statewide survey that will be within the committee budget. There was no objection and the motion passed unanimously.

The committee discussed the two proposals submitted for the illustration of the brochure. After discussion and review of each proposer's work, there was a motion by Representative Terry Gardiner to accept the proposal for illustration of the brochure by Today's Graphics. The contract would stipulate one-third payment on signing of the contract, one-third after receipt of the draft, and the final third payment upon completion of the project. There being no objection, the motion passed unanimously.

Mr. Guy A. Van Doren, Administrative Assistant to the Committee, introduced Mr. George Braden and Mr. Gordon Harrison. Mr. Harrison will be the author of the "Citizen's Guide to the Alaska Constitution" and Mr. Braden will work with Mr. Harrison and will write an introduction to the "Guide". Mr. Braden discussed his several concepts and his philosphy regarding constitutions and constitutional conventions.

There was discussion regarding the advisory group to help with the "Citizen's Guide to the Alaska Constitution". After discussion, it was decided that the group would be only an advisory group, and would not dictate to Mr. Harrison or Mr. Braden in their endeavors.

Several persons were suggested by Mr. Van Doren in his memo to Chairman Rogers. These include:

The Attorney General or his designee;

A person chosen by the Alaska League of Women Voters;

Judge Tom Stewart;

Mr. Dick Engen, Director, Alaska State Libraries;

Staff of Joint Constitutional Convention Committee;

Mr. George Braden;

Chairman of the Joint Constitutional Convention Committee

Senator Vic Fischer.

Senator Ziegler suggested Mr. Joe LaRocca be included and Mr. LaRocca stated he would consider serving.

Chairman Rogers informed the committee members that the enabling legislation for the constitutional convention would be introduced on February 9, 1981, and the legislation to continue the committee would be introduced on February 10.

There being no further business, it was moved to adjourn the meeting. There was no objection and the meeting adjourned at 11:20 a.m.

Landa Krossa,
Secretary

EMORY UNIVERSITY SCHOOL OF LAW
GAMBRELL HALL ATLANTA, GEORGIA 30322

Law Library January 26, 1981

Alaska State Legislature
Interim Committee on the Constitutional Convention
State Capitol
Juneau, Alaska 99811

Gentlemen:

Please advise us of the availability and price of the publication(s) listed below.

Thank you very much.

Yours truly,

Angelina H. Way

Angelina H. Way
Reference Librarian

Fischer, Victor. A new constitutional convention for Alaska? The lessons of Hawaii, 1978.

AHW/mb

Rep. Brian Rogers

Members:
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Cardiff
Rep. Hayes

Capitol Building
Juneau, Alaska
99811
(907) 465-3743

Staff:
Guy Van Dorp
Admin. Asst.

29 January 1981

Angelina H. Way
Reference Librarian
Emory University School of Law
Gambrell Hall
Atlanta, Georgia 30322

Dear Ms. Way,

Enclosed is a copy of the report, " A New Constitutional Convention for Alaska? The Lessons of Hawaii 1978".

There is no charge for this publication and you may feel free to make copies of it as you see fit.

Thank you for your letter and request. We are pleased to have been of help.

Sincerely,

Rep. Brian Rogers, Chair
Interim Committee on the Constitutional Convention

Fischer

Alaska State Legislature

Senate

JUNEAU, ALASKA

M E M O R A N D U M

Date: 1/20/81

To: Rep. Brian Rogers

From: Sen. Fischer

Attached is a comment from a member of Hawaii's Constitutional Convention about the report I did on their 1978 convention. I have not sent a copy of this to Bill Sumner, as I'm not sure he would really appreciate it, or even understand it.

Vic

Paul E. DiBianco
ATTORNEY AT LAW
A LAW CORPORATION

SUITE 904
HAWAII BUILDING
745 FORT STREET
HONOLULU, HAWAII 96813

(808) 536-4984

January 5, 1981

Victor Fischer
221 E. 7th Avenue
Anchorage, Alaska 99501

Dear Mr. Fischer:

Tom Dinell of the University of Hawaii forwarded to me your report for the Alaska State legislature on Hawaii's 1978 Constitutional Convention. I want to congratulate you on a fine job--and I understand that congratulations are also in order on account of your being elected to the Alaska State Senate!

Your report was, in my opinion, accurate and complete. I wish a lot of people in Hawaii (and in the Convention) had seen the issues as clearly as you did. I trust you learned from our mistakes and that Alaska will profit from your experience.

It was a pleasure to have met with you and I wish you success in your political career. I also want to take this opportunity to thank Tom Dinell for sending the material along to me.

Sincerely yours,

Paul E. DiBianco

PEDB:gw

GORDON HARRISON
social and economic research

1621 Wilton Road, Tacoma, WA 98465
(206) 565-6523

1/5/81

Guy,
will you return writing
samples when the selection
process is finished. I
don't want to take any
chances on FWS material
circulating before it is
released by them.
Thanks
Gordon

GORDON HARRISON
& ASSOC.

social and economic research

1621 Wilton Road
Tacoma, WA 98465
(206) 565-6523

January 5, 1981

Mr. Guy Van Doren
Joint Committee on the Constitutional Convention
Pouch Y
Juneau, Alaska 99811

Dear Guy:

Enclosed is my proposal to write a citizen's guide to the state constitution. I am including a brief proposal statement, my resume, and samples of my writing. This project interests me a great deal, and I feel particularly well suited for it by virtue of my background and experience, which includes a masters degree in journalism and doctorate in political science.

For the past several years I have lived in the Seattle area while my wife has been in medical school as an Alaska WAMI student. She finishes her residency in family practice in July, 1981, and we plan to return permanently to Alaska soon thereafter (we hope to Juneau). During April my wife is going to work at a clinic in Juneau in order to learn about the medical situation locally and assess opportunities for her there. In my proposed work schedule I suggest that the project begin in April, as this would give me a full month to work in the state library in Juneau.

Sincerely,

Gordon Harrison

Gordon Harrison

PROPOSAL

Writing a Citizen's Guide to the Alaska Constitution

Submitted to

Joint Legislative Committee on the Constitutional Convention

by

Gordon Harrison and Associates

January, 1981

PROPOSAL

Introduction

This proposal is submitted in response to the Request for Proposals from the Joint Legislative Committee on the Constitutional Convention for writing a citizens' guide to the Alaska constitution. My general approach to the task and my qualifications for undertaking it, as well as a proposed schedule and budget, are presented below.

Approach

As a layman's guide to the state constitution, this publication must be clearly and simply written. But it must do much more than paraphrase constitutional text in sentences that are simple, short, active and unadorned. The booklet must provide historical context for each constitutional section; it must point to major political issues; and it must explain controversy that has arisen over the interpretation of disputed provisions. Readers of this guide should learn what the constitutional convention delegates hoped to achieve with each section; why they chose the words they did; and how the legislature and courts have given form and substance to their language. For example, only when the reader knows what the delegates sought through borough government, how local areas have responded to the opportunity and

requirement to form boroughs, and how the Local Boundary Commission and Alaska Supreme Court have interpreted the constitutional mandates, will he be fully acquainted with this important aspect of Article X.

That this guide should be easily readable does not require it to be artless. Nor does it require that complex and subtle issues be shunned. Complexity and subtlety animate the subject, and without them the guide would be flat, tedious, and little-used. Clearly, the challenge of this publication is to present a comprehensive view of Alaska's constitution in language that is uncomplicated yet legally precise, and in a style that is direct yet imaginative and resourceful.

Before writing anything for publication, an author should have a good idea of who his readers will be. I think the Committee should give careful consideration to the likely readers of this guide before writing begins. This effort will help define the content and characteristics of the final product. For example, it seems to me that important potential groups of readers are students at the high school and college level; in-coming legislators and their staff; and members of civic organizations such as the League of Women Voters. We can presume that the interest of this audience will be keen, and the level of intellectual sophistication high. Thus, these readers will be dissatisfied with a primer that is targeted for a less well educated readership and is overly superficial as a consequence.

Another potential group of users may be people other than lawyers who are interested in researching some aspect of the state constitution or constitutional history. Therefore it seems appropriate for the primer to

contain an annotated bibliography of material on Alaska statehood and the constitutional convention (including Proceedings of the Alaska Constitutional Convention), as well as opinions of attorneys general and the Alaska Supreme Court that address basic constitutional issues (the latter would be selective of the extensive annotations found in the constitution published with the Alaska Statutes).

I have read A Citizen's Guide to the Texas Constitution by George D. Braden, and I find it a useful example of a state constitutional primer. Especially valuable are the author's frequent contrasts and comparisons with other state practices, and his introductory discussion of constitutions and their functions. However, it seems to me that the main narrative of an Alaska version of this book would be altogether different because the constitutions of the two states are so fundamentally dissimilar. Indeed, it was the nightmare of a Texas constitution that the Alaska convention delegates sought to avoid. Alaska's constitution is much more like that of the United States in its brevity and resiliency. Mr. Braden's task was to bring a measure of coherence to a hopelessly fragmented, incomplete, scrambled, detailed, and unreadable document. The author of Alaska's guide begins with a short, concise, intelligible constitution, and his task is to explain the origin, intent, and implementation of these few deliberate words. Also, the tone of Mr. Braden's work is condemnatory. The author of Alaska's guide should not evaluate the constitution, either explicitly or implicitly.

It is my understanding that Mr. Braden will be a consultant to this project. I suggest it would be helpful to the author of this publication

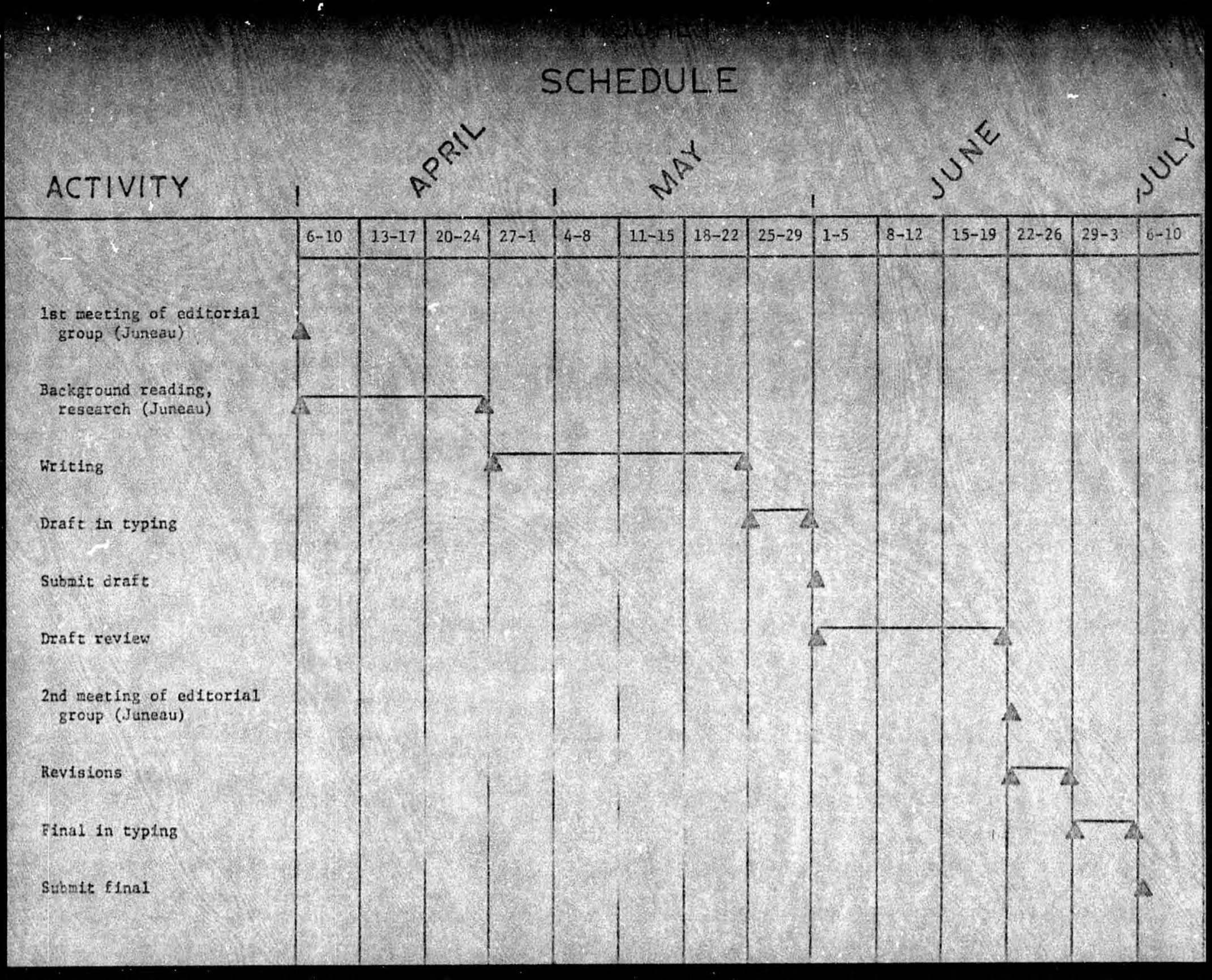
to have the advice of others as well. I propose that the Joint Committee appoint a formal editorial advisory group. In addition to Mr. Braden and the Committee staff, the group might include one or more lawyers with knowledge of the constitution (perhaps assistant attorneys general in Juneau) and a local person or two outside state government representing potential user groups (a teacher, librarian, civic activist, etc.) This editorial committee would be helpful to the author at the outset of the project in discussing such matters as outline, format, readership, etc. The members of this committee would later review the draft manuscript, and at that time they will be better able to evaluate the success of the product than had they not participated in discussions of what it aimed to accomplish, and how.

Schedule

I am proposing the schedule in Figure 1 to take advantage of the fact that my wife and I plan to reside in Juneau during April, 1981. If another schedule is more convenient for the committee I will attempt to accommodate it. However, to do so would not allow me as much time to work in the Alaska State Library, and it would require increased travel and per diem expenses.

According to the schedule I have proposed, work would begin on April 6 with a meeting of the editorial group. I would spend approximately three weeks immediately thereafter engaged in background reading and research. During this period I would work in the state historical and law libraries in Juneau where I would have access to the Proceedings and AG and Supreme Court opinions. Also, in Juneau I would have access to lawyers and other people knowledgeable of the daily workings of the constitution.

SCHEDULE


ACTIVITY
APRIL
MAY
JUNE
JULY
6-10
13-17
20-24
27-1
4-8
11-15
18-22
25-29
1-5
8-12
15-19
22-26
29-3
6-10
1st meeting of editorial group (Juneau)
Background reading, research (Juneau)
Writing
Draft in typing
Submit draft
Draft review
2nd meeting of editorial group (Juneau)
Revisions
Final in typing
Submit final

A draft would be submitted for review on June 1, and a final product on July 6.

Qualifications

I hold advanced degrees in both journalism and political science; I have had substantial exposure to the state constitution and constitutional issues; and I have had extensive writing and editorial experience. My resume summarizes much of this experience. In addition, however, I have written several corporate annual reports and other publications. Currently I am assisting Northwest Alaskan Pipeline Company design and prepare a publication that is, in effect, a citizen's guide to the gasline project in all of its technical, organizational, and regulatory dimensions. While at the University of Alaska, I worked closely in an editorial role with Victor Fischer while he was writing Alaska's Constitutional Convention.

During the past year I have been involved in a major effort with other consultants to review for the U.S. Fish and Wildlife Service federal on-shore oil and gas leasing in Alaska and the environmental effects of on-shore petroleum operations. I wrote major sections of the final technical report that deal with procedural, historical, and administrative issues. Also, I prepared an introductory handbook for field biologists that is designed to acquaint them with oil industry operations and potential environmental impacts.

You may contact as references Ms. Susan Fison, Northwest Alaskan Pipeline Co., Fairbanks (452-5500); Dr. Thomas Morehouse, ISER, Anchorage (278-4621);

Mr. Peter Hanley, Dames and Moore, Anchorage (279-0673); Mr. Kent Wohl, U.S. Fish and Wildlife Service, Anchorage (276-3800, ex. 503); and Mr. Victor Fischer, Anchorage (272-2381).

Budget

Figure 2 presents a budget for the project of $18,190. If the Committee provides typing from dictaphone tapes, the budget is $17,190.

FIGURE 2

BUDGET

LABOR		
Professional	320 hrs @ $50/hr	$16,000
Secretarial	40 hrs @ $25/hr	1,000*
EXPENSES		
Travel	2 RT Seattle-Juneau @ $325	650
Per diem	4 days Juneau @ $85/day	340
Xerox		100
Telephone, Postage		100
		$18,190

*This expense may be omitted if the secretarial staff of the Committee types the draft and final from dictaphone tapes. In this case, the budget is $17,190.

SCOMM

#27:6

Con Con

VICTOR FISCHER ASSOCIATES CONSULTING
221 EAST 7TH AVENUE #204 • ANCHORAGE, ALASKA 99501 • (907) 272-2381

March 12, 1980

MAR 19 RECD

Sen. George Hohman
Rep. Brian Rogers
Pouch V
Juneau, AK 99811

Dear George and Brian:

I am transmitting with Brian's copy of this letter my paper "A new constitutional convention for Alaska? The lessons of Hawaii 1978." Brian agreed to have copies made and ditributed.

This paper completes my work for the Interim Committee on the Constitutional Convention. I believe that the efforts so far demonstrate the importance of the kind of preparation for the 1982 convention referendum that both of you are pursuing.

I very much appreciate the opportunity of having worked with you in this endeavor and look forward to further cooperation in the future.

My very best personal regards,

Hi, Brian --- I would appreciate receiving 10 copies of the Hawaii paper. In addition, will send a list of less than ten people to who copies should be mailed.

Thanks for handling this,

CONTRACT BETWEEN

STATE OF ALASKA, LEGISLATIVE AFFAIRS AGENCY

POUCH Y

JUNEAU, ALASKA 99811

AND

VICTOR FISCHER

221 E. 7th. Ave. #204

ANCHORAGE, ALASKA 99501

The parties to this agreement are the LEGISLATIVE AFFAIRS AGENCY, on behalf of the Alaska State Legislature's Interim Committee on the Constitutional Convention, hereinafter referred to as the AGENCY, and Victor Fischer, hereinafter referred to as the " CONSULTANT."

THE PURPOSE OF THIS AGREEMENT is to provide specialized research and consulting services to the Interim Committee on the Constitutional Convention.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I STATEMENT OF WORK:

The CONSULTANT shall, as directed by the project director (s), provide the Interim Committee on the Constitutional Convention with specialized research and consulting services relating to the Constitution, Constitutional Convention, and constitutional issues including but not limited to:

(a) developing major constitutional issues into an introductory report for use at public hearings;

(b) development of in-depth analysis of several constitutional issues to be determined by the project manager (s);

(c) attending public hearings and assisting in the analysis of the information gathered at the meetings.

( ) assisting in the gathering and reproduction of archival materials;

(e) assisting in the preperation of the final report for the committee;

(f) coordinating with committee staff and other consultants

(g) other duties assigned by the project manager (s).

CLAUSE II - PERIOD OF PERFORMANCE

(A) The period of this contract shall be from July 1, 1979, to June 30, 1980, unless extended by written agreement or terminated in accordance with (B) of this clause.

(B) This contract may be terminated by mutual agreement.

CLAUSE III - COMPENSATION AND METHOD OF PAYMENT

(A) ment for work performed under this agreement shall be at the rate of $50.00 per hour or $250.00 per day, whichever is less, to be paid before the last working day of each month for work carried out between the 15th day of the preceding month and the 15th day of the current month. On or before the 10th day of each month, the CONSULTANT shall submit a statement of time worked to the Project Director (s) for approval. Total compensation for the work performed under Clause I shall not exceed $15,000.00.

(B) The AGENCY shall furnish travel (coach fare) and per diem (prevailing state employee rates), long distance telephone charges related to business of the committee, clerical support, and equipment necessary to carry out the work designated in Clause I of this agreement.

(C) Office space shall be provided by the CONSULTANT

(D) No other employee benefits are allowed the CONSULTANT.

CLAUSE IV - PROJECT DIRECTORS

The Project Directors for the Constitutional Convention Committee shall be the Honorable George Hohman and the Honorable Brian Rogers.

CLAUSE V - RECORDS

The CONSULTANT shall keep the Project Director informed as to the progress of work performed under this agreement and shall provide written progress reports as specified by him.

CLAUSE VI- RECORDS, DOCUMENTS, AUDIT

The CONSULTANT shall maintain accurate records, including detailed time record , as may be required by the AGENCY. The records are subject to inspection by the AGENCY at all reasonable times. All documents, reports and writings produced in the course of the work performed under this contract are, upon delivery to the AGENCY or at termination of this agreement, the property of the AGENCY, and/or in the public domain; provided that the CONSULTANT will have the right to use any such materials for purposes of writing about or disucssing the issues.

CLAUSE VII - ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties of this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated below.

CONSULTANT

Victor Fischer 8-9-79

VICTOR FISCHER DATE

LEGISLATIVE AFFAIRS AGENCY

Myrton R. Charney 9/6/79

MYRTON R. CHARNEY DATE
Executive Director

ACCEPTED:

George H. Hohman Jr. 9/6/79

SENATOR GEORGE HOHMAN DATE
Project Director
Interim Committee on Constitutional Convention

APPROVED AS TO FORM

Billy G. Berrier 9/6/79

BILLY G. BERRIER DATE
Legal Counsel

REP. BRIAN ROGERS DATE
Project Director
Interim Committee on Constitutional Convention

Agency Account No._____

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
Juneau, Alaska 99811

AND

DOUGLAS POPE
912 West Sixth Avenue
Anchorage, Alaska 99501

The parties to this Agreement are the LEGISLATIVE AFFAIRS AGENCY, hereinafter referred to as the "Agency", and DOUGLAS POPE, hereinafter referred to as the "Contractor."

THE PURPOSE OF THIS AGREEMENT is to provide the Interim Committee on a Constitutional Convention, through the Agency, professional services relating to issues studied by the committee.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I. STATEMENT OF WORK

(A) The Contractor shall provide the committee with professional consulting and adminstrative services with regard to issues relating to any call for a constitutional convention in Alaska and any issues which could arise at any constitutional convention called in Alaska.

CLAUSE I. . TERM OF TERMINATION

(A) The period of this contract shall be retroactive to July 1, 1979, and terminate on June 1, 1980, unless extended, or terminated in accordance with (B) of this Clause.

(B) This contract may be terminated by either party on written notice to the other.

CLAUSE III. PROJECT DIRECTOR

The project director shall be Representative Brian Rogers, co-chairman of the Interim Committee on a Constitutional Convention.

CLAUSE IV. COMPENSATION AND METHOD OF PAYMENT

(A) The Contractor shall be compensated at the rate of $200 per day for his own services, while traveling or otherwise away from his own office in Anchorage, and at the rate of $50.00 per hour for services performed as an attorney and administrator while in Anchorage.

(B) The Contractor shall be reimbursed for all expenses incurred which are authorized in advance by the Project Director. The Contractor shall be reimbursed on the basis of coach class airfare and prevailing state employee per diem rates for all travel expenses authorized in advance by the Project Director. Travel expense claims shall be submitted on forms provided by the Agency. Contractor shall be reimbursed for long distance telephone charges incurred in the course of the Contractor's work under this contract.

(C) Total compensation under this contract, inclusive of all expenses, shall not exceed $10,000.00.

CLAUSE V. OFFICE SPACE, EQUIPMENT, CLERICAL SUPPORT

Office space, equipment and clerical support necessary to carry out the Contractor's obligations under this contract shall be supplied by the Contractor at no cost to the Agency, unless authorized by the Project Director.

CLAUSE VI. PROGRESS REPORTS

The Contractor shall keep the Project Director informed as to the progress of the work performed under this agreement and shall provide progress reports as specified by him.

CLAUSE VII. RECORDS, DOCUMENTS, AUDIT

The Contractor shall maintain accurate records, including detailed time records as may be required by the Agency. The records are subject to inspection by the Agency at all reasonable times. All documents, reports and writings performed under this contract are, upon delivery to the Agency or at termination of this agreement, the property of the Agency.

CLAUSE VIII. ALL WRITINGS CONTAINED HEREIN

This agreement contained all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties to this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated below.

CONTRACTOR

DOUGLAS POPE
Dated: 9/26/79
IRS Identification NO. 574-18-2976

LEGISLATIVE AFFAIRS AGENCY
(By direction of the Executive Director)

MYRTON R. CHARNEY
Dated: 9/27/79

Accepted:

REP. BRIAN ROGERS,
Co-Chairman, Interim
Committee on a Constitutional
Convention
Dated: 9/8/79

Approved as to form:

AGENCY LEGAL COUNSEL
Dated: 9/26/79

DOUGLAS POPE
Attorney

Law Offices
912 West Sixth Avenue
Anchorage, Alaska 99501
(907) 272-6225

Box 27
Hope, Alaska 99605

June 3, 1980

The Honorable Brian Rogers
Alaska State Representative
Pouch V
Juneau, Alaska 99811

Re. Constitutional Convention Contract

Dear Representative Rogers:

The purpose of this letter is to bill the Legislative Affairs Agency, through you, for time and expenses incurred since the last billing. Expenses include air travel but not lodging. I intend to submit a per diem statement to cover lodging while away from Anchorage.

Date	Item	Hours	Days	Expenses
3/24	Meet, Re: Privacy	.5		
3/26	Draft memo	2.5		
4/23	Review bill	2.0		
4/25	Round trip ticket to Juneau			$ 228.00
4/25	Meet in Juneau		1	
5/2	Draft amendments	1.0		
5/5	Review amendments	1.0		
5/19 - 5/21	Travel to Juneau, Meet		3.5	
5/27	Round trip ticket to Juneau			$ 228.00
5/27 - 6/4	Meet, prepare amendments in Juneau		9.0	
6/5-6/6	" "		2.0	
		7.0 Hours	~~13.5~~ ~~Days~~ 15.5 Days	$ 456.00

BR&P

BR

BR

7.0 hours at $50/hr.	$ 350.00
~~13.5~~ 15.5 days at $200/day	~~2,700.00~~ 3,100.00
Expenses	456.00
	$ ~~3,506.00~~ 3,906.00

Sincerely,

Douglas Pope

Approved:

Representative Brian Rogers
Project Director

DOUGLAS POPE
Attorney

Law Offices
912 West Sixth Avenue
Anchorage, Alaska 99501
(907) 272-6225

Box 27
Hope, Alaska 99605

August 28, 1979

Representative Brian Rogers
Box K
College, Alaska 99701

Re: Interim Committee on a Constitutional Convention

Dear Brian:

Enclosed is a final draft of a contract between myself and the Legislative Affairs Agency for work requested by the Interim Committee on a Constitutional Convention. If it meets your concerns, please sign and forward to the agency. With regard to the one particular concern you voiced, clause IV(a) leaves room for the Committee to be billed at a daily rather than the hourly rate while I'm in Anchorage but attending meetings.

In addition you have advised me that there will be a meeting in Fairbanks on September 19th and have requested that the following issues be researched prior to the meeting in order that I will be prepared to comment. I intend to have a succinct memo for the members of that meeting to accompany my discussion.

(1) Draft Legislation for a call, including

(a) Procedures of a call that may be passed by the legislature relating to a convention and

(b) A bill or a resolution calling the convention itself.

(2) An analysis of apportionment of the convention by the legislature, including

(a) Relevant case law and

(b) What to expect if someone sues to halt a convention called based upon the apportionment schedule established.

In addition to those issues that you requested be researched prior to the September 19th meeting, you have also asked me to initiate research which I have placed under the general heading of "limitations of state soverneignty." I intend to have enough research done to be able to make general comments with regard to that topic, but will not have a memorandum available at that date. Please advise if you wish to have any other issues researched and commented upon in memoranda form for the September 19th meeting.

Sincerely,

Douglas Pope

DP/emm
cc: Senator George Hohman

Con Con
Doug Pope

DOUGLAS POPE
Attorney

Law Offices
912 West Sixth Avenue
Anchorage, Alaska 99501
(907) 272-6225

Box 27
Hope, Alaska 99605

November 29, 1979

Representative Brian Rogers
c/o Legislative Committee on
a Constitutional Convention
Rm. 610F, Gruening Building
University of Alaska
Fairbanks, Alaska 99701

Re: Contract With Interim Committee on the Constitutional Convention

Dear Representative Rogers:

Enclosed is the final draft of the memorandum you requested. This letter is also for the purpose of billing the Committee for work and expenses to date. Unless you have any further questions, please approve the bill and forward to the Legislative Affairs Agency in the envelope provided.

8/20/79	Meet w/ Rep. Rogers	1.00
8/21/79	Review all material	4.00
9/24/79	Review materals	.50
11/15/79	Prepare memorandum	4.00
11/16/79	Prepare memorandum	5.00
11/19/79	Review Fischer memorandum	1.00
11/27/79	Edit Memorandum and draft inserts, draft letter, calls to Van Doren and Rogers	5.00
		20.50
	20.50 hours at $50.00	$1,025.00

Please submit for payment. Thank you.

Sincerely,

Douglas Pope

DP/emm
Approved:

Representative Brian Rogers,
Project Director

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

June 18, 1980

Mr. Douglas Pope
912 West Sixth Avenue
Anchorage, Alaska 99501

Dear Mr. Pope:

Attached is your signed copy of Amendment No. 1 to a contract between you and the State of Alaska, Legislative Affairs Agency, concerned with the Interim Committee on a Constitutional Convention.

Sincerely,

Helen Gowdy

Helen F. Gowdy
Executive Secretary

Enclosure

cc: Rep. Brian Rogers ✓
w/encls.

Agency Account No._____

AMENDMENT NO. 1
CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
Juneau, Alaska 99811

AND

DOUGLAS POPE
912 West Sixth Avenue
Anchorage, Alaska 99501

This amendment is to the agreement to provide the Interim Committee on a Constitutional Convention, through the LEGISLATIVE AFFAIRS AGENCY, with professional services, between the Agency and DOUGLAS POPE, that is attached to this amendment for the purposes of reference.

CLAUSE II (A) of the attached contract is amended to read:

CLAUSE II. TERM OF TERMINATION

(A) The period of this contract shall be retroactive to July 1, 1979, and terminate on January 11, 1981, unless extended, or terminated in accordance with (B) of this Clause.

CONTRACTOR

Douglas Pope

DOUGLAS POPE
Dated: 6/7/80
IRS Identification No. 574-18-3846

LEGISLATIVE AFFAIRS AGENCY
(By direction of the Executive Director)

Myrton R. Charney

MYRTON R. CHARNEY
Dated: 6/18/80

ACCEPTED:

Brian Rogers

Rep. Brian Rogers
Project Director, Dated: 6/7/80

Approved as to form:

Billy G. Bevins

AGENCY LEGAL COUNSEL
Dated: June 17, 1980

Agency Account No._____

AMENDMENT NO. 1
CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
Juneau, Alaska 99811

AND

DOUGLAS POPE
912 West Sixth Avenue
Anchorage, Alaska 99501

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CONTRACTOR

Douglas Pope

DOUGLAS POPE
Dated: 6/7/80
IRS Identification No. 574-18-3846

LEGISLATIVE AFFAIRS AGENCY
(By direction of the Executive Director)

MYRTON R. CHARNEY
Dated:_____

ACCEPTED:

Brian Rogers

Rep. Brian Rogers
Project Director, Dated: 6/7/80

Approved as to form:

AGENCY LEGAL COUNSEL
Dated:_____

Const. Conv.

Agency Account No._____

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
Juneau, Alaska 99811

AND

DOUGLAS POPE
912 West Sixth Avenue
Anchorage, Alaska 99501

The parties to this Agreement are the LEGISLATIVE AFFAIRS AGENCY, hereinafter referred to as the "Agency", and DOUGLAS POPE, hereinafter referred to as the "Contractor."

THE PURPOSE OF THIS AGREEMENT is to provide the Interim Committee on a Constitutional Convention, through the Agency, professional services relating to issues studied by the committee.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I. STATEMENT OF WORK

(A) The Contractor shall provide the committee with professional consulting and adminstrative services with regard to issues relating to any call for a constitutional convention in Alaska and any issues which could arise at any constitutional convention called in Alaska.

CLAUSE II. TERM OF TERMINATION

(A) The period of this contract shall be retroactive to July 1, 1979, and terminate on June 1, 1980, unless extended, or terminated in accordance with (B) of this Clause.

(B) This contract may be terminated by either party on written notice to the other.

CLAUSE III. PROJECT DIRECTOR

The project director shall be Representative Brian Rogers, co-chairman of the Interim Committee on a Constitutional Convention.

CLAUSE IV. COMPENSATION AND METHOD OF PAYMENT

(A) The Contractor shall be compensated at the rate of $200 per day for his own services, while traveling or otherwise away from his own office in Anchorage, and at the rate of $50.00 per hour for services performed as an attorney and administrator while in Anchorage.

(B) The Contractor shall be reimbursed for all expenses incurred which are authorized in advance by the Project Director. The Contractor shall be reimbursed on the basis of coach class airfare and prevailing state employee per diem rates for all travel expenses authorized in advance by the Project Director. Travel expense claims shall be submitted on forms provided by the Agency. Contractor shall be reimbursed for long distance telephone charges incurred in the course of the Contractor's work under this contract.

(C) Total compensation under this contract, inclusive of all expenses, shall not exceed $10,000.00.

CLAUSE V. OFFICE SPACE, EQUIPMENT, CLERICAL SUPPORT

Office space, equipment and clerical support necessary to carry out the Contractor's obligations under this contract shall be supplied by the Contractor at no cost to the Agency, unless authorized by the Project Director.

CLAUSE VI. PROGRESS REPORTS

The Contractor shall keep the Project Director informed as to the progress of the work performed under this agreement and shall provide progress reports as specified by him.

CLAUSE VII. RECORDS, DOCUMENTS, AUDIT

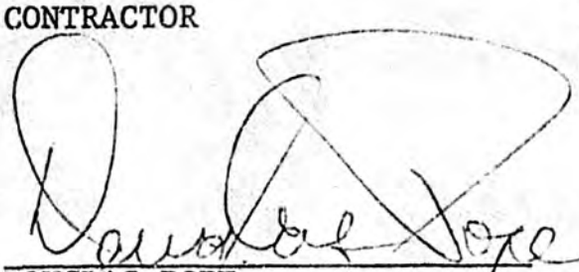
The Contractor shall maintain accurate records, including detailed time records as may be required by the Agency. The records are subject to inspection by the Agency at all reasonable times. All documents, reports and writings performed under this contract are, upon delivery to the Agency or at termination of this agreement, the property of the Agency.

CLAUSE VIII. ALL WRITINGS CONTAINED HEREIN

This agreement contained all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties to this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated below.

CONTRACTOR

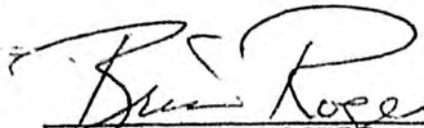


DOUGLAS POPE
Dated: 8/21/79
IRS Identification NO. 579-18-3776

LEGISLATIVE AFFAIRS AGENCY
(By direction of the Executive Director)

MYRTON R. CHARNEY
Dated: _____

Accepted:



REP. BRIAN ROGERS,
Co-Chairman, Interim
Committee on a Constitutional
Convention
Dated: 9/8/79

Approved as to form:

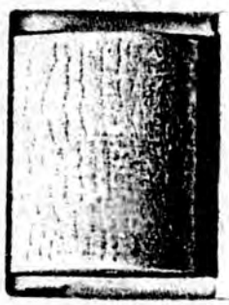
AGENCY LEGAL COUNSEL

Dated: _____

WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

HOME:
BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907) 456-2037

BRIAN ROGERS
Alaska State Legislature



Pat Costello
Legislative Affairs
Pouch V
Juneau

Dear Pat:
Enclosed is a contract with Douglas Pope for work with the Constitutional Convention Committee. Please forward it to Myrt + Billy for their approval and encumber funds for the contract. If there are any problems, please call me at 479-7692 (Constitutional Convention office in FAI).

Thanks,

Brian Rogers



MEMORANDUM September 4, 1980

TO: Pam Calhoon, Personnel Officer
Legislative Affairs Agency

FROM: Representative Brian Rogers, Chairman
Constitutional Convention

SUBJECT: Guy Van Doren

This is authorize Guy Van Doren as Administrative Assistant to the interim Constitutional Convention Committee effective August 29, 1980.

Guy is to be paid at the hourly rate of $15.73.

I hereby authorize Guy to sign all timesheets in my absence associated with the Constitutional Convention Committee (including his own).

SCOMM

#27:7

CITY OF FAIRBANKS

MUNICIPAL UTILITIES SYSTEM

ACCT. NO. 479-769-2 PHONE: 479-7692

DATE OF CALL MONTH	DAY	FROM PLACE	TO PLACE	WORDS OR MINUTES	CLASS	TYPE OF CALL	CALLING NUMBER	CALLED NUMBER	AMOUNT	REFERENCE
09	24	FAIRBKSAK	JUNEAU AK	1	SD	2	456-2037	907-465-3795	2.60	Q427 11047
09	24	FAIRBKSAK	ELMENDORF AK	7	SD	1	479-7692	907-752-5468	3.90	Q427015194
09	24	FAIRBKSAK	ELMENDORF AK	5	SD	1	479-7692	907-752-5118	2.80	Q427015274
09	24	FAIRBKSAK	KETCHIKAN AK	1	SD	1	479-7692	907-225-9675	2.80	Q427016294
09	24	FAIRBKSAK	KETCHIKAN AK	13	SD	1	479-7692	907-247-8231	12.30	Q427016314
09	24	FAIRBKSAK	KENAI AK	1	SD	1	479-7692	907-283-7743	1.85	Q427016554
09	25	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-276-1955	1.70	Q427009444
09	25	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-278-1583	1.70	Q427009487
09	25	FAIRBKSAK	ANCHORAGE AK	11	SD	1	479-7692	907-276-7969	6.10	Q427010034
09	25	FAIRBKSAK	JUNEAU AK	2	SD	1	479-7692	907-465-2400	2.60	Q427010274
09	25	FAIRBKSAK	ANCHORAGE AK	3	SD	1	479-7692	907-276-1955	1.70	Q427016394
09	27	FAIRBKSAK	ANCHORAGE AK	2	SD	1	479-7692	907-276-1132	1.70	Q427410244
09	27	FAIRBKSAK	ANCHORAGE AK	2	SD	1	479-7692	907-277-7641	1.70	Q427411394
09	28	FAIRBKSAK	PALMER AK	18	SD	1	479-7692	907-745-3236	9.95	Q427609164
10	01	FAIRBKSAK	ANCHORAGE AK	2	SD	1	479-7692	907-276-1955	1.70	Q427715044
10	02	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-276-1955	1.70	Q427710274

SEE REVERSE SIDE FOR SPECIAL INSTRUCTIONS AND EXPLANATION OF CODES. PAGE 1

BILLED NOV 2 1979

CITY OF FAIRBANKS

MUNICIPAL UTILITIES SYSTEM

TOLL AND TELEGRAM STATEMENT

ACCT. NO. 479-769-2 PHONE 479-7692

DATE OF CALL MONTH	DAY	FROM PLACE	TO PLACE	WORDS OR MINUTES	CLASS	TYPE OF CALL	CALLING NUMBER	CALLED NUMBER	AMOUNT	REFERENCE
10	02	FAIRBKSAK	JUNEAU AK	12	SD	1	479-7692	907-465-2400	10.25	Q427712274
10	02	FAIRBKSAK	JUNEAU AK	4	SD	1	479-7692	907-465-3900	3.45	Q427713124
10	02	FAIRBKSAK	JUNEAU AK	2	SD	1	479-7692	907-465-3880	2.60	Q427713244
10	02	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-279-5577	1.70	Q427713334
10	03	FAIRBKSAK	JUNEAU AK	1	SD	1	479-7692	907-465-3880	2.60	Q427810144
10	04	FAIRBKSAK	ANCHORAGE AK	3	SD	1	479-7692	907-278-1583	1.70	Q428210304
10	04	FAIRBKSAK	JUNEAU AK	3	SD	1	479-7692	907-465-3800	2.60	Q428213314
10	04	FAIRBKSAK	JUNEAU AK	13	SD	1	479-7692	907-465-3734	11.10	Q428213464
10	04	FAIRBKSAK	JUNEAU AK	1	SD	1	479-7692	907-465-3577	2.60	Q428214354
10	04	FAIRBKSAK	JUNEAU AK	1	SD	1	479-7692	907-465-3796	2.60	Q428214404
10	04	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-278-1583	1.70	Q428214464
10	04	FAIRBKSAK	ANCHORAGE AK	25	SD	1	479-7692	907-344-2455	13.80	Q428215464
10	04	FAIRBKSAK	ANCHORAGE AK	8	SD	1	479-7692	907-272-2381	4.45	Q428216334
10	05	FAIRBKSAK	JUNEAU AK	1	SD	1	479-7692	907-586-1325	2.60	Q428209214
10	10	FAIRBKSAK	JUNEAU AK	2	SD	1	479-7692	907-465-3376	2.60	Q428810424
10	11	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-278-1583	1.70	Q428914414

SEE REVERSE SIDE FOR SPECIAL INSTRUCTIONS AND EXPLANATION OF CODES PAGE 2

CITY OF FAIRBANKS

MUNICIPAL UTILITIES SYSTEM

TOLL AND TELEGRAM STATEMENT

ACCT. NO. 479-769-2 PHONE: 479-7692

DATE OF CALL MONTH	DAY	FROM PLACE	TO PLACE	WORDS OR MINUTES	CLASS	TYPE OF CALL	CALLING NUMBER	CALLED NUMBER	AMOUNT	REFERENCE
								PHONE TOTAL	124.85	
**	PLEASE REPORT	DISCREPANCIES	WITHIN	30	DAYS	**		CURRENT TOLLS	124.85	
								TOLL CREDITS	0.00	
			10/31/79				479-769-2	ACCOUNT TOTAL	124.85	

SEE REVERSE SIDE FOR SPECIAL INSTRUCTIONS AND EXPLANATION OF CODES. PAGE 3

CITY OF FAIRBANKS
MUNICIPAL UTILITIES SYSTEM

TOLL AND TELEGRAM STATEMENT

ACCT. NO. 479-769-2 PHONE: 479-7692

DATE OF CALL MONTH	DAY	FROM PLACE	TO PLACE	WORDS OR MINUTES	CLASS	TYPE OF CALL	CALLING NUMBER	CALLED NUMBER		AMOUNT	REFERENCE
09	07	FAIRBKSAK	ANCHORAGE AK	2	SD	1	479-7692	907-276-1955	✓	1.70	0425513504
09	07	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-278-1583	✓	1.70	0425514034
09	07	FAIRBKSAK	JUNEAU AK	9	SD	1	479-7692	907-465-2510	✓	7.70	0425514284
09	07	FAIRBKSAK	ANCHORAGE AK	14	SD	1	479-7692	907-276-1955	✓	7.75	0425515494
09	10	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-276-1955	✓	1.70	0425609494
09	10	FAIRBKSAK	ANCHORAGE AK	2	SD	1	479-7692	907-272-6225	✓	1.70	0425610184
09	10	FAIRBKSAK	ANCHORAGE AK	3	SD	1	479-7692	907-276-1955	✓	1.70	0425614084
09	10	FAIRBKSAK	ANCHORAGE AK	2	SD	1	479-7692	907-276-1955	✓	1.70	0425614134
09	11	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-272-6225	✓	1.70	0426010354
09	11	FAIRBKSAK	JUNEAU AK	6	SD	1	479-7692	907-465-3880	✓	5.15	0426011124
09	11	FAIRBKSAK	BETHEL AK	1	SD	1	479-7692	907-543-3541	✓	2.45	0426011194
09	11	FAIRBKSAK	JUNEAU AK	11	SD	1	479-7692	907-465-3852	✓	9.40	0426011314
09	11	FAIRBKSAK	ANCHORAGE AK	9	SD	1	479-7692	907-276-1955	✓	5.00	0426012094
09	11	FAIRBKSAK	ANCHORAGE AK	5	SD	1	479-7692	907-276-1955	✓	2.80	0426013294
09	11	FAIRBKSAK	ANCHORAGE AK	2	SD	1	479-7692	907-278-1583	✓	1.70	0426014324
09	11	FAIRBKSAK	ANCHORAGE AK	3	SD	1	479-7692	907-272-6225	✓	1.70	0426014364

SEE REVERSE SIDE FOR SPECIAL INSTRUCTIONS AND EXPLANATION OF CODES. PAGE 1

CITY OF FAIRBANKS
MUNICIPAL UTILITIES SYSTEM
TOLL AND TELEGRAM STATEMENT
ACCT. NO. 479-769-2 PHONE: 479-7692

DATE OF CALL MONTH	DAY	FROM PLACE	TO PLACE	WORDS OR MINUTES	CLASS	TYPE OF CALL	CALLING NUMBER	CALLED NUMBER		AMOUNT	REFERENCE
09	11	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-277-5761	✓	1.70	0426015174
09	12	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-278-4621	✓	1.70	0426114294
09	13	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-278-4621	✓	1.70	0426109474
09	13	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-276-1721	✓	1.70	0426109494
09	13	FAIRBKSAK	JUNEAU AK	4	SD	1	479-7692	907-465-3720	✓	3.45	0426111484
09	14	FAIRBKSAK	JUNEAU AK	7	SD	1	479-7692	907-465-3800	✓	6.00	0426110334
09	14	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-278-4621	✓	1.70	0426114344
09	18	FAIRBKSAK	BELLINGHAMWA	7	DD	1	479-7692	206-676-6756		3.39	0426409054
09	18	FAIRBKSAK	JUNEAU AK	5	SD	1	479-7692	907-465-3796	✓	4.30	0426414284
09	18	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-276-1955	✓	1.70	0426414334
09	18	FAIRBKSAK	JUNEAU AK	2	SD	1	479-7692	907-364-3442	✓	2.60	0426414374
09	18	FAIRBKSAK	JUNEAU AK	19	SD	1	479-7692	907-364-3442	✓	16.20	0426415097
09	18	FAIRBKSAK	ANCHORAGE AK	5	SD	1	479-7692	907-277-7641	✓	2.80	0426416144
09	19	FAIRBKSAK	JUNEAU AK	1	SD	1	479-7692	907-465-3880	✓	2.60	0426709504
09	19	FAIRBKSAK	ANCHORAGE AK	1	SD	1	479-7692	907-272-6225	✓	1.70	0426709524
09	19	FAIRBKSAK	JUNEAU AK	5	SD	1	479-7692	907-465-3852	✓	4.30	0426710194

SEE REVERSE SIDE FOR SPECIAL INSTRUCTIONS AND EXPLANATION OF CODES. PAGE 2

CITY OF FAIRBANKS
MUNICIPAL UTILITIES SYSTEM
TOLL AND TELEGRAM STATEMENT
ACCT. NO. 479-769-2 PHONE: 479-7692

DATE OF CALL MONTH	DAY	FROM PLACE	TO PLACE	WORDS OR MINUTES	CLASS	TYPE OF CALL	CALLING NUMBER	CALLED NUMBER		AMOUNT	REFERENCE
09	19	FAIRBKSAK	ANCHORAGE AK	4	SD	1	479-7692	907-278-1583	✓	2.25	0426710304
09	19	FAIRBKSAK	JUNEAU AK	20	SD	1	479-7692	907-465-3880	✓	17.05	0426712034
09	19	FAIRBKSAK	JUNEAU AK	14	SD	1	479-7692	907-465-3880	✓	11.95	0426713374
09	19	FAIRBKSAK	JUNEAU AK	2	SD	1	479-7692	907-465-3796	✓	2.60	0426714284
09	19	FAIRBKSAK	JUNEAU AK	1	SD	1	479-7692	907-364-3442	✓	2.60	0426715124
09	19	FAIRBKSAK	ANCHORAGE AK	22	SD	1	479-7692	907-272-6225	✓	12.15	0426715424
09	20	FAIRBKSAK	JUNEAU AK	5	SD	1	479-7692	907-465-3828	✓	4.30	0426714144
09	20	FAIRBKSAK	ANCHORAGE AK	19	SD	1	479-7692	907-274-3621	✓	10.50	0426715204
09	20	FAIRBKSAK	ANCHORAGE AK	4	SE	1	479-7692	907-276-1955	✓	1.65	0426717064
09	21	FAIRBKSAK	ANCHORAGE AK	9	SD	1	479-7692	907-274-3621	✓	5.00	0426814494
09	21	FAIRBKSAK	ANCHORAGE AK	13	SD	1	479-7692	907-276-0508	✓	7.20	0426816134

			PHONE TOTAL	190.34
**	PLEASE REPORT DISCREPANCIES WITHIN 30 DAYS **		CURRENT TOLLS	190.34
			TOLL CREDITS	0.00
		09/28/79	479-769-2 ACCOUNT TOTAL	190.34

BILLED OCT 10 1979

SEE REVERSE SIDE FOR SPECIAL INSTRUCTIONS AND EXPLANATION OF CODES. PAGE 3

Glenda

JA01 1787 12.20 LA21 0022 12.20 09/04/79

TO TRUDY, FAIRBNAKS
FROM GUY VAN DOREN, JUNEAU
PLEASE GIVE THE FOLLOWING INFORMATION TTO GLENDA, THE CONSTITUTIONAL CONVENTION STAFF PERSON WHO WILL BE COMING INTO YOUR OFFICE TODAY:

THE FOLLOWING IS A COPY OF THE LETTER I SENT TO THE MUNICIPAL UTILITIES SYST

DEAR CUSTOMER SERVICE REPRESENTATIVE:
THIS LETTER IS TO AUTHORIZE THE INSTALLAATION OF A SINGLE LIINE BUSINESS PHONE IN ROOM 6L0 F OF THE GRUENING BUILDING ON THE UNIVERSITY OF ALASKA CAMPUS. THE PHONE SHOULD BE A DESK TYPE, TOUCH TONE, WITH A LONG CORD. LISTING SHOULD BE THE FOLLOWING TWO COMMITTEES:

"LEGISLATIVE INTERIM COMMITTEE ON THE CONSTITUTION CONVENTION"

AND

"HOUSE FINANCE SUB-COMMITTEE ON THE UNIVERSITY BUDGET"

THE PHONE NUMBER WILL BE ON THE UNIVERSITY CENTREX SYSTEM (479-7???) AND THE BILLING ADDRESS WILL BE+

ALASKA STATE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY
INTERIM COMMITTEE ON THE ALASKA CONSTITUTION CONVENTION
POUCH V
JUNEAU, ALASKA 99811 ATT. PAT COSTELL

IN ORDER THAT THE OFFICE WILL BE OPEN FOR THE INSTALLATION, PLEASE CONTACT REPRESENTATIVE BRIAN ROGERS AT 456-2037 A DAY PRIOR TO THE WORK BEING DONE.

SINCE WE ARE WAITING FOR THE INSTALLATION OF THE PHONE AND THE ASSIGNMENT OF A NUMBER, WE WOULD APPRECIATE THE SERVICE BEING CONNECTED AT THE EARLIEST POSSIBLE DATE.

IN APPRECIATION OF YOUR COOPERATION, I REMAIN,

SINCERELY,

GUY VAN DOREN
ADMINISTRATIVE OFFICER,
INTERIM COMMITTEE ON THE ALASKA CONSTITUTIONAL CONVENTION
EOM

SOMA SERVICES
P. O. Box 10198
FAIRBANKS, ALASKA 99701

(907) 479-8441

FOLLOW-UP DATE

_____ 19____

Date

To

Subject

FROM: GLENDA STRAUBE
CONSTITUTIONAL CONVENTION COMMITTEE
6TH OF GRUENING
UNIVERSITY OF ALASKA
FAIRBANKS, AK 99701 479-7692

JAN,

ENCLOSED ARE THE PETTY CASH RECEIPTS AND THE ENVELOPE. PLEASE ISSUE A CHECK FOR $44.74 as SOON AS POSSIBLE.

MUCH THANKS,

Glenda Straube, A.A.

SIGNED

☐ Please reply ☐ No reply necessary

FORM 186-2 Available from NEBS Inc., Groton, Mass. 01450

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

September 20, 1979

TO: Glenda J. Straube
Constitutional Convention Committee

FROM: Jan Quinn, Accountant JQ
LAA - Juneau

SUBJECT: Petty Cash Fund

The enclosed check establishes your petty cash fund. Keep track of your costs on the outside of the petty cash envelope and put your receipts inside.

When your cash starts running low, simply send the envelope and receipts to us. We'll send you a check for the receipt total and a new petty cash envelope.

JAQ:mm

Enclosure



DYNAMIC RESEARCH CORPORATION

THE ALASKAN THINK TANK

DATA GATHERING • ANALYSIS • RESEARCH • IDEAS

S. R. BOX 10612 — FAIRBANKS, ALASKA 99701 — PHONE (907) 479-8107

Dear Representative Rogers:

Enclosed is a summary of hours and expenses used to evaluate the geotechnical portions of the three Susitna Dam proposals, and for the trip to Anchorage so as to be present an offer assistance to the Commitee For Alternatives To Susutna, at the Alaska Power Authority meeting.

Date	Hours	Item	Amount
9/11/79	3	Review Prop.	45.00
9/12/79	2	Review Prop.	30.00
9/18/79	2	Review Prop.	30.00
9/21/79	2.5	Locating Previos Stud.	37.50
9/22/79	3	Review Previos Studies	45.00
9/23/79	2	Meeting w/Brian Rogers	30.00
9/23/79	1	Meeting w/Dr Ostekamp	15.00
9/26/79	3	Prelim. Report	45.00
9/27/79	6.5	APA Hearing Anch.	97.50
		SUBTOTAL	375.00

EXPENSES

Round trip air fare Fbx.-Anch.	128.00
Cab. fare Hearing-Airport	11.00
parking Fbx Int. Airport	2.00
SUBTOTAL	141.00
TOTAL	516.00

* There are copies of time slips and reciepts for expenses that will be furnished upon request.

September 4, 1979

Pat Costello
Legistative Affairs
Pouch Y
Juneau, AK 99811

Dear Pat:

The Constitutional Convention Committee is in need of a petty cash fund. I would appreciate it if you could let me know how we could obtain one and what the accountability procedure and method of replenishment might be.

Enclosed is my first time card. Please send my checks to: P.O. Box 81958, Fairbanks, AK 99708.

Thanks for your help.

Sincerely,

Glenda J. Straube
Aide

JA01 1977 12.57 LA21 0012 13.17 08/20/79

TO TRUDY

PLEASE ADVISE BRIAN ROGERS (456-2037) THAT ARRANGEMENTS WERE MADE FOR PHONE SERVICE. THE PHONE COMPANY WILL NOTIFY HIM ONE DAY PRIOR TO INSTALLATION. THE PHONE WILL BE "TOUCH TONE" TYPE WITH EXTENSION CORD AND ON UNIVERSITY CENTREX SYSTEM.

ALSO, 19TH MEETING IN FBX WITH SENATOR HOHMAN AND CONSTITUTIONAL CONVENTION STAFF NOT POSSIBLE DUE TO ANOTHER MEETING PREVIOUSLY SCHEDULED. GUY WILL CONTACT YOU AT LATER TIME FOR ANOTHER EARLIER DATE, PLEASE ADVISE GUY, THROUGH JUNEAU OFFICE, WHEN BRIAN WILL BE AVAILABLE.
THANKS,
GUY Van Doren
EOM

Douglas Research
364-3442
465-3743

Brian,
For your info
Hamit been able to
reach you.
Trudy

2-4448

BLANK MOORE BUSINESS FORMS, INC.

Telephone

1. Have person in the office notify Pat Costello the date the phone is connected

2. All billing to

Legislative Affairs Agency
Constitutional Convention Comm.
Pouch Y
Juneau, AK 99811

3 Disconnect phone when office is closed and notify Pat's office of cut-off date.

General

1. all time for aide will be straight-time, but he/she can work extra hours.

2. Supplies should be purchased at FBK. Office machine or Bowers

3. Have person who works for you notify Pat where the checks should be sent.

4. Person must send in time cards immediately after the 1st and the 15th of the month.

5. Notify Pat

September 6, 1979

Ms. Pat Costello
Legislative Affairs Agency
Pouch Y
Juneau, AK 99811

Dear Ms. Costello:

I'm writing to inform you that the phone for the Constitutional Convention Committee was installed today in 610F Gruening Building, UAF campus.

The number here is 479-7692.

Sincerely,

Glenda J. Straube

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

October 17, 1979

TO: REPRESENTATIVE BRIAN ROGERS

FROM: Susan Stevenson, Accounting Clerk

SUBJECT: Transmittal TR Book Nos. 210091 through 210100

Since this TR book has been issued for both the Constitutional Convention Committee and the Susitna Study Group, please identify each of the TR's showing to which committee travel should be charged.

Thank you.

SS:mm

Enclosure

Soma Services

P.O. BOX 10,198 · FAIRBANKS, ALASKA 99701 · (907) 479-5362

3850

April 28, 1980

Alice Jackinsky
Administrative Services
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Ms. Jackinsky:

I am sorry that I was unable to coordinate with your office on my recent trip to Juneau. Hopefully, this letter will explain all.

Enclosed are statements from the University of Alaska for the Constitutional Convention Committee. This committee was jointly chaired by Sen. George Hohman and Rep. Brian Rogers. Rep. Rogers and myself worked out of a Fairbanks office located at the University, thus explaining our use of University charge account.

Attachment A is the statement for November, 1979. I have placed an explanation next to each charge and have enclosed the receipts I could find. When we charged at the University, we did not always receive receipts. Rep. Rogers and I presumed that my signature for these charges would be sufficient authorization for the University and for your office.

Attachment B is the statement for December, 1979. Rep. Rogers office has no receipts for this.

Attachment C is the statement for January, 1980. The Xerox charges are itemized on the accompanying paper.

After January 15, 1980, the office was used by the House Finance Committee, subcommittee on the University, of which Rep. Rogers is chair. Therefore, I will handle payment to the University for all items on Attachment D & E. This leaves a balance due from the Constitutional Convention Committee to the University of Alaska for $215.78.

Now I will deal with the phone bill charged to the Constitutional Convention Committee (479-7692). The billing dated January 31, 1980, is strictly Con Con Committee calls.

On both the billings dated 2/28/80 and 4/3/80, I am enclosing a check for $36.74 to cover the costs of the long distance calls. The phone rent for these two billings - $23.85 x 2 -, $47.70, will be paid by the House Finance Committee.

If you are in need of any authorization concerning all this, please contact Beth Jenson in Rep. Rogers office and she will insure that you receive the appropriate signatures.

If you have any further questions, please call me at 488-6454.

Sincerely,

Glenda J. Straube

Glenda J. Straube

P.S. I have notified Municipal Utilities System, today, to disconnect the phone (479-7692).

Enclosures

Alaska State Legislature

LEGISLATIVE AFFAIRS AGENCY

FAIRBANKS LEGISLATIVE
INFORMATION OFFICE
Room 252, Building F
101 College Road
Fairbanks, Alaska 99701
(907) 452-4448

August 31, 1979

Glenda,

Bowers sent this to our office by mistake.

Trudy Cain

IBM

REMIT TO: P.O. BOX 5826, SAN MATEO, CA 94402
INQUIRE AT: P.O. BOX 2160, ANCHORAGE, AK 99510

1465246 - 06A

PROD.	MACHINE SERIAL	HOURS TRAVEL	HOURS LABOR (+ TRAVEL)	PARTS CODE	PARTS QUAN.	PARTS NAME	TOTAL PRICE
28	0153261	1/10	1 0/10		1	on-off lever	70
					1	code switch	5 10
					1	" " button	10
	Damaged in Shipping						

CUSTOMER NAME: Leg. Aff. Agency St. of AK. Constitutional Conv. Comm
ADDRESS: Pouch "Y"
CITY, STATE: Juneau AK.
ZIP: 99811
CUSTOMER REFERENCE:
CUSTOMER SIGNATURE: x Glenda J. Straube
PRINT SIGNATURE:

GOVERNMENT: FED STATE X LOCAL
SERVICE CODE: 01
G.O. INVOICE:
OVERTIME:
SERVICE AGREEMENT SOLD:

TOTAL PARTS: 6.50

INVOICE NUMBER: 1465246
OFF. NO.: - 06A

TOTAL HOURS: 1 0/10
☐ MINIMUM CHARGE OR X LABOR RATE PER HOUR $ 61.25 = TOTAL LABOR: 61 25

MILES AT ____ EACH PLUS ____ OTHER EXPENSE =
STATE TAX | COUNTY TAX | CITY TAX | TOTAL TAX: —

08/27/79
09/13/79
SERVICE DATES

R D. Ihle 789761
IBM REPRESENTATIVE SIGNATURE | EMPLOYEE SERIAL NO

PAID
CHECK NO

TOTAL AMOUNT: 67 75

IBM OFFICE PRODUCTS DIVISION
SERVICE INVOICE

ORIGINAL INVOICE

PLEASE RETURN REMITTANCE COPY WITH THIS AMOUNT

SUBJECT TO TERMS ON REVERSE SIDE

Z 145 0073 26

CUSTOMER COPY

BOWERS OFFICE PRODUCTS, INC.

2175 UNIVERSITY AVE. S. • FAIRBANKS, ALASKA 99701 • TELEPHONE 479-6264

CUSTOMER P.O. NO. DATE 9/28/79

NAME Legislative Affairs Agency

ADDRESS Pouch Y Juneau 99811

CITY

FILL	CHECK	CASH	CHARGE	ON ACC'T	C. O. D.	MDSE. RETD.	CREDIT	SOLD BY
AOD								

QUANTITY	DESCRIPTION	UNIT PRICE		AMOUNT	
1 Bg	Pencils	2	05	2	05
5 ea	Bic Pens		69	3	45
3 ea	Pads Canary		00	2	40

Constitutional Convention Committee

ALL CLAIMS and Returned Goods MUST be accompanied by this INVOICE. No Returns After 30 Days. Terms Net 10th – Interest Charged Thereafter At Maximum Legal Rate.

SUB TOTAL	7	90
TAX		16
FREIGHT OR POSTAGE		
TOTAL	8	06

68475 x RECEIVED BY: Glenda J Straube

BOWERS OFFICE PRODUCTS, INC.

2175 UNIVERSITY AVE. S. • FAIRBANKS, ALASKA 99701 • TELEPHONE 479-6264

CUSTOMER P.O. NO. DATE 8/20/79

NAME Alaska State Legislature

ADDRESS Pouch Y

CITY Juneau, Alaska 99811

FILE	CHECK	CASH	CHARGE	ON ACC'T	C.O.D.	MDSE. RETD.	CREDIT	SOLD BY
R.K.M.			X					R.K.M.

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1 ea.	Hon 30X60 double pedestal desk #32474		245 02
1 ea.	Hon 30X60 secretarial desk #32467L		215 89
1 ea.	Hon 30X60 secretarial return #31830R-WS		158 45
1 ea.	Hon 48" metal bookcase		131 14
1 ea	Hon 4-drawer legal file cabinet reflect Black		184 56
1 ea.	Black plastic wastebasket #2956		3 60
1 ea.	3 tier horizontal file K3-23L-WA		12 58

ALL CLAIMS and Returned Goods MUST be accompanied by this INVOICE. No Returns After 30 Days. Terms Net 10th — Interest Charged Thereafter At Maximum Legal Rate.

SUB TOTAL	951 24
TAX	—
FREIGHT OR POSTAGE	
TOTAL	951 24

66047

RECEIVED BY: X B. S. R.

BOWERS OFFICE PRODUCTS, INC.

2175 UNIVERSITY AVE. S. • FAIRBANKS, ALASKA 99701 • TELEPHONE 479-6264

CUSTOMER P.O. NO. DATE 8/28/79

NAME Legislative Affairs Agency

ADDRESS Constitutional Convention

CITY Committee 101 College Rd Fairbanks

FILL	CHECK	CASH	CHARGE	ON ACCT	C.O.D.	MOSE. REFD.	CREDIT	SOLD BY
AOD			X					

QUANTITY	DESCRIPTION	UNIT PRICE		AMOUNT	
1 Pkg	Post-it Note Pad 65	1	05	[illegible]	05
2 Pkg	Accuracy 5 x 8 2 Per		45	1	[illegible]
4 Pkg	" 8 1/2 x 11 3/4 Per		95	3	[illegible]
6 Pkg	" " Log Not Per		88	5	[illegible]
7 Pkg	Bic Fine		69	4	[illegible]
2 Pkg	Eldon Smokable Trays	3	34	6	41
	1600 Lt Men Size				
1 Bx	Hard Pencils 1308	2	05		05
1 Pkg	Eldon Fine R106 Pentel		11		11
1 Pkg	Pitty Cash Pad		70		70
2 Box	Gem Clips 1"	3	15	1	90
1 Pkg	Avery FI-3	2	10	2	10
1 Bx	F.F. 213	13	77	13	77
4 Pkg	Eldon Fine Lt Tan	1	60	6	40
	Less 15%			8	57

• ALL CLAIMS and Returned Goods MUST be accompanied by this INVOICE. No Returns After 30 Days. Terms Net 10th – Interest Charged Thereafter At Maximum Legal Rate.

SUB TOTAL	48	58
TAX		
FREIGHT OR POSTAGE		
TOTAL	48	58

66560

RECEIVED BY: x Glenda J. Straube

CHARGE SALE

No. 556325

FAIRBANKS OFFICE SUPPLY
P.O. BOX 2552, FAIRBANKS, ALASKA 99701

SOLD TO [illegible] DELIVER TO

ADDRESS [illegible]

CITY STATE ZIP

DATE 10-11-79 PURCHASE ORDER NO. SALESMAN

	QUANTITY	STOCK NUMBER	DESCRIPTION	UNIT PRICE	TAX OR AMOUNT
1	1 Box	1-20X	Typing Paper		13 98
2	1 Bot		White Liquid Paper		1 50
3	1 Bot		Blue Liquid Paper		1 50
4					
5					
6					16 68
7					
8			Less 10%		1 67
9					
10		"	"		
11			Constitutional Convention Committee		
12					
13					
14					

RECEIVED BY: Glenda J. Straube 479-7692

SUB TOTAL	15 01
% SALES TAX	7 C
TOTAL	15 01

400 CUSHMAN · FAIRBANKS, ALASKA 99701 · PHONE 452-4466
FINANCE CHARGE of 1½% per month (18% ANNUALLY) on unpaid balances.

FOS

CHARGE SALE

No. 555178

FAIRBANKS OFFICE SUPPLY
P.O. BOX 2552, FAIRBANKS, ALASKA 99701

2 01 918 0
AK. STATE LEGISLATURE
P.O. BOX [illegible]

SOLD TO

DELIVER TO Constitutional Convention Committee

ADDRESS

CITY STATE ZIP

DATE 8/30/79 PURCHASE ORDER NO. SALESMAN Dick

	QUANTITY	STOCK NUMBER	DESCRIPTION	UNIT PRICE	AMOUNT
1	1 a.	P-85	Lanier Regent Transcriber		
2			SN 716866		
3			Complete w/ Controls & Instruction Manual.		
4					
5					
6			2 Weeks Rental		15 00
7					
8			(Rental Period 8/31/79 - 9/14/79		
9					
10					
11					
12					
13					
14					

RECEIVED BY: Glenda J. Straube

SUB TOTAL	15 00
% SALES TAX	1 E
TOTAL	15 00

400 CUSHMAN · FAIRBANKS, ALASKA 99701 · PHONE 452-4466

FINANCE CHARGE of 1½% per month (18% ANNUALLY) on unpaid balances.

FOS

CHARGE SALE

No. 556325

FAIRBANKS OFFICE SUPPLY
P.O. BOX 2552, FAIRBANKS, ALASKA 99701

SOLD TO 2 01 912 0 AK. STATE LEGISLATURE P.O. BOX 1379 [illegible]

DELIVER TO

ADDRESS

CITY STATE ZIP

DATE 10-11-79 | PURCHASE ORDER NO. | SALESMAN

	QUANTITY	STOCK NUMBER	DESCRIPTION	UNIT PRICE	AMOUNT
1	10x	1-20x	Typing Paper		13.98
2	10 ft.		White Liquid Paper		1.00
3	10 ft.		Buff Liquid Paper		1.50
4					
5					
6					16.68
7					
8			Less 10%		1.67
9					
10		"		"	
11			Constitutional Convention Committee		
12					
13					
14					

RECEIVED BY: Glenda J. Straube 479-7692

SUB TOTAL	15.01
% SALES TAX	TC
TOTAL	15.01

400 CUSHMAN · FAIRBANKS, ALASKA 99701 · PHONE 452-4466

FINANCE CHARGE of 1½% per month (18% ANNUALLY) on unpaid balances.

IBM **REMIT TO:** P.O. BOX 5826, SAN MATEO, CA 94402
INQUIRE AT: P.O. BOX 2130, ANCHORAGE, AK 99510

INVOICE NUMBER 1465246 OFF. NO. - 06A

PROD.	MACHINE SERIAL	HOURS TRAVEL	HOURS LABOR (+ TRAVEL)	PARTS CODE	PARTS QUAN.	PARTS NAME	TOTAL PRICE
28	0153261	1/10	1 0/10		1	on-off lever	70
					1	code switch	5 10
					1	" " button	70
	Damaged in Shipping						

CUSTOMER NAME Leg. Aff. Agency St. of AK. Constitutional Conv. Comm.
ADDRESS Rouch "Y"
CITY, STATE Juneau, AK.
ZIP 99811
CUSTOMER REFERENCE
CUSTOMER SIGNATURE X Glenda J. Straube
PRINT SIGNATURE

GOVERNMENT FED.	GOVERNMENT STATE	GOVERNMENT LOCAL	SERVICE CODE	B.O. INVOICE	OVERTIME	SERVICE AGREEMENT COVD.	TOTAL PARTS	TOTAL LABOR
	X		01				650	6125

INVOICE NUMBER 1465246 OFF. NO. - 06A

TOTAL HOURS 1 0/10 ☐ MINIMUM CHARGE OR X LABOR RATE PER HOUR $ 61.25

MILES AT ____ EACH PLUS ____ OTHER EXPENSE = ____

STATE TAX	COUNTY TAX	CITY TAX	= TOTAL TAX
			—

IBM OFFICE PRODUCTS DIVISION SERVICE INVOICE

ORIGINAL INVOICE

PLEASE DETACH REMITTANCE FOR PROPER CREDIT

SERVICE DATES	IBM REPRESENTATIVE SIGNATURE	EMPLOYEE SERIAL NO	PAID CHECK NO	TOTAL AMOUNT
08/27/79				
09/13/79	R. D. Ihle	789761		67 75

Z 140-0073-26

SUBJECT TO TERMS ON REVERSE SIDE

SCOMM

#27:8

Con Con

Wagstaff & Middleton
Lawyers

September 20, 1980

Rep. Brian Rogers
Pouch Y
Juneau, Alaska 99811

Dear Representative Rogers:

Attached is the analysis you wished me to provide concerning the current permanent fund distribution plan. My recommendation in Conclusion is that the present statute be repealed and that constitutionally sound alternatives be explored. This remedy may appear unduly harsh, but I feel it is warranted both by the extreme unlikelihood that the law will survive legal challenge and the consequences of any interim application.

I do not feel it is possible to develop a constitutionally secure plan during the short time of a special legislative session. In this context haste would seem to beget waste.

Very truly yours,

WAGSTAFF & MIDDLETON

Robert H. Wagstaff

RHW:mec

Attachments

Robert H. Wagstaff R. Collin Middleton
912 West Sixth Avenue Anchorage, Alaska 99501 907-277-0282/272-9811

OBSERVATIONS ON THE CURRENT PERMANENT FUND DISTRIBUTION PLAN

INTRODUCTION

The present plan for public distribution of Permanent Fund revenues raises, in my judgment, significant problems under both our State and Federal Constitutions. These problems are of the first order and command both State and Federal scrutiny as the current plan runs against the basic democratic philosophy of our country. If the Alaska Supreme Court does not overturn, it is my opinion that the Supreme Court of the United States will grant review and reverse. In my judgment the question would not even be close before the United States Supreme Court notwithstanding apparent division before the Alaska Supreme Court.

HISTORICAL VIEW

There are several dates that we could have chosen to identify as the birthdate of the United States. March 1, 1781 is the day that the Articles of Confederation were adopted, which was our first governing instrument. On September 17, 1787 the existing Federal Constitution was signed. However, the actual choice of July 4, 1776, the date of signing the Declaration of Independence, represents a significant articulation of our priorities. We hold above

all else "that all men are created equal, that they are endowed by their creator with certain inalienable rights, and among these are life, liberty and the pursuit of happiness. . . . It is to secure these rights that governments are instituted among men." After the work of the Constitution was completed it was recognized that it was incomplete. Hence a bill of rights was adopted to identify those rights which could not be abridged by government and are thought to be fundamental in a free society. After the Civil War the Thirteenth Amendment was adopted abolishing slavery, the Fifteenth Amendment holding that right to vote was not to be denied on account of race, and the most far reaching of all, the Fourteenth Amendment, providing that the fundamental rights of citizens heretofore protected from abridgement by the Federal Government were now to be protected from the states and that no state could deny to any person the equal protection of the laws. It is against the long history of our egalitarian government that the present permanent fund distribution scheme must be measured. There has been much legal discussion about the "right to travel" and "two and three tiered equal protection analyses." More talk is of "compelling state interests" and "reasonable tailoring." This shorthand is a technical way of describing the broader concept of the equalities of citizenship. This country was created in part because of the lack of basic human equality that existed elsewhere. The goverment here was and is an experiment in true democracy where it matters not where you

come from, who your parents were, or how long you have been here. Whether arrival came by the Mayflower or the Malispina is of no importance. This is a basic reality of democratic life.

In its brief before the State Supreme Court in the Zobel case the Attorney General's Office has attempted to articulate several justifications for the present distribution scheme. What is inevitable in any analysis is that the longer you have lived in Alaska the more money you get. The apparent idea is to give credit to those who, it is argued, have paid their dues. But we are all equal. The states are specifically enjoined by the Federal Constitution from "granting any title of nobility." The present scheme in effect creates a "sourdough nobility" which yields longer term residents perpetually greater benefits than the shorter term.

Identical reasons were submitted to the Alaska Supreme Court in the Bierne Homestead Initiative case of Thomas v. Bailey, 559 P.2d 1 (1979). The State Supreme Court held that the power of initiative could not be used to give away public assets to state residents. Justice Rabinowitz issued a separate opinion on the equal protection aspects of the initiative. The Bierne Initiative provided that you got more land if you lived in Alaska longer. This concept is virtually identical to the present permanent fund disbribution concept. Justice Rabinowitz's analysis of state law can scarcely be improved upon and I am therefore including it as

an Appendix to this memorandum. Justice Rabinowitz found that such a bonus for having lived in Alaska longer would "do violence" to the equal protection clauses in our constitutions. It is my opinion that Justice Rabinowitz' position is correct and the position that will ultimately prevail. It must be remembered that the Alaska Supreme Court is not the final arbitrator of this issue nor, in my judgment, will it be if a majority of the State Supreme Court decides to uphold the present distribution plan. An analogous situation existed in the Alaska Hire case of Hicklin v. Orbeck where the Alaska Supreme Court held three to two, with Justices Rabinowitz and Boochever dissenting, that a mandatory preferential hire for Alaska residents in oil and gas related activities was constitutionally permissible. But this was subsequently overturned in a unanimous opinion by the Supreme Court of the United States. The United States Supreme Court subscribed to the dissenters' views in Alaska Hire as I believe it would if the permanent fund issue survives the State Supreme Court. If a majority of the Alaska Supreme Court chooses to uphold the present scheme it is my opinion that there is a ninety percent probability that the United States Supreme Court will take review and reverse. I think that the Legislature would be ill advised to hold out hoping for a victory. I believe this is unfair to the residents of the State of Alaska, in violation of oath of office and would, I think, project a negative national image about the spirit of

Alaska. We are an immigrant state. We are an immigrant nation. "Equal Justice Under Law" is the literal facade of the United States Supreme Court. This was recognized by the French when they gave us the Statue of Liberty.

In his Bierne Initiative concurrence Justice Rabinowitz concludes:

> As I stated before, the only conceivable relationship between the duration of residency in the case of the disposal of state grant land is the notion that long term Alaska residents deserve a reward for their continued residence. It is my opinion, this contention does not meet the "fair and substantial relation" equal protection test of Isakson.

I would go one step further. The reward for length of residence not only does not meet a fair and substantial relation test but also is simply not a legitimate governmental purpose. The assets of the state are held in trust for all of residents regardless of the duration of their residency.

"Right to travel" is the slogan that is often applied to situations involving a durational residency or different temporal classes of citizens. The words "right to travel" do not appear in the constitution. It is a legal term of art. The concept emanates from the equal protection clause and privilege and immunity clauses of the Federal Constitution. It is misleading to think that questions involving the constitutional concept of right to travel can be answered through a literal interpretation of what might simply affect actual travel. The legal concept of right to travel embraces a great deal more. This, I suspect, is why

many are lead astray. Right to travel embraces at least these sections of the Constitution of the United States:

> Article IV, Section II provides in paragraph I: "The citizens of each state shall be entitled to all privilege and immunities of the citizens in the several states."
>
> The Fourteenth Amendment to the United States Constitution provides that:
>
> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."
>
> and
>
> "Nor (shall any state) deny any person within its jurisdiction the equal protection of the laws."

Also involved is the Commerce Clause which prohibits states from placing undue burdens on interstate commerce. Out of all of these is distilled the concept of the right to travel, which is very broad, rather than narrow and technical. The United States Supreme Court has said: "The constitutional right to travel from one state to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. . . . Although there have been necessary differences in emphasis within the court as to the source of the constitutional right of interstate travel, there is no need to canvas those differences further. All have agreed that the right exists." State v. Guest, 383 U.S. 745 (1966). Within all the concepts embraced

by the slogan "right to travel" emerges one crystalline idea that goes back to the fundamental concept of the Revolution -- we are all created equal. Equal protection of the law, the privileges and immunities of United States citizenship, the privileges and immunities of the residents of other states, and the universality of commerce are all overlapping.

Legal challenges based on the right to travel rarely arise because a state is trying to keep anyone out of the state but rather because a state conditions opportunities and receipt of state benefits on residency with a particular duration. These cases are usually decided on equal protection grounds rather than on the broader right to travel theory. While the theories may vary, their spirit and purpose are the same.

Perhaps the only certain content of the Fourteenth Amendment privileges and immunities of national citizenship is what has come to be known as the right to travel between states and within them. This right was encompassed in the language of the Articles of Confederation and from there by implication in the Fourth Article from which it is traveled to the Fourteenth Amendment. Shapiro v. Thompson, 394 U.S. 618 (1969) is the first case where the United States Supreme Court created a derivative right on the basis of the right to travel. Here the court said that the right to travel was unconstitutionally inhibited by a one year residency requirement for welfare recipients, a requirement imposed by the

states with the approval of the national government. The means to the end was the right to travel, a central ingredient of the privileges and immunities of American citizens. In language which could have been written about the permanent fund distribution issue the Supreme Court stated:

> But we need not rest on the particular facts of these cases. Appellant's reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services. . . .
>
> In sum, neither deterrence of indigents from migrating to the State nor limitation of welfare benefits to those regarded as contributing to the State is a constitutionally permissible state objective. 1/

The Attorney General's Office has attempted to distinguish this line of cases asserting that receipt of welfare is a different economic and accounting phenomena. This may be true but the spirit and impact are the same. Moreover, any distinctions between rights and privileges were abolished by the United States Supreme Court in Graham v. Richardson, 123 U.S. 365 (1971). "Under modern analysis the question is simply whether the state has exercised its police power in

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1/ Additional legal analysis is found in Appendix I.

conformity with the federal laws and constitution." Douglas v. Sea Coast Products, 52 L.Ed 2d 308 (1977).

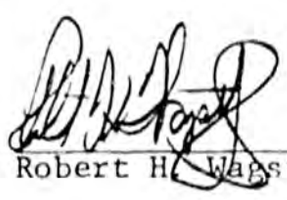
All persons similarly situated are to be treated equally. A resident of Alaska is a resident of Alaska and there can be no requirement that a resident live in Alaska for a certain time in order to qualify for any rights or benefits.

CONCLUSION

Accordingly, if the Alaska Supreme Court has not ruled or has upheld the present permanent fund scheme it is recommended that the legislature, nonetheless, repeal the present scheme and attempt to forge a constitutionally permissible plan at the next general legislative session.

There are also compelling practical reasons to repeal at this time. If a distribution takes place prior to reversal by the United States Supreme Court the monies would, practically speaking, never be recovered. Those who received less than the maximum could demand, with merit, that they be paid the same. An injunction against enforcement could only occur if requested and if granted, cumulative contingencies over which the state has no control.

DATED this 20th day of September, 1980.

By 
Robert H. Wagstaff

APPENDIX I

The legislature has wide latitude in appropriating state funds, subject, however, to certain constitutional provisions. 1/ This initial memorandum is intended to establish some parameters for discussion of how to distribute permanent fund monies, to solicit possible plans of distribution which individual legislators wish to have considered and report preliminarily on apparent defects of the present statutory scheme -- an issue now pending before the Alaska Supreme Court. It is not intended as an exhaustive legal brief. It does not attempt to address possible acceptable plans, many of which have not yet been conceived. Because of the interest focused through prior debate and legislation

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1/ E.g., see Alaska Constitution, Art. IX, Sec. 6 (requiring appropriations be for public purposes); Alaska Constitution Art. IX, Sec. 7 (prohibiting establishment of dedicated funds); Alaska Constitution, Art. I, Sec. 1, and U.S. Constitution, Amendment XIV, (requiring equal protection of the law be accorded all persons and the privileges and immunities of national citizenship); see also the privileges and immunities clause of Art. IV, Sec.2 of the U.S. Constitution, the due process clauses of the Fourteenth Amendment to the U.S. Constitution and Article I, Sec. 7 of the Alaska Constitution, and the Commerce Clause of the U.S. Constitution, Art. I, Sec. 8.

as well as litigation on the issue of differentiating between long term residents and newcomers, this primarily addresses the problem of durational residency requirements.

Choosing between competing claimants for shares of the State's wealth is the proper province of legislators. Courts reviewing legislative policy judgments, however, will scrutinize certain facets of the process. Questions of what the actual objectives of the legislation are, whether those are legitimate governmental goals, and the relationship between these goals and the legislation are areas of inquiry by the courts. In areas affecting fundamental rights or discrimination between classes of people, the courts will closely examine the predicates of the legislation. Whether or not the bases asserted for a statute are correct or logically require a particular result thus become legal issues as well as policy choices.

The permanent fund distribution scheme enacted as SLA 1980, Ch. 21 (codified as A.S.43.23.010 et seq.) appears to be defective under both the state and federal constitutions. It does not treat everyone equally, as is required by law. Instead it creates a functional caste system which perpetuates distinctions among virtually all residents of Alaska. 2 /

2/ Article I, Sec. 10, cl.1 of the United States Constitution forbids states to "grant any Title of Nobility." In effect, however, the State of Alaska is creating a "sourdough nobility," ushering long term residents into the order in recognition of putative past contributions and rewarding them with an estate which grows annually but is forever greater than that of the cheechako.

The Attorney General's brief in Williams v. Zobel argues that all Alaskan residents are being treated equally. They argue that as dividend payments are to be made at the same "rate" for all everyone has equal opportunity to move into higher echelons of the caste by remaining here longer. The fallacy of this assertion is somewhat concealed by the unusual nature of the distribution scheme employed. The usual method for appropriating state wealth to the citizenry is through services and capital expenditures. Direct cash payments are uncommon, if not completely novel. 3/ Applying the residency based distributive scheme of A.S.43.23.010 to appropriations of services or facilities--the alternative means of getting permanent fund wealth to the people--4/ should illustrate why the statute is fatally flawed.

Instead of distributing cash to residents directly, the

3/ The only other cash payments which come to mind are (a) tax credits, refunds or rebates or (b) state lottery winnings. Both are different in kind but more familiar.

4/ Cf. Thomas v. Bailey, 595 P.2d 1, 5-8 (Alaska 1979) defining appropriations as including cash as well as non-monetary state assets.

state might well choose to distribute Permanent Fund earnings through new health or social programs, or capital expenditures for schools, university buildings, ports, sewage treatment centers, and the like. 5 / If the State of Alaska were to divide all residents into twenty or more classes--as is done in A.S.43.23.010--for purposes of using state parks, receiving social services, or hunting game animals, to pick only a few examples, the illegal discrimination would be more obvious.

To illustrate, assume the state were to inventory and assign a ranking to all state parks. Then, using the State's theory that we can differentiate among residents according to past contributions or length of residence, assume we provided access to parks based on how long each person has been an Alaskan. The most beautiful and secluded parks would be available only to those who had been residents for 15-20 years. Roadside turnoffs might be the only ones open to 1-3 year residents.

5/ Other states have spent their resource wealth in this fashion, see, e.g., Minnesota high schools (copper & mining), and Texas universities (oil). In any event cash and indirect expenditures are not mutually exclusive, and the $50.00 per share dividend program is intended to use only one half the permanent fund interest each year.

Prenatal checkups might be made available to residents of less than five years, full delivery services to those here from five to ten years, and full family health care for those here over ten years.

A sewage system might be installed in a village with individual hookups priced differently according to length of residence.

One to five year residents might be allowed to hunt geese but nothing else, five to ten year Alaskans a caribou, ten to fifteen year residents a moose, and those who had resided here fifteen years or longer could be permitted to hunt for bear.

The list of potential examples is endless. The point is the same. Whether the State's wealth is distributed through services, facilities, or cash, the present distributive scheme impermissibly discriminates among State residents.

The Alaska Hire case, by the time it reached the U.S. Supreme Court, dealt only with impermissible discriminations between residents and nonresidents. See Hicklin v. Orbeck, 437 U.S. 518 (1978). Numerous other cases have dealt with attempts by one state to discriminate against--treat differently--residents of other states. See, e.g., Austin v. New Hampshire, 420 U.S. 656, 43 L.Ed 2d 530, 95 S.Ct 1191 (1975) (unequal taxation); Ward v. Maryland, 12 Wall. 418, 20 L.Ed 449 (1871) (unequal licensing fees); Edwards v. People of State of California, 314 U.S. 160, 86 L.Ed. 1919, 62 S.Ct. 164 (1941) (prohibition against bringing indigent nonresident

into California); Lynden Transport, Inc. v. State of Alaska, 532 P.2d 700 (1975) (unequal requirements for grant of motor carrier's intrastate operating authority); but see, Baldwin v. Montana Fish & Game Commission, 436 U.S. 371 (1978).

Here, however, we are concerned with a discrimination by the State against certain of its own residents in favor of others. This too has been tried--and generally found illegal--in a number of instances throughout history. There are three distinct examples of states discriminating against classes of its own residents: These are (1) cases involving unequal treatment based on the length of time one has been a resident of the state (so called "durational residency" cases); (2) cases involving discrimination against resident aliens; and (3) cases concerning political reapportionment and unequal weighting of votes of certain classes of state citizens.

Most durational residency cases concern attempts to limit those who have resided in a state for less than a certain period of time--usually one year--from participating in state government, commerce, or services on an equal footing with other state residents. See, e.g., Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed 2d 600, 89 SCt 1322 (1969) (access to public welfare assistance); Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed 2d 274, 92 SCt. 995 (1972) (voting); Memorial Hospital v. Maricopa County, 415 U.S. 250, 39 L.Ed 2d 306, 94 SCt 1076 (1974) (equal access to free nonemergency medical care); Hicklin v. Orbeck, 565

P.2d 159 (Alaska 1977) (access to oil and gas related employment stemming from State leases); State v. Adams, 522 P.2d 1125 (Alaska 1974) (one year residency requirement for divorce) State v. Wylie, 516 P.2d 142 (Alaska 1973) (preference in hiring State employees); State v. Van Dort, 502 P.2d 454 (Alaska 1972) (75 day residency requirement for voting); Thomas v. Bailey, 595 P.2d 1, 9 ("Bierne Initiative" case, Rabinowitz, Jr., concurring); but see, Gilbert v. State, 526 P.2d 1131 (Alaska 1974) (eligibility to seek state legislative office). All of the same justifications made by the Attorney General to support A.S. 43.23.010's scheme of providing greater benefits according to duration of residence have been proffered and rejected in these cases.

The Attorney General's Office has asserted several bases for the legislation, 6/ which boil down largely to

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6/ It is important to note that the statute itself specifies only three legislative goals:

(1) to provide a mechanism for equitable distribution to the people of Alaska of at least a portion of the State's energy wealth derived from the development and production of the natural resources belonging to them as Alaskans;

(2) to encourage persons to maintain their residence in Alaska and to reduce population turnover in the state; and

(3) to encourage increased awareness and involvement by the residents of the State in management and expenditure of the Alaska Permanent Fund (Art. IX, Sec. 15, State Constitution).

SLA 1980, Ch. 21, Sec. 1(b).

These purposes are general and couched in neutral terms which do not compel any distinctions between newer and older Alaskan residents. The gloss which the Attorney General's office gives in its Zobel brief to explain and amplify these purposes is what reveals the inappropriateness or inadequacy of using the distributive formula established to accomplish them.

two themes--first a desire to recognize and reward contributions of long-term residents, and second, a desire to prevent or hinder an influx of newcomers seeking a share of the resource wealth.

The issue of rewarding longer term residents, either for prior tax contributions, enduring "the rigors of a harsh climate," contributing to the cultural, economic or political life of the State or for other reasons, is not new here or elsewhere. Justice Rabinowitz addressed this issue in his concurrence in Thomas v. Bailey, supra, rejecting it as legitimate justification for distinguishing between Alaskan residents on the basis of how long they have lived here. He observed that such a scheme

> "accomplishes nothing more than the sanctioning of a bonus or reward for having been a resident of Alaska longer than certain other classes of persons. It would do violence to the meaning of the requirement that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.'" 595 P.2d at 78.

He also noted the arguments concerning prior contribution were defective because the plan involved distribution of a state asset "the acquisition of which was unrelated to contributions of taxes and earnings by even the longest-term residents of Alaska." Id at 17. He stated that although it was "arguable that the longer-term resident has contributed more to the general welfare of the State over the course of his domicile" here, the asserted correlation between

such contributions and the varying lengths of residency required for each incremental distributive share of the assets being appropriated "is on its face too tenuous to satisfy" the legal tests for denial of equal protection. He noted that the parties had made no additional data available supporting their rationale, leaving the Court in the unacceptable position of having to hypothesize facts to sustain the classifications.

This is exactly what has been done with the permanent fund distribution legislation also. The Attorney General's Office asserts a number of arguments which are either illogical on their face, or which could as easily be argued the other way without providing facts to support their speculative positions.

For example, it is argued that newcomers are more likely to encourage imprudent and hasty exploitation of the resources in order to increase their share of dividends vis à vis those who will follow them here. No one would dispute that sound, prudent management of our resources is a legitimate legislative goal. However, it is at least as logical, if not more so, to assume that the distributive formula of A.S.43.23.010 encourages more immediate exploitation since under this plan 20 year residents have 20 times as much to gain from such development as newcomers do. 7/

7/ This does not even account for the fact that quite apart from permanent fund dividend distributions, longer term residents are more likely to benefit from immediate development because as a class they are more likely to own mineral leases, operate businesses and own housing that will generate income from such economic activity.

Under a plan where all Alaskans are treated equally, no class of residents has a greater incentive to promote unwise development, and all will share equally in sustained annual growth. Stable population might be encouraged by the prospect of steady annual dividends, whereas the present plan may encourage those with larger proportionate shares to push for a few large distributions before retiring to other states. But even these assertions are speculative to the extent they rely on logic rather than facts for answers--the point is that without facts classifications favoring one group of residents over another are irrational and arbitrary.

The State's position that it can discriminate against newcomers because they are likely to come to the State solely for a handout of our oil wealth, that they will not exercise good judgment with respect to resource development, and that they are not as likely otherwise to be interested in the long-term good of Alaska or to become part of a stable population base lacks merit. It ignores the history of our state and creates irrebuttable presumptions unfairly lumping all newcomers into an overinclusive class.

This State, like all others in the Union, has traditionally attracted people who hoped to use their skills or energy to utilize available resources, building a future for themselves, and in the process, for the State. Justice Rabinowitz recognized this when he stated that the protection accorded people migrating to Alaska "reflects,

in part, an awareness of the distinctive character of the State in attracting many new residents to participate in Alaska's growth and expansion." Thomas v. Bailey, supra, 595 P.2d at 16.

A similar analysis is found in the United States Supreme Court decision in Shapiro v. Thompson, supra. There states who provided their own residents with greater public assistance benefits than did other states tried to impose durational residency requirements on receipt of welfare, in large part to prevent an influx of newcomers seeking higher benefits. There, as here, the State made speculative assertions without facts to support them. The Court found:

> "The class of barred newcomers is all-inclusive, lumping together the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits. In actual operation, therefore, the three statutes enact what in effect are nonrebuttable presumptions that every applicant for assistance in his first year of residence came to the jurisdiction solely to obtain higher benefits. Nothing whatsoever in any of these records supplies any basis in fact for such a presumption."

394 U.S. at 631, 22 L.Ed 2d at 613.

The U.S. Supreme Court also rejected the notion that classifications among State residents could be made on the basis of putative past contributions:

> "Appellants argue further that the challenged classification may be sustained as an attempt to distinguish between new and old residents on the basis of the contribution they have made to the community through the payment of taxes. We have difficulty seeing how long-term residents

who qualify for welfare are making a greater present contribution to the State in taxes than indigent residents who have recently arrived. If the argument is based on contributions made in the past by the long-term residents, there is some question, as a factual matter, whether this argument is applicable in Pennsylvania where the record suggests that some 40% of those denied public assistance because of the waiting period had lengthy prior residence in the State. But we need not rest on the particular facts of these cases. Appellant's reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services.

We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification.

In sum, neither deterrence of indigents from migrating to the State nor limitation of welfare benefits to those regarded as contributing to the State is a constitutionally permissible state objective."

Shapiro v. Thompson, supra, 394 U.S. at 632-633, 22 L.Ed 2d at 614.

Courts have considered other areas where states have discriminated against one class of residents in favor of another, and the results in these analogous situations compel the same result.

In the area of legislative apportionment, for example, many states discriminated among citizens by according greater weight to some residents' votes than to others'. The discrimination in those cases was based on where in the State a person lived--here it is based on how long. The remedy mandated by the Constitution in those cases was "one person, one vote". Laws which advantaged one resident over another were struck down. A.S.43.23.010 disadvantages some residents and favors others; it is constitutionally infirm. The precise remedy here is up to the legislature--but it cannot include giving twenty shares to one person and one to another.

The same arguments which are asserted by the Attorney General's Office to uphold the present Permanent Fund Distribution scheme could as well have been made to justify giving one resident ten or twenty times the voting power. For example, it might be asserted that certain residents had contributed more culturally, economically or politically to the State, that they had "paid their dues," while others had not and were therefore entitled

to more voting power.8 /

In Reynolds v. Sims, 377 U.S. 533, 12 L.Ed 2d 506, 84 S.Ct. 1362 (1964), the United States Supreme Court Stated:

> "If a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable. Of course, the effect of state legislative districting schemes which give the same number of representatives a unequal numbers of constituents is identical. Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 or them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. . . ."

8/ One formerly commonplace example of such discrimination was the denial of voting rights in school board or other local elections to those who did not own property (e.g. renters) in the community.

Quoting its opinion in the earlier apportionment case of Gray v. Sanders, 372 U.S. 368, the Court in its Reynolds opinion observed:

> "How then can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote--whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions." 372 U.S. at 379-380.

> Continuing we stated that "there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State." And, finally, we concluded: "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing--one person, one vote." 372 U.S. at 381.

The Attorney General's office argues that by creating these distinctions between Alaska residents "the legislature created a political constituency with an interest in long term sound management of both the permanent fund and the resources on which it depended. . . " Brief in Williams

v. Zobel. at p.28. In effect, it has given some of the "voters" within this "political constituency" up to 20 times the voting power of others. This is inconsistent with our constitutional democracy.

The final analogous area which is instructive concerns attempts by states to differentiate among their residents on the basis of U.S. citizenship. Again, in most cases, such attempts to treat one class of state residents differently than another on this basis have been held unconstitutional. While the issue of alienage poses certain considerations not necessarily applicable to the legislation at hand, the cases generally indicate a presumption that all state residents should be treated equally and that distinctions between one class of state residents and another will rarely be valid.

In Graham v. Richardson, 9/ for example, the U.S. Supreme Court invalidated a Pennsylvania law attempting to distinguish between citizens and non-citizens, and an

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9/ 403 U.S. 365, 29 L.Ed 534, 91 S.Ct. 1848 (1971).

Arizona law requiring non-citizens to have been residents for a specified number of years, for purposes of receiving welfare benefits. The Court rejected the notion that a state's desire to preserve limited welfare benefits for its own citizens justified restricting benefits to citizens and long term resident aliens. It also rejected the idea that constitutional rights turn upon whether a governmental benefit is characterized as a "right" or a "privilege." Finally, the Court explained that although a state may legitimately attempt to limit its expenditures, whether for public assistance, public education or any other program, it cannot accomplish such a purpose by invidious distinctions between classes of its residents, in violation of the Fourteenth Amendment.

The fact that natural resources are involved does not compel a different result. In Takahashi v. Fish and Game Commission, 334 U.S. 410, 92 L.Ed 1478, 68 S.Ct. 1138 (1948), the U.S. Supreme Court rejected the assertion by California that its "ownership" of all fish within three miles of its coast as trustee for all state citizens authorized it to bar resident aliens from obtaining commercial fishing licenses. The state claimed the law was passed largely as a conservation measure, as well as to protect its own citizens. The Court rejected the distinction between residents created by this legislation, and also undermined the doctrine suggested by earlier cases that a state could so discriminate where there was a "special public interest" as in public lands or

natural resources.

In summary, A.S. 43.23.010 is inconsistent with our constitutional democracy. The problems incident to distribution of wealth have long been recognized. In Democracy in America, in 1835, Alexis De Tocqueville wrote:

> "Thus the prosperity of the United States is the source of their most serious danger, since it tends to create in some of the federated states that intoxication which accompanies a rapid increase in fortune, and to awaken in others those feelings of envy, mistrust and regret which usually attend the loss of it."

(Alfred A. Knopf, Eleventh Printing (1972) edition, at 403). One check on the development of such conflicts is responsible legislative judgment. If this fails, the ultimate check, and balance, is the enforcement of the constitution by the courts.

D. JOHN McKAY

ROBERT H. WAGSTAFF

APPENDIX II

RABINOWITZ, Justice, concurring.

Though I am in accord with the majority's views regarding the nature of the Alaska Homestead Act[1] as an appropriation which may not be enacted by the voters through the initiative process, I wish to add my separate views concerning appellees' equal protection arguments.

The Alaska Homestead Act, popularly known as the Beirne Initiative, provides grants of forty acres of state land[2] to Alaska residents[3] who have resided continuously in the state for three years preceding application for land. Residents of five years duration are eligible to receive two forty-acre grants, and a person who has resided continuously within the state for ten years is entitled to four forty-acre parcels. Regardless of the length of time of residency, the Homestead Act provides that an individual is entitled to not more than one grant of forty acres per year, and no person may accumulate more than 160 acres combined total under the act.

I have concluded that these durational residency provisions violate the equal protection clause of the Alaska Constitution[4] by infringing on the right to travel to this state and make one's home here. A review of the case law illustrates the important nature of the right to travel protected by the state constitution.

33. We note that the applicant need not bear the cost of the survey. A survey must be made within five years of receiving the land, AS 38.-05.440, yet the applicant may sell the land after one year.

34. If state-owned land were surveyed by private individuals, that would be valuable to the state. The value to the state is certainly insignificant, however, when the surveyed lands are in private ownership.

1. The Alaska Homestead Act, AS 38.05.410–540, created a new Article 13 of the Alaska Land Act, AS 38.05, entitled Homestead Grants of State Land.

2. AS 38.05.410 provides that "[a]ll vacant, unappropriated, and unreserved general grant land" is to remain classified and available as homestead entry land until thirty percent or 30,000,000 acres (whichever comes first) of the state general grant land (excluding trust land) has passed into private ownership under the terms of the Homestead Act.

3. A resident is defined by AS 38.05.530(4) as a person who is at least eighteen years of age and

(A) except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause, is physically present in the state for the required period;

(B) maintains a place of residence in the state;

(C) has established residence for voting purposes in the state and is a registered voter;

(D) has not, within the period of required residency, claimed residency in another state; and

(E) shows by all attending circumstances that his intent is to make Alaska his permanent residence.

4. Art. I, § 1, of the Alaska Constitution states:

Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Additionally, art. VIII, § 17 provides specifically with regard to disposition of the state's natural resources:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

The protection extended by the Alaska Constitution to new residents of Alaska differs markedly from the level of protection afforded by the United States Constitution to new residents of a state against discriminatory treatment based solely on the duration of residency.[5] In the past, this court consistently has subjected durational residency restrictions to strict scrutiny under the equal protection clause of the Alaska Constitution. This intensified review was premised on our conclusion that "the right to interstate travel is itself a fundamental right and any classification which serves to penalize the exercise of that right must be subjected to strict judicial scrutiny."[6]

State v. Van Dort, 502 P.2d 453 (Alaska 1972), was the first case to challenge a durational residency requirement under Alaska law. In *Van Dort* we considered a seventy-five-day residency requirement for voting in state elections and found it to be unconstitutional. We stated there:

> It is our reading of [*Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972),] that all durational residency requirements are prima facie invalid as in contravention of the equal protection clause because they penalize the right to travel and the right to vote in elections on an equal basis with other citizens in the jurisdiction.

Id. at 454. The state's argument that a seventy-five-day residency requirement for voting was justified by the compelling interest in guaranteeing that only bona fide residents participated in the election was rejected. Even recognizing Alaska's uniqueness in size, population and geography, its special economic, cultural and social problems, and the communication deficiencies between different parts of the state, we found that a less restrictive alternative was available to accomplish the state's objectives in administering proper elections. Thus, a thirty-day residency requirement expressly was approved in *Van Dort*; however, the seventy-five-day period challenged in the case was struck down since that particular classification served no compelling state interest.

In *State v. Wylie*, 516 P.2d 142 (Alaska 1973), we struck down certain state personnel regulations which gave an absolute hiring preference for state employment to per-

5. Under the United States Supreme Court's interpretation, the federal constitutional right to travel is not by itself a fundamental right which triggers application of the strict scrutiny tier of equal protection analysis. The rational basis standard applies to review of durational residency requirements unless, in addition, the discriminatory treatment of new residents either deters or penalizes the federal right of interstate migration. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). *See also Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975); *Starns v. Malkerson*, 326 F.Supp. 234 (D.Minn.1970), *aff'd*, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971). Deterrence of the right of interstate migration apparently never has been used by the Supreme Court as a ground for applying strict scrutiny (*see Shapiro v. Thompson*, 394 U.S. 618, 655, 89 S.Ct. 1322, 1342, 22 L.Ed.2d 600, 626 (1969) (Harlan, J., dissenting)), and the existence of a penalty on the exercise of the right requires a showing of the denial of a basic necessity of life or the denial of a separately protected fundamental right other than the right to travel. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974).

6. *State v. Wylie*, 516 P.2d 142, 147 (Alaska 1973). The constitutional right to travel interstate has not been identified with any particular textual source in the Alaska Constitution. Rather, the Alaska Supreme Court appears to be in agreement with Mr. Justice Stewart's discussion of the federal right to travel in *United States v. Guest*, 383 U.S. 745, 757-58, 86 S.Ct. 1170, 1178, 16 L.Ed.2d 239, 249 (1966) (footnote omitted):

> The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. . . . [The] right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.

Id. quoted in State v. Wylie, 516 P.2d 142, 145 n.5 (Alaska 1973). *See also Hicklin v. Orbeck*, 565 P.2d 159, 163 n.5 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978).

sons who had resided in Alaska for at least one year.[7] We held in *Wylie* that the right of interstate travel is itself a fundamental right under the state constitution and that any classification which serves to penalize the exercise of that right must be subjected to strict scrutiny. At the time, this holding was based in part on our reading of the United States Supreme Court's opinion in *Dunn v. Blumstein*, 405 U.S. 330, 338, 92 S.Ct. 995, 1001, 31 L.Ed.2d 274, 282 (1972), in which the Court had expressed its similar view that the right to travel was a "fundamental personal right." However, *Wylie* established that aside from its status under the federal Constitution, the Alaska Constitution unambiguously protects the right of interstate migration as a fundamental interest such that strict judicial scrutiny must be applied to any burden on the exercise of that right.

Wylie significantly expanded the United States Supreme Court's prior applications of the "penalty" concept to measures interfering with the fundamental right of interstate migration by holding that any differential treatment based on length of residency would be viewed as a penalty in light of the fundamental nature of the right of migration guaranteed by the Alaska Constitution. In *Wylie*, we held that state personnel rules which granted hiring preferences to persons who have satisfied the durational residency requirement penalized interstate travel. In contrast, though the precise limits of penalty analysis under the United States Constitution had not been explored fully at the time this court decided *Wylie*, the United States Supreme Court subsequently declined to classify as a penalty on the right to travel any burden other than the denial of basic necessities of life. *See Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974).[8]

In *State v. Adams*, 522 P.2d 1125 (Alaska 1974), we again differed from the United States Supreme Court's analysis of penalties on the right of interstate migration in holding that Alaska's one-year durational residency requirement for the initiation of divorce proceedings in state courts violated the equal protection clause of the Alaska Constitution. We reiterated in *Adams*:

> All durational residency requirements inherently infringe upon the fundamental constitutional right of interstate travel.

7. At the time *State v. Wylie*, 516 P.2d 142 (Alaska 1973), was decided, the United States Supreme Court had decided two durational residency cases utilizing strict scrutiny review: *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), which invalidated a one-year durational residency requirement of the State of Connecticut for eligibility for aid to families with dependent children welfare assistance; and *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), which struck down Tennessee's one-year durational residency requirement for eligibility to vote in state elections. *See also Starns v. Malkerson*, 326 F.Supp. 234 (D.Minn.1970), *aff'd*, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971) (upholding on rational basis grounds Minnesota's one-year durational residency requirement for reduced tuition at the state university).

8. When we applied the strict scrutiny tier of equal protection judicial review in *State v. Wylie*, 516 P.2d 142 (Alaska 1973), the state's interests in upgrading Alaska's human resources, in reducing the level of unemployment within the state and in relieving the burden imposed by unemployment on the public purse were found not to be related sufficiently to the means selected for accomplishing the objectives (*i. e.*, discrimination against new residents in hiring) to satisfy the compelling state interest standard of review. We concluded that "[t]here are certainly available to the state other means for lowering unemployment which impose a lesser burden on the constitutionally protected right to interstate travel." *Id.* at 149 (footnote omitted). We also held that the state's interest in preferring bona fide residents over non-residents in selecting public employees in order to improve the efficiency of state government by reducing personnel turnover was not substantial enough to warrant burdening the fundamental right of interstate travel.

It should be noted that in *Wylie*, as in the present case involving the Beirne Initiative, the state's interest in preferring bona fide residents over non-residents was not challenged. Thus, the court made no determination as to the permissibility of such a classification; it ruled only on the constitutionality of discriminating between classes of actual residents based on an irrebuttable presumption that those who had lived in Alaska for less than one year should not be treated as permanent residents regardless of other indicia of intent to establish permanent residence in the state.

> Hence, all such requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest. There need be no actual deterrence to interstate migration to actuate strict scrutiny under the compelling state interest test. In our view, the nature of the benefit withheld by the state is relevant only to judging the relative importance of the competing state interest, not to determining the applicable standard of judicial review.

Applying strict scrutiny to the state's asserted public goals justifying the classification based on duration of residency, we found that the relationship between the goals and the means selected for furthering the objectives (the durational residency requirement) was substantially lacking. We held that the state's important interest in protecting the integrity of the basic family unit simply was not furthered by the differential treatment of new residents since it did nothing to preserve marriages of persons who had been in the state for more than one year. The state's interest in assuring the validity of its divorce decrees against collateral attacks on due process grounds, while substantial, could be satisfied by insuring that the domicile of the divorce-complainant was in this state. This reasonable, less restrictive alternative to the absolute requirement of residence of one year in the challenged divorce statute rendered the more restrictive standard less than compelling. The durational residency requirement thus failed to withstand strict scrutiny and was struck down.[9]

Following *Adams*, we decided the only Alaska right to travel case which has upheld a durational residency requirement in the face of strict judicial scrutiny of equal protection claims. *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974), involved a challenge to the state constitutional requirement, article II, § 2, of three-year residency in the state and one-year residency in the election district for eligibility to seek legislative office. The residency requirement was analyzed only under the equal protection clause of the federal Constitution since a provision of the Alaska Constitution was directly attacked by the appellant in the case. Nevertheless, we determined to apply the strict scrutiny tier of review based in part on our own prior cases relating to durational residency requirements. Two of the state's asserted justifications for the restrictions on candidacy for public office were found to be compelling: the interest of the state in assuring that those who govern it are acquainted with the diverse conditions, problems, and needs of those who are to be governed, and the interest of the electors in exposure of the potential candidate to the people during a period of time sufficient for the voters to become familiar with the candidate's knowledge, character, and reputation. In upholding the classification, we found that no viable less restrictive alternatives to the durational residency requirements imposed by the state constitution existed to fulfill the compelling state interests.

This court's most recent statement of the law relating to durational residency requirements was in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978). *Hicklin* involved an

9. Subsequent to our invalidation of the one-year residency requirement in the state divorce statute, the United States Supreme Court addressed the identical issue in a case involving the State of Iowa's statutory requirement that a petitioner in a divorce action must be a resident of the state for one year preceding the filing of the petition. *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). The Supreme Court came to the opposite conclusion from our court in *Sosna*, however. Although the Court did not specifically identify the standard of review it was applying in upholding the durational residency requirement, its analysis was couched in language suggesting application of the rational basis test. It found that the statute in question reasonably furthered three basic public purposes: protection of the rights of the defendant spouse in the divorce proceeding, avoidance of interference in matters in which another state has a paramount interest, and assurance that the state's own divorce decrees will be afforded full faith and credit by other states. It should be noted that the third of these rationales is identical to the state interest this court had found unpersuasive in *State v. Adams*, 522 P.2d 1125 (Alaska 1974).

equal protection challenge to the so-called "Alaska Hire" law which limited eligibility for petroleum and pipeline related jobs to residents of the state who had been physically present in Alaska, with certain exceptions, for one year.[10] In holding that the proper standard for review of the durational residency preference in hiring was the strict scrutiny tier of equal protection analysis which applies to such residency requirements "because they penalize those who have exercised their fundamental right of interstate migration," [11] we expressly considered and rejected the "basic necessities" reasoning of *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). As already noted, *Memorial Hospital* had addressed a challenge under the federal Constitution and had limited application of strict scrutiny to durational residency cases in which the residency requirement penalized the right to travel by depriving the recent migrant of a basic necessity of life.[12] We noted that "[w]e have never used this 'basic necessity' reasoning," [13] and proceeded to subject the Alaska Hire law to strict scrutiny. The interests which the state sought to further through the hiring preference for one-year residents of the state in *Hicklin* were the reduction of the unemployment rate for bona fide Alaska residents and the cultivation of Alaska's human resources through extraction of the state's natural resources. We invalidated the durational residency requirements because the correlation between the classification based on length of residence and the goals of the challenged statute was tenuous and, in any case, the durational residency requirement was not the least drastic means available for accomplishing the public goals of reduced unemployment and stabilization of the economy.[14]

In my view, under the test applied in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), the three-year durational residency requirement imposed by the Beirne Initiative to qualify for land grants would fail. The general standard for judicial review of equal protection challenges arising under the state constitution was modified subsequent to the *Hicklin* decision, however. In *State v. Erickson*, 574 P.2d 1 (Alaska 1978), we abandoned the traditional two-tier approach to equal protection analysis which

10. The durational residency statute at issue in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), was nearly identical to the Beirne Initiative's residency requirements. AS 38.40.090(1) provided:

> 'resident' means a person who
> (A) except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause, is physically present in the state for a period of one year immediately before the time his status is determined;
> (B) maintains a place of residence in the state;
> (C) has established residency for voting purposes in the state;
> (D) has not, within the period of required residency, claimed residency in another state; and
> (E) shows by all attending circumstances that his intent is to make Alaska his permanent residence.

The only differences between the statutory definition of an Alaska resident which was considered in the *Hicklin* case and the definition of resident in the Beirne Initiative are found in the duration of the residency required (one year in the *Hicklin* case and a minimum of three years in the present case), and in the addition of registered voter status and the attainment of eighteen years of age as requirements for eligibility for land grants under the Beirne Initiative. *See* note 3 *supra*.

11. *Hicklin v. Orbeck*, 565 P.2d 159, 162 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978) (footnote omitted).

12. In *Hicklin, id.* we also rejected the rational basis test as applied in *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). See discussion of *Sosna* in note 9, *supra*.

13. *Hicklin v. Orbeck*, 565 P.2d 159, 163 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978).

14. It was pointed out in *Hicklin, id.* at 165, that "the least drastic, and also the most effective, means to help the unemployed and recent trainees to find jobs is to give an employment preference only to the unemployed and recent trainees."

had been followed in all our prior cases[15] and adopted a new single test for evaluating equal protection claims under the Alaska Constitution. The new standard of review was explained in *Erickson* as follows:

> Such a test will be flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden will be placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective. Where fundamental rights or suspect categories are involved, the results of this test will be essentially the same as requiring a 'compelling state interest'; but, by avoiding outright categorization of fundamental and non-fundamental rights, a more flexible, less result-oriented analysis may be made.

Id. at 12. Our task in applying the equal protection test adopted in *Erickson* has three steps: first, we must ascertain what the purposes of the challenged legislation are and whether they are within the legitimate police power of the state; second, we must examine the means used to accomplish the legislative objectives and establish whether the means substantially further the legislative goals; and third, we must balance the importance of the state's interest in the means actually chosen to accomplish the legislative purpose against the nature of the constitutional right which has been infringed.[16]

The *Erickson* analysis begins by considering the purposes of the challenged act, viewing the Beirne Initiative as a whole as well as the circumstances which surrounded its enactment. Since the act was passed as an initiative by the people rather than by the legislature there is no relevant legislative history of its passage to resort to. However, the Beirne Initiative makes its objectives clear in the statement of purpose which constitutes section 1 of the Homestead Act.[17] The purpose of the act, quite simply, is to accomplish the transfer of thirty percent or 30,000,000 acres of the state's vacant, unappropriated, and unreserved general grant lands into private ownership. The initiative finds that "individual land ownership is integral to the material well-being of the people and encourages more citizen awareness and involvement in the

15. We had previously expressed our increasing dissatisfaction with traditional equal protection analysis, however, in *Isakson v. Rickey*, 550 P.2d 359, 362–63 (Alaska 1976); *Lynden Transport, Inc. v. State*, 532 P.2d 700, 706–07 (Alaska 1975); *State v. Adams*, 522 P.2d 1125, 1127 n.12 (Alaska 1974); *State v. Wylie*, 516 P.2d 142, 145 n.4 (Alaska 1973). *See generally* T. Yarbrough, *The Burger Court and Unspecified Rights: On Protecting Fundamental and Not-So-Fundamental "Rights" or "Interests" Through a Flexible Conception of Equal Protection*, Duke L.J. 143 (1977); G. Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv.L.Rev. 1 (1972).

16. *See Erickson v. State*, 574 P.2d 1, 12 (Alaska 1978). *See also Dandridge v. Williams*, 397 U.S. 471, 508, 90 S.Ct. 1153, 1173, 25 L.Ed.2d 491, 515 (1970) (Marshall, J., dissenting).

17. Section 1 of the Beirne Initiative provides:

> The people find that only approximately one million acres of the 363 million total land acreage of Alaska is in private ownership on the effective date of this Act. The people further find that individual land ownership is integral to the material well-being of the people and encourages more citizen awareness and involvement in the affairs of the state. Further, the people are cognizant that all land was privately owned at the time of the nation's founding and [believe] that private land ownership is integral to the American system. In addition, the people are aware that the Constitution of the State of Alaska declares that it is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest (art. VIII, sec. 1), and further that the constitution permits the people to implement this policy by providing for the grant of state land (art. VIII, sec. 9). The people find that of the approximately 104 million acres to which the state is entitled under the Statehood Act, less than 75,000 acres have been made available by the state to citizens for settlement and development purposes, and that the failure to make more land available is a failure [to] implement the policy of art. VIII, sec. 1 of the Alaska Constitution. The people declare their purpose to make available to its citizens at least 30 percent or 30,000,000 acres of state land for settlement and development, and further [declare] that a policy of private land ownership is in the best interest of the people of the state.

affairs of the state." It further finds that the state unduly has delayed making public land available for private settlement and development purposes and enacts the grant program to facilitate the distribution of state land into private ownership.

The mechanism chosen for the transfer of land is a land grant initiated by filing an application which must have been recorded previously in the recording district where the land is located, together with proof of residency as required by the act and a $100 filing fee. The applicant is required to publish notice of his application and to provide a land survey within five years after the right to possession attaches. The grantee is required only to hold the land grant for one year before he "may extract timber or materials on a commercial basis, sell, subdivide, or otherwise dispose of the land . . . ." There is no requirement that the grantee actually enter upon the land and make improvements.[18]

Only persons who meet the minimum residency requirements of the Beirne Initiative may apply for grants of state land. A three-year resident is eligible for one forty-acre grant, a five-year resident may apply for two such grants, and a ten-year resident is eligible for a maximum of four forty-acre grants of state land under the act.[19] The justifications advanced by the state in support of this differential treatment based on duration of residency are basically twofold. First, it is asserted that the durational residency requirements insure that the recipients of benefits under the Beirne Initiative have earned the right to grants of state land based on their contribution to the overall state welfare by voting and paying taxes for the required periods of time. Second, it is claimed that the durational residency requirements insure that the recipients of land grants are genuinely attached to the state since they already have demonstrated their willingness to remain in Alaska for a substantial period of time.

Judicial scrutiny of the closeness of fit between the means and permissible legislative objectives, and scrutiny of the relative necessity for utilizing the particular means selected as opposed to other means less restrictive of constitutional rights, vary in intensity with the character of the classification in question under *State v. Erickson*, 574 P.2d 1 (Alaska 1978). At the upper end of this flexible equal protection formula, where fundamental rights or suspect categories are involved, *Erickson* indicates that the results of this new test will be essentially the same as under the traditional strict scrutiny tier of equal protection doctrine which requires a "compelling state interest" in the means chosen. At the lower end of the scale, the intensity of scrutiny applied will be governed by the new, more demanding "rational basis" test articulated in *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976). In *Isakson* we held:

> Under the rational basis test, in order for a classification to survive judicial scrutiny, the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons simi-

18. The Beirne Initiative has been titled the "Alaska Homestead Act" and the state land made available under the act is referred to as "homestead entry land," but this description of the act's purposes is somewhat inaccurate. Although the act does open up state land for transfer to private ownership and, presumably, at least some of that land will actually be settled, the Beirne Initiative contains no requirement that the grantee enter upon the land and live there in the traditional mode of homestead acts. *See generally* 43 U.S.C. §§ 161-302 (*repealed by* Pub.L. 94-579, 90 Stat. 2787, effective October 21, 1976). In fact, the initiative explicitly provides that "no improvements may be required or restrictions imposed on homestead entry land, except as required by general law or home rule municipalities." *See* AS 38.08.060.

19. It should be noted that the act limits the size of the yearly grant to forty acres regardless of the duration of residency; thus, five-year and ten-year state residents may accumulate their total grant land only at the rate of forty acres a year until their respective maximums are reached.

larly circumstanced shall be treated alike."[20]

Isakson also concluded that "we will no longer hypothesize facts which would sustain otherwise questionable legislation as was the case under the traditional rational basis standard."[21]

The present challenge to the constitutionality of the durational residency requirements in the Beirne Initiative is the first post-*Erickson* case to come before this court on right-to-travel grounds. Thus, an important inquiry in this case is the determination of what standard of review should be applied. Our cases on this subject uniformly have expressed our opinion that the right of interstate migration is a fundamental constitutional guarantee which may not be infringed without showing a compelling state interest in retaining any durational residency requirement and the absence of less restrictive alternative means of accomplishing the state's legislative objectives. The uniquely important status of right-to-travel protection in the Alaska Constitution reflects, in part, an awareness of the distinctive character of this state in attracting many new residents to participate in Alaska's growth and expansion.[22] The risk that longer-term Alaska residents would seek to insulate themselves from sharing the public benefits of development of the state with the influx of relative newcomers already has been confronted directly in *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978). Significantly, this court in *Hicklin* stood fast in expressly repudiating the United States Supreme Court's "basic necessities" limitation on applying strict scrutiny to right-to-travel cases and clearly stated that "it can no longer be disputed that [the right to travel into a different state and make one's home there] is a fundamental right calling for strict scrutiny."[23] In light of the consistent pronouncements by this court concerning the fundamental nature of the right to travel under our state constitution in prior cases, I believe there is a strong case presented in favor of continuing to apply the most stringent standard of review to durational residency classifications under the new, flexible equal protection test adopted in *State v. Erickson*, 574 P.2d 1 (Alaska 1978). However, even starting from the premise that the least intensive scrutiny available under *Erickson* applies, I do not think that the classification of Alaska residents into four groups of dissimilarly treated individuals based on duration of residency[24] for purposes of disbursing

20. *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976), *quoting State v. Wylie*, 516 P.2d 142, 145 (Alaska 1973) (footnote omitted).

21. *Id.* *Isakson* continued, *quoting* G. Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 Harv.L.Rev. at 20 (1972):

> Judicial deference to a broad range of conceivable legislative purposes and to imaginable facts that might justify classifications is strikingly diminished. Judicial tolerance of overinclusive and underinclusive classifications is notably reduced. Legislative leeway for unexplained pragmatic experimentation is substantially narrowed.

See also State v. Lewis, 559 P.2d 630, 643 (Alaska 1977), *cert. denied*, 432 U.S. 901, 97 S.Ct. 2943, 53 L.Ed.2d 1073, which applies the *Isakson* "rational basis" standard of review.

22. *See* Note, *Durational Residency Requirements: The Alaskan Experience*, 6 U.C.L.A.—Alaska L.Rev. 50 (1976).

23. *Hicklin v. Orbeck*, 565 P.2d 159, 163 n.5 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978) (citations omitted).

In *Hicklin*, we also quoted art. VIII, § 2 of the Alaska Constitution which reads:

> The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, *for the maximum benefit of its people.* [emphasis added]

We concluded that "[this] section is not limited to those of Alaska's people who have been here for at least twelve months." *Id.* at 164 n.8.

24. The four classes of residents created by the Beirne Initiative are (1) those persons who have lived in Alaska for less than three years and who qualify for no state land; (2) those persons who have lived in Alaska for more than three years but less than five years and thereby qualify for one grant of forty acres of land; (3) persons who have resided in the state for more than five years but less than ten years, thus qualifying for two forty-acre grants of state land totalling eighty acres altogether; and (4) residents of ten years or longer who are

grants of state land is "reasonable, not arbitrary" and " 'rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced [are] treated alike.' " [25]

The first rationale advanced for upholding the durational residency requirements of the Beirne Initiative is that they constitute a reasonable device for excluding from the benefits of the land grants those persons who have not made a substantial contribution to the state's economy and general welfare. The state cites *Starns v. Malkerson*, 326 F.Supp. 234 (D.Minn.1970), *aff'd*, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971), in support of its argument on this point. *Starns* upheld the University of Minnesota's regulation creating an irrebuttable presumption that any person who had resided in the state for less than one year was a non-resident and could not qualify for a reduced resident tuition rate at the state university. The rationale advanced in *Starns* was that the one-year waiting period for reduced tuition was an attempt to achieve partial cost equalization between those who had and those who had not contributed to the state's economy through employment, tax payments and expenditures within the state. The federal district court explained its holding as follows:

> We believe that the State of Minnesota has the right to say that those new residents of the State shall make some contribution, tangible or intangible, towards the State's welfare for a period of twelve months before becoming entitled to enjoy the same privileges as long-term residents possess to attend the University at a reduced resident's fee.

Id. at 241. Assuming that the Alaska Supreme Court would uphold a similar one-year residency requirement for reduced tuition in this state's university system, a premise that is not altogether inevitable under the new, "more demanding" rational basis test adopted in *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976), substantial differences remain between the holding in the *Starns* case and the durational residency requirements of the Beirne Initiative.

A requirement of contribution through domicile in the state which funds an institution of higher education primarily out of tax revenues bears a relatively direct relationship to the rationale of cost equalization. The current residents of the state presumably carry the primary burden for providing the educational service and it is rational (under the deferential lower tier of federal equal protection scrutiny, at least) to require the new resident to pay more for a limited period of time to attend the state university in order to approximate the greater overall cost borne by the longer term resident for access to the same educational opportunity. In contrast, the distribution of land mandated by the Beirne Initiative constitutes the disposal of a permanent state asset the acquisition of which was unrelated to contributions of taxes and earnings by even the longest-term residents of Alaska. Of course, aside from the specif-

eligible to receive four grants of forty acres each, or a total of 160 acres of state land.

25. *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976), *quoting State v. Wylie*, 516 P.2d 142, 145 (Alaska 1973). It should be noted here that the general equal protection guarantee in article I, § 1 of the Alaska Constitution is not the only constitutional equal protection clause applicable in the present case. Article VIII of the state constitution relating to natural resources contains a separate guarantee:

> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Alaska Const. art. VIII, § 17. Inclusion in the state constitution of this separate equal protection guarantee relating specifically to the disposal of natural resources evidences the constitutional framers' particular concern that the benefits from development of Alaska's large store of natural resources be shared by all persons similarly situated with respect to those resources and the purposes to be served by their disposal. This express indication of the importance attached to the interests of the people in the state's resources is thus an independent reason for rigorous scrutiny under *Erickson* of classifications differentiating between groups of residents where the distribution of natural resources is at stake. *State v. Erickson*, 574 P.2d 1, 12 (Alaska 1978).

ic funding sources of the state benefit in question, it is arguable that the longer-term resident has contributed more to the general welfare of the state over the course of his domicile in the state. However, in my view the asserted correlation between the contribution of the land grantee to the state's economy and the varying periods of residency required to become eligible for each incremental forty-acre grant of land under the Beirne Initiative is on its face too tenuous to satisfy the standard of review adopted in *State v. Erickson*, 574 P.2d 1 (Alaska 1978). The parties to this action have made available no additional data supporting this rationale. Therefore, this court is left in the position of hypothesizing facts to sustain the classification on cost-equalization grounds, an exercise we expressly declined to undertake in *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976). Further, if eligibility for land grants validly may be conditioned on participation in the state's economy for such extended periods of time as the initiative requires, the state apparently would not be prohibited from distributing all of its public benefits (other than those protected by federal equal protection guarantees) proportionately to the length of continued residence in the state. I think that, upon careful evaluation, it becomes clear that the cost-equalization rationale advanced in this case in support of the durational residency requirements accomplishes nothing more than the sanctioning of a bonus or reward for having been a resident of Alaska longer than certain other classes of persons. It would do violence to the meaning of the requirement in *Isakson v. Rickey, id.* at 362 (Alaska 1976), that the classification "'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation'" if this court were to uphold the durational residency requirements of the Beirne Initiative on a cost-equalization rationale.

The second justification for the Beirne Initiative's durational residency requirements advanced by the state is that they insure that state land grants made available by the act actually end up in the hands of those who have demonstrated their genuine attachment to the state and their willingness to remain in Alaska and adapt to its uniquely rigorous climate and frontier characteristics. I do not think this rationale is supported by the express provisions of the Beirne Initiative. Despite its title,[26] the act is not a homestead law in the sense that the grantee must undertake to make improvements on the grant land or even to live on the land. In fact, under the terms of the initiative, a land grant applicant need not ever even visit the land acquired and can sell the land or otherwise dispose of it after holding it for one year. This scheme of land disposal may adequately serve the initiative's purpose of transferring state land to private ownership, but it certainly does not require that the land is ultimately developed by those with any degree of attachment to the State of Alaska or that people with experience in "Alaskan living" utilize the land. The three-year durational residency requirement adds nothing to the assurance of these objectives.

Further, residence of three years duration is not reasonably required to insure that only actual residents receive grant lands. Whether or not the state has a justifiable concern that state land be distributed to bona fide residents of Alaska to the exclusion of non-resident applicants,[27] requiring a minimum of three years actual domicile to establish bona fide residence status in this state simply bears no substantial relationship to the asserted purpose of the requirement. The Beirne Initiative itself includes other less onerous indicia of

26. *See* note 18 *supra*

27. *See generally Baldwin v. Fish & Game Comm'n*, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed 2d 354 (1978), which upheld large disparities in hunting license fees between residents of Montana and non-resident recreational hunters.

But see Hicklin v. Orbeck, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), invalidating the "Alaska Hire" law's statutory preference for hiring of state residents for pipeline and other petroleum industry jobs.

resident status which easily may be used to distinguish the resident from the non-resident.[28]

Given that the three-year durational residency requirement is not substantially related to the purpose of insuring that only bona fide residents with significant ties to the state receive the grant land, the five-year and ten-year requirements are even less relevant to this objective of the act. As stated before, the only conceivable relationship between the duration of residency in the case and the disposal of the state grant land is the notion that long-term Alaska residents deserve a reward for their continued residence. In my opinion, this connection does not meet the "fair and substantial relation" equal protection test of *Isakson*.[29]

CONNOR, Justice, dissenting.

I.

On the question of whether the initiative makes an appropriation, I respectfully dissent.

In *Thomas v. Rosen*, 569 P.2d 793, 796 (Alaska 1977), we quoted favorably from *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622, 624 (1936), which in turn states:

> "An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such manner as the executive officers of the government are authorized to use that money, and no more, for that object, and no other."

Courts in other jurisdictions have also defined "appropriation" for state constitutional purposes as applying to the use of money.[1] But even more persuasive is the record of the proceedings of the Alaska Constitutional Convention. As originally proposed, the provision restricting the use of the initiative and referendum prohibited their use in "making or defeating appropriations of public funds."[2] The floor discussion shows that the main concern of the delegates was that the expenditure of public money should not be subject to direct legislation by the electorate.[3]

It appears that the committee on style and drafting eliminated the words "of public funds" from the constitutional provisions because the state can only appropriate public funds. The committee chairman, Dele-

28. The initiative's other requirements of residency are set out in note 3 *supra*. Similar indicia of residency were approved in *Hicklin v. Orbeck*, 565 P.2d 159, 169-70 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978) (The United States Supreme Court invalidated the residency requirement portion of the "Alaska Hire" law but did not express its opinion on the appropriateness of the criteria employed to establish residence in a case where such a classification is proper.).

Though my disposition of this case on durational residency grounds makes it unnecessary for me to examine the validity of the remainder of the residency classification, I question particularly the requirement that a resident be a registered voter to qualify for a grant of land under the act. Resident aliens, who are not eligible to register to vote, would be excluded from the Beirne initiative's land distribution scheme if this requirement were enforced. *See Nyquist v. Mauclet*, 432 U.S. 1, 97 S.Ct. 2120, 53 L.Ed.2d 63 (1977); *Sugarman v. Dougall*, 413 U.S. 634, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973); *Graham v. Richardson*, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 68 S.Ct. 1138, 92 L.Ed. 1478 (1948); *Oyama v. California*, 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249 (1948); *C. D. R. Enterprises, Ltd. v. Board of Educ.*, 412 F.Supp. 1164 (E.D.N.Y.1976), *aff'd*, 429 U.S. 1031, 97 S.Ct. 721, 50 L.Ed.2d 742 (1977), all of which invalidate state discriminatory treatment of resident aliens. *See also Foley v. Connelie*, 435 U.S. 291, 98 S.Ct. 1067, 55 L.Ed.2d 287 (1978).

29. This test was also applied in: *State v. Erickson*, 574 P.2d 1 (Alaska 1978); *State v. Lewis*, 559 P.2d 630 (Alaska 1977), *cert. denied*, 432 U.S. 901, 97 S.Ct. 2943, 53 L.Ed.2d 1073.

1. *Dorsey v. Petrott*, 178 Md. 230, 13 A.2d 630 (1940); *Michigan Good Roads Federation v. Alger*, 333 Mich. 352, 53 N.W.2d 481 (1952).

2. Part 6, Appendices, December 9, 1955, at 1820, 23-24.

3. Part 2, Proceedings, December 16, 1955, at 931-33, 941-42.

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THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

---------- draft ----------

ISSUES OF CONSTITUTIONAL CHANGE

prepared for

Interim Committee on the Constitutional Convention
of the Alaska State Legislature
Sen. George Hohman and Rep. Brian Rogers, Co-chairmen

by

Victor Fischer
221 E. 7th Ave., #204, Anchorage, Alaska 99501

December 7, 1979

---------- draft ----------

PREFACE

This paper is part of a series of studies sponsored by the Interim Committee on the Constitutional Convention to examine issues pertinent to the 1982 referendum on whether or not Alaska should hold a constitutional convention.

The current study reviews proposed and potential amendments to Alaska's constitution. It seeks to identify problems that have arisen, proposals that have been made formally and informally, and newly emerging issues. Discussion of a particular subject in no way implies its endorsement as an item for constitutional revision. Rather, the purpose here is to lay issues on the table for examination and further consideration.

The extent of consideration given individual topics does not necessarily reflect their significance. In some instances, minimal space is devoted to important issues because they have already been exposed to extensive public discussion. In other cases, a subject may be treated at greater length to help sharpen the issues and possibly help dispose of the matter.

Many proposed constitutional changes are not truly constitutional in nature; they are more appropriate subjects for action by the legsilature. However, so long as they have been discussed as proposals for constitutional change, they are included.

I would like to emphasize that this paper is a draft. While I have tried to include all topics that I am aware of, the coverage may certainly not be complete. Accordingly, reviewers are encouraged to suggest additional topics for inclusion, preferably accompanied by an appropriate description and discussion of the change. Similarly, I would welcome any comment on or revision of any item that is covered in this draft.

My two previous papers cover (1) various aspects of calling and arranging a constitutional convention, and (2) considerations that need to be taken into account in deciding whether or not to call a new convention. The first dealt with the following topics: call by referndum, call by legislature, timing considerations, qualification of voters and delegates, convention size and apportionment, convention site, preparatory commission, and the like.

The second paper, prepared for the Conference on Alaska's Future Frontiers, reviewed the 1955-56 convention and the means it established to update the Alaska constitution, examined constitutional changes that have been suggested, and delved into the gamut of questions entailed in accomplishing desirable revisions and judging whether or not to call a new constitutional convention.

Two more papers are planned. One will take a look at Hawaii's 1978 constitutional convention. The purpose will be to examine the character of the revision process and the changes that were made. As Alaska, Hawaii wrote its constitution prior to becoming a state. Unlike Alaska, it has already held two conventions to revise the constitution. Last year's is particularly interesting, for it constituted an amalgam of people who were concerned about Hawaii's economy and its special culture and lifestyles, while reflecting an increasing populism and concern about government expansion. Its experience may, therefore, be particularly pertinent to Alaskans as they consider whether or not to make major revisions in the state constitutions.

Another paper will start examining issues of constitutional revision broader and more basic than those treated in this paper. Instead of just looking at specific amendments, the new study will deal with the major philosophical and conceptual underpinnings of Alaska and its prospective future: ralationship to the federal government, the total executive-legislative structure for governing the state, the urban-rural relationship and special consideration of Alaska lifestyles, now and in the future.

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ARTICLE I: DECLARATION OF RIGHTS

The constitution's first article defines the powers that belong to the people and sets the limits on what government can do.

In drafting this article, the 1955 constitutional convention generally followed traditional provisions contained in other state constitutions and in the first ten amendments to the U.S. Constitution. Reflecting the mood of the times, particularly in Alaska, a strong civil rights provision was included with a mandate for legislative implementation (Section 3).

An innovative provision adopted by the convention extended the standard "due process" clause to establish a new "right" -- a guarantee that all persons have the right to "fair and just treatment in the course of legislative and executive investigations" (Section 7). The provision, since adopted by other states, responded to concerns of the 1950's, the "McCarthy era."

Two provisions considered but rejected by the convention have since been included in the constitution. A delegate (male) proposed that the Section 3 civil rights guarantees -- "No persons is to be denied the enjoyment of any civil or political right because of race, color, creed, or national origin" -- be extended to also prohibit discrimination on account of sex. The amendment was defeated upon the argument (by a woman delegate) that Alaska was the first subdivision under the American flag to give women the right to suffrage and that the territory had amply provided for the political and civil rights of its women. In 1972, however, the word "sex" was added to the civil rights clause by constitutional amendment.

A "right to privacy" provision was extensively debated, but delegates could not agree on language that satisfied the majority and no action on the matter was taken. At the time, delegates were principally concerned about indiscriminate use of wiretapping and other electronic devices. Since then, concerns have broadened to the point that the voters of Alaska in 1972 amended the constitution to specify that "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." (Section 22)

There have been no significant pressures for other amendments to Article I. Several proposals have been made to revise grand jury provisions and to add language that would protect Alaska culture and lifestyles. Other issues within the purview of this article are guarantee of economic rights, bail, penal administration, and provision for "right to life."

Section 3: Economic Rights

It was proposed during the 1955 convention that the civil rights section provide for protection of economic as well as civil and political rights. The purpose was to clearly cover the right of employment and equal opportunity for employment, especially for Alaska Natives. The proposal was not adopted for several reasons: some delegates worried that the "right to work" and collective bargaining issues would get mixed up in a civil rights clause; "civil" was considered to include "economic"; and protection of economic rights does not appear in the federal constitution nor that of any other state.

Since the constitution was written, the concept of equal employment opportunity has been widely accepted. It is now incorporated in federal and

state laws and is followed by most large-scale private employers. Some people, however, continue to believe that protection of economic rights is sufficiently important to be included in the state constitution.

Section 8: Grand Jury*

Existing language provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury..." The provision was modeled after the Fifth Amendment to the federal constitution, which had derived it from English criminal jurisprudence.

Changes to this section of the constitution have been proposed that vary only in degree of revision:

1. The grand jury indictment process should be replaced by a probable cause hearing procedure.
2. The grand jury process should be retained, but it should be complemented by a probable cause hearing procedure.

It has been widely agreed in recent years that the accepted function of the grand jury as a safeguard interposed between this state (presecutor, district attorney) and a defendant is not generally being fulfilled in actual practice. Even though court rules have restricted some of the more undesirable practices, the grand jury is not deemed effective to protect the private citizen against malice or bad judgment on the part of the prosecutor. In addition, the grand jury indictment process is said to have become a focal point for technical and procedural attacks by defendants, causing delays in

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* This discussion is based in part on the February 1975 report by Michael Rubenstein "The Grand Jury in Alaska: Tentative Recommendations to the Judicial Council."

the process of justice. Further, it is charged that prosecutors may use the grand jury to avoid accepting due responsibility for the decision whether or not to prosecute in certain close or sensitive cases. Also, the grand jury system is accused of unfairness to defendants because they are not allowed to be present at the proceedings to confront the witnesses testifying against them. Another argument is that grand juries do not appear to advance the progress of most cases toward final solution. Lastly, a grand jury is criticized as no longer playing a useful part in the adjudicative process and having become, in effect, little more than an historically-based ritual.

There are two alternatives to the grand jury process. One is the "probable cause preliminary hearings" procedure, the other is the "information system." Under the preliminary hearing procedure, the prosecutor presents his proposed indictment and his witnesses before a judge rather than the grand jury. Witnesses are questioned as to facts which the prosecutor hopes will show probable cause to believe that a crime was committed and probable cause to believe that the defendant was the one who committed it. The defendant himself is present with his attorney, and an opportunity is provided for cross-examination of the witnesses. The defendant may testify and call his own witnesses, but he need not do so.

While this procedure could make it more difficult for the prosecutor to obtain a felony indictment, the process can lead to much more expeditious resolution of cases. It overcomes the problem that the grand jury, in most instances, does nothing to advance a case along the road to final disposition because the one-sided presentation that it is exposed to does not allow for

a realistic assessment of the probabilities of successful prosecution. Nor does it serve to bring both sides together in court early in the proceeding to confront each other and begin working for a final resolution. Preliminary hearings further both of these objectives.

Under the so-called "information system", a charging document is filed in court by the prosecutor. It is based upon his own conclusions without any grand jury or judge to screen the evidence. This approach eliminates the grand jury process as a "rubber stamp" step that serves no particular function. However, although the present system may be ineffective, the alternative of no check whatsoever upon initiating a prosecution would seem unacceptable from either the standpoint of justice or from that of efficient administration. (Section 3 now provides that grand jury indictment can be waived by an accused, in which case prosecution is by information. Similar waiver can be authorized under the probable cause and preliminary hearing approach.)

Preliminary hearings procedures have actually been instituted in Alaska by the court system. Those who have been involved in and observed the process have generally found that it worked quite satisfactorily, usually bettern than the grand jury system. A defendant could be represented by counsel and had greater assurance that their rights would be protected. Although prosecutors had to do more preparation, they have been able to explore the defendant's case and interrogate his witnesses. The principal problem was that more attorneys and time were required than in processing cases through grand juries. However, it is likely that in the long run more cases will be settled as a result of the preliminary hearing and the necessary

finding of probable cause. Thus, overall economies will be effected while justice is being better served.

Assuming that a change is desired in the procedure for initiating criminal prosecution, there are several ways of changing from the grand jury to the preliminary hearing system: by practice, supreme court rule, supreme court decision, or constitutional amendment. The judicial system has, in effect, begun to use the preliminary hearing, and its use could be readily expanded so long as the various parties and interests continue to be satisfied. The fastest and easiest way would be to institute the change by supreme court rule, which could continue to give a choice between the two methods. There are some who believe that a supreme court decision establishing the preliminary hearing method as a right for defendants will be forthcoming sooner or later.

In view of these alternatives, constitutional change can be viewed as applying a major remedy when simpler processes are available. Amending the constitution may, however, turnout to be the most expeditious way, especially if the supreme court has not acted prior to a convention, if and when one is held.

Section 11: Right to Release on Bail

An accused in a criminal prosecution is now entitled to be released on bail, "except for capital offenses when the proof is evident or the presumption great."

A proposal has been made to expand the exception to also disallow release on bail to persons who may cause a danger to other persons or the community.

This suggestion is designed to help prevent occurrences of criminal acts being performed by persons accused of criminal acts who are out on bail. A seperate proposal would make ineligible for bail a person held for non-capital felony involving violence when the accused has been twice convicted of violent felonies. Bail could be denied only after a hearing and determination by a judge that there is evidence substantially showing guilt.

Section 12: Penal Administration

Part of the section provides: "Penal administration shall be based on the principle of reformation and upon the need for protecting the public." It has been proposed that this base should be expanded to include "just punishment" and "deterrents".

New Issue: "Right To Life"

Restriction of abortions has been proposed to the "right" of the unborn to be born and to live.

This matter was not an issue before the 1955-56 constitutional convention, as anti-abortion laws were extremely strict at that time. It is only since federal and state courts have upheld women's right to abort unwanted pregnancies that the issue has assumed massive and highly emotional proportions. One result has been a spate of statutory and appropriation restrictions on the expenditure of public funds to perform abortions. The impact has been principally to limit ability of poor women to obtain legal abortions.

"Right to life" advocates have two constitutional means of limiting abortions. First there could be a recognition and affirmation of the "right",

together with a directive to the legislature to implement the section; this would be akin to the privacy provision in Section 22. Second, a provisio could be included to prohibit or restrict the use of public funds to support abortions.

Constitutional recourse could also be taken by advocates of women's free choice to avoid undesired pregnancies. Their objective can be achieved by establishing the "right" of women to obtain abortions and/or restricting the legislature from imposing any limitations on such a right.

Abortion is probably not appropriate constitutional matter, particularly as the U.S. Supreme Court has established women's basic right to this procedure. However, passions on this issue run strong, and the state constitution may well be seen as a vehicle for asserting one's position. Faced with the same issue, the state legislature has refused to enact limiting statutes or restrict appropriations.

It must be recognized that the whole abortion issue is highly controversial and devisive. It could easily wreak havoc with a convention referendum and a constitutional convention.

New Issue: Alaska/Native Culture and Lifestyles

If the constitution had been written in the mid-70s, Native rights, freedom of culture, and the right to subsist off the land would have received major attention. Such was one conclusion reached during the 1976 constitutional review conference.

(The subject was given attention during the 1969 Brookings seminars, and some interesting conclusions were reached. Rather than recite those, the

findings and recommendations of the Future Frontiers conference will be used to develop this further.)

(A broader discussion of Alaska Natives and the constitution will be found at the end of this paper.)

ARTICLE II: THE LEGISLATURE

In establishing the governmental structure, the constitutional convention of 1955-56 acted on the premise that just as individual prerogatives should be enhanced to the utmost, so government should function as effectively as possible. Accordingly, each branch -- the legislative, executive, and judiciary -- was to be effective and strong in its own right. Because its powers and structure were strictly limited by Congress, the territorial legislature was quite weak. Legislative reform was, therefore, one of the primary objectives of the statehood movement and the constitutional convention. As a result, constitutional provisions were designed to achieve a strong legislature and an effective legislative process, including a legislature of sixty members, annual salaries, annual sessions without limit on length, a legislative council, and restrictions on enactment of local and special legislation.

Proposals to revise the legislative article are directed both at further strengthening the legislative process and at creating limitations stricter than those provided in the constitution. Among both categories are suggestions for a unicameral legislative structure, increase in membership, revising qualifications and disqualifications of members, limiting salaries and length of sessions, and others.

Section 1: Unicameral Legislature

Alaska's Constitution provides for a senate with a membership of twenty and a house of representatives with a membership of forty. Extensive discussion was given during the constitutional convention to the alternative of

a single-house legislature. Principal agruments in behalf of a unicameral system were: a single chamber operates more effectively than two and is able to more thoroughly consider proposed legislation, while hasty action can be avoided by appropriate rules; conflict between two houses is eliminated, as is the need for conference committees; legislative responsibility is more definitely fixed; substantial savings can be achieved through a reduced staff; the power of special interest groups and lobbies to defeat legislation is reduced.

Arguments favoring the bicameral system claimed that it would retain a structure that has been proven in most states, preserve an effective system of checks and balances and a more deliverative process, and assure more representation for different groups. Further, proponents voiced fear that Congress (which had to approve the state constitution) would not look with favor upon a unicameral legislature, and they raised the spectre that Alaska voters also might not go along with the change from the traditional territorial system.

It was clear after a major debate that an overwhelming majority of delegates wanted to go with the bicameral system, and the issue became moot. However, the unicameral concept was built into the legislative process by specifying that the two houses would act in joint session on governor's appointments and vetoes.

The unicameral issue had actually been raised in Alaska prior to the constitutional convention. On two occasions, in the 1930s and 40s, bills were introduced providing for a single-house legislature. Both times the proposals failed, although a memorial to congress favoring unicameralism was

approved by the territorial house in 1945.

Since statehood, the issue has been raised a number of times in the state legislature. Repeated proposals for constitutional amendments originated in the house but either did not see house action or, if approved, were killed in the senate.

The arguments about legislative structure have essentially been the same as those during the constitutional convention. Additional pro-unicameral sentiment has, however, been engendered by the fact that since the one-man one-vote rule was established under the U.S. Supreme Court decision in Baker vs. Carr, the house and senate represent the same populations, a departure from the original constitutional concept of each house representing different constituencies. It has also been argued that standoffs and maneuvering between the two houses has been responsible for long legislative sessions, and that the last minute legislative rush and the use free conference committees have resulted in irresponsible legislative practices and in poor legislation.

As before, countering these positions is the position that separate houses tend to check each other, result in greater consideration of bills, and help avoid bad laws. Most significant so far has been senators' opposition to diluting the power they can exercise in a twenty-member body.

As a result of continuing frustration, house members (lead by Representative Bill Parker) brought a referendum before the voters to obtain an expression about their views on the subject. Since under the constitution an initiative cannot be used to amend the constitution, the vote was to be strictly advisory. However, its sponsors hoped that popular approval of a unicameral legislature might exert sufficient pressure on the state to support

a constitutional amendment.

At the election, voters approved the single-house legislature proposal by a vote of in favor and opposed. However, this action did not result in any follow-up by the legislature. Although, an amendment for a unicameral legislature was again introduced, the senate has so far again refused to put the proposition before the voters.

A change from a two-house to a single-house state legislature can only be put into affect by changing the Alaska constitution. History so far indicates that an amendment to effect such a change will not be agreed to by the state senate. Therefore, it is now fairly clear that bringing about the change to a unicameral legislative structure would require a constitutional convention.*

An alternative way to establish the unicameral system would be created if the constitution were changed to allow for amendments to be proposed and approved by the voters through the initiative process. This subject is discussed under Article XIII.

Section 1: Membership

A number of constitutional amendments have been proposed to provide for an odd number of legislators in each house. Proposals have also been made to also increase the total membership of each house. Thus, several suggestions would increase senate membership from twenty to twenty-five and house membership from forty to fifty-one. The purpose of increased membership is to

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* Some time ago, after years of working for a single-house legislature, then state representative Ted Stevens decided to give up any attempt to obtain action by the legislature and, instead, urged the calling of a constitutional convention to effect a transition to a unicameral system.

spread legislative committee work among more people and to achieve smaller election districts. The principal reason for an odd number of members in each house of the legislature is to lessen problems of initial organization of each legislature that arise when parties or coalitions command equal number of votes. However, the matter of resultant districting difficulty needs to be addressed. At this time, with the house having twice as many members as the senate, senate districts can be multiples of or coterminous with house districts. If, as under the various proposals, the house membership is not double that of the senate, apportionment of legislative seats may become more complicated. Thus, unless the variance per member can be accommodated in a large multi-member district such as in Anchorage, either an excessive deviation from equal population standards may result, or a confusing differentiation between house and senate district boundaries may arise. These difficulties can be dealt with if the objective of odd-numbered memberships are considered more important.

Section 2: Members' Qualifications

SECTION 2: A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceeding his filing for office. A senator shall be at least twenty-five years of age and a representative at least twenty-one years of age.

Two changes have been proposed to this section. One would eliminate the age requirement, and the other would modify the district residence requirement to accommodate changes occurring as a result of legislative redistricting.

It has been variously propsed that the constitution contain no minimum age requirement for legislators so that any qualified voter would be eligible

to serve in the legislature. This change can be effected by eliminating the last sentence in Section 2. This issue is pretty much one of personal philosophy. Recent years have shown that some of the youngest candidates elected made far more effective legislators than many of their elder colleagues. Terry Miller of Fairbanks and Terry Gardner of Ketchikan are prime examples. Under the present constitutional provision, neither met the age requirement to serve in the senate at a time of achieving high position in the house of representatives.

The stipulation that a member of the legislature must be a resident of the district from which elected for at least one year prior to filing for office could conceivably raise a problem for a legislator then in office when district boundaries are revised as a result of reapportionment. Accordingly, an amendment was considered in 1972 (SSJR 44) which would have provided that a legislator must have been "for at least six months, a resident of an area which, under the plan for redistributing and reapportionment in effect for the immediately preceding election, was a portion of the district from which he was elected." This somewhat cumbersome provision was not approved by the legislature, and to date no problems have arisen to necessitate the change. The original constitutional language would appear to be broad enough to cover the purpose of the proposed amendment.

Section 5: Disqualifications

> SECTION 5: No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

Several changes have been suggested to this section: eliminating the restriction against office holding under specified conditions; exempting educators from the restrictions of this section; and substituting "lieutenant governor" for "secretary of state" in the second sentence. When the constitution was amended in 1970 to effect the name change to lieutenant governor, amendment of this section was inadvertently omitted.

Proposals to revise the one-year restriction on state office holding are predicted on the idea that legislators frequently have the kind of background and experience that would make them valuable members of the state executive branch. Suggested changes range from eliminating the restriction altogether to exempting from the restriction any salary increases resulting from recommendations by a salary commission or from a collective bargaining agreement. The latter approach would be designed to differentiate salary increases resulting from third-party recommendations or across-the-board raises from legislative action affecting individual positions to which a legislator might aspire. Such action may, however, not be necessary since the state superior court, in Jefferson vs. Strandberg, ruled that the one year provision applies not to general, across-the-board pay increases but only to isolated pay actions for specific state positions.

A separate proposal would exempt application of the section to "employment as a teacher or school administrator by the state, a political subdivision of the state, or the University of Alaska." This suggested amendment is the result of an earlier court decision that employment by the state as a teacher constituted a "position of profit" and could not be maintained while serving as a legislator.

Section 7: Salary and Expenses

Establishment of legislative compensation caused much debate during the constitutional convention and has been a problematic issue ever since. The constitution simply provides that legislators receive annual salaries. Providing for level of compensation has been left to the legislature.

The initial constitutional convention proposal called for an annual legislative salary equal to one-third of the governor's salary. However, ovjection was raised both to the payment of an annual salary and to the amount. Extensive debate took place on both issues, with a string of amendments presented to establish a daily rate and to limit both salary and per diem to a different percentage of the governor's salary.

A strong majority accepted the concept of an annual salary becuase the legislators perform legislative duties whether in session or not. There was also a feeling that daily compensation would encourage longer sessions, whereas an annual salary would encourage legislators to conclude their business with as much dispatch as the public interest would permit.

Most veteran legislators in the convention supported a high level of compensation to attract good people and compensate them for actual expenses and for loss of other income. The majority of those who had never been in the legislature supported a lower compensation.

Discussion about the level of an annual salaries dealt with a variety of ratios of a hypothetical gubernatorial salary. Relating these rates to different lengths of sessions (delegates expected that initial sessions after statehood might last up to five months, after which only one or two months might be required) and then computing daily income resulted in projections

of compensation that could range anywhere from $20 to several hundred dollars a day. In the end, the delegates agreed by a very close vote to set and provide for an annual salary without constitutional limitation. This action was taken in the interest of obtaining good legislators with high pay, while avoiding a fixed ceiling that might be unacceptable to the public and be overly inflexible.

Lack of constitutional directive or guidance on the level of compensation has, however, put legislators in the difficult position of establishing their own pay. Whether they do it directly or through a vehicle such as a salary commission, the public expresses much resentment about high salaries even when these may seem quite reasonable to legislators. In fact, voters in a 1976 referendum defeated a pay bill that had been enacted by the legislature, thus accentuating the issue.

Whether a truly satisfactory constitutional resolution of the issue can be evolved is somewhat questionable. While some would establish a limitation on legislative salaries, experience in other states has shown that where a specific amount is set in a constitution it quickly becomes obsolete. Changing the established salary by constitutional amendment is virtually impossible.

Setting a ration between legislative salaries and that of a governor may be somewhat more feasible now than when the constitution was written. The character and scope of legislative service is much clearer now than prior to and in the early years of statehood. Thus, a practical ratio might be established now, whereas in 1955-56 delegates struggled vainly to do so.

An independent salary commission provides a potential vehicle for handling the conpensation issue. But such commissions have quite often come forth with substantial salary increases that proved highly unpopular with the public and put extreme pressure on legislators at both federal and state levels to override or restrict their recommendations for political reasons.

Section 8: Session Limit

No limit on the length of legislative sessions is established in the state constitution. As sessions have become longer in duration over recent years, a series of resolutions have been introduced to restrict their duration. However, none of the proposed constitutional amendments have been approved by the legislature.

At the 1978 general election, the legislature asked Alaskans to cast an advisory vote on establishing a maximum 120 day length for regular legislative sessions; provision was included for a ten day extension by concurrent vote of each house. The actual proposition asked voters whether a constitutional amendment to that effect should be placed before the qualified voters at the 1980 general election. Voters approved the proposition by a margin of 3 to 1.

Arguments in behalf of a session limit focus principally on the increased order and speed that would result from everyone being aware of timing requirements and session deadlines. Opponents argue that the increased complexity of state business necessitates availability of adequate time for legislative consideration, and that specific closing dates would work into the hands of

powerful lobbies that would have an easier time killing legislation they dislike.

Actually, both sides to the issue agree that shorter sessions are desirable, and the principal question is whether a constitutional limit needs to be established. An alternative to setting a maximum session length is establishing stricter guidelines and deadlines for legislative work and increased recourse to and greater effectiveness of interim committee work.

Several variants to session limit proposals have been submitted and discussed in the past. Among these is a proposal to recess the legislature 65 days after the governor submits his budget, unless the legislature by extraordinary majority votes to proceed without a recess. The legislature would subsequently reconvene in special session, with the principal order of business being the general appropriations bill. The purpose of this approach is to get the regular business of the legislature out of the way, permit interim work on the budget, and then concentrate exclusively upon the budget after recess.

Section 11: Interim Committees

The governor's authority to make budget revisions after the legislature enacts the annual appropriations bill has been a matter of controversy for a number of years. Legislative attempts to have the budget and audit committee exercise approval rights over budget transfers and over expenditure of federal and other program receipts have been struck down by the courts as unconstitutional. To accomplish its objective, the legislature then

proposed that the constitution be amended to establish an interim committee to approve state budget revisions jointly with the governor. Voters defeated this proposed constitutional amendment by a 3 to 2 margin.

The issue in this controversy is the question of whose prerogatives are being abbrogated under the present system and whose would be limited if a change were effected. In other words, it is a question of executive versus legislative power.

The legislative argument is that gubernatorial transfer of funds from an appropriated purpose to another constitutes an amendment of a legislatively enacted appropriations bill. However, even though the constitution authorizes interim committees, it does not specifically provide for delegation of legislative powers to such committees. Accordingly, legislators favor a constitutional change that would authorize the legislature to establish an interim committee to approve state budget revisions.

Countervailing arguments are based principally on opposition to legislative interference with executive branch control and efficiency, which are responsibilities of the governor. Adequate legislative control is deemed to exist in the initial appropriation process and subsequent legislative audit of state expenditures.

According to the state supreme court, this is strictly a constitutional issue. Since Alaska voters have only recently turned down a constitutional amendment, the only potential recourse on this issue would appear to be via revision in constitutional convention.

Section 15: Action Upon Veto

(anything needed on this subject?)

New Issue: Free Conference Committees

Much criticism has been levied in recent years at the effects of legislative use of free conference committees. Such committees are utilized to resolve differences between bills passed by the two houses of the legislature. Composed of members appointed from each house, a free conference committee has extensive authority to revise the legislation approved by the two bodies, frequently bringing forth a version quite different from either of the original bills it considered. Bills reported by the committees are subject to approval by both houses.

Critics of free conference committees deem that these bodies become "super legislatures", because they effectively function beyond control of the membership. This results from committees usually holding their results until the very end of the session. Usually dealing with some of the most important legislation, committee reports then have to be dealt with during an adjournment rush that provides little time, if any, for consideration of the changes made. The result has been characterized as embodying the worst possible features of a unicameral legislative system, one functioning without proper rules and safeguards.

Despite criticisms, conference committees are needed in a bicameral legislature to help adjust differences between legislation emanating from the two houses. The committees are established under legislative rules.

There is no constitutional language dealing with such committees. And none seems required, since problems and abuses could be dealt with by the legislature if its members so desired. It is only in the case of continued ill feeling about the use of free conference committees that a constitutional convention, if one were called, might deal with the issue. A legislatively-sponsored amendment is, of course, highly unlikely.

ARTICLE III: THE EXECUTIVE

Constitutional provisions for the executive branch were designed to establish a strong executive to complement a strong legislature and an independent judiciary.

Under territorial government, executive authority was highly defused. Many functions were under direct federal agency jurisdiction, such as road building and fish and game. Other functions fell under federally appointed officials, who included the governor, Secretary of Alaska, judges, district attorney, tec. To dilute the authority of the federally appointed chief executive, the legislature provided for a number of elected officials (attorney general, treasurer, highway engineer, and commissioner of labor) and established dozens of boards and commissions as a further means of bypassing federal control.

Government then was neither responsible nor responsive to the people of Alaska. As a result, convention delegates were ready to make basic structural changes so the people could hold the governor wholly responsible for the conduct of state adminstration. There was consensus, both within the convention and throughout public hearings, that the constitution should provide a strong executive who would appoint state department heads. The governor was to be responsible for his entire administration.

Some critics have since argued that governors have too much power under the constitution, although others have held that state executives have actually not utilized their authorities and responsibilities sufficiently to serve the people well. In these times, a strong governor is considered

by many important to upholding the state's interest in dealing with the federal government.

Generally, observers have deemed the executive article to have served Alaska well, as evidenced by the lack of any substantive amendments. The only change has been to rename the "secretary of state" as "lieutenant governor".

Sections 4 & 5: Governor's Term of Office and Tenure

The constitution establishes the governor's term of office at four years (Section 4) and authorizes the governor to serve two full four-year terms (Section 5). Incumbent governor Jay Hammond has suggested that state governors serve a single six-year term. The principal reason for the proposal is to eliminate a governor's concerns about reelection and, with the compromises and political expediencies that such concerns usually beget. It has also been suggested that too large a part of a four year term is devoted to becoming an effective governor and that the end of the term, and reelection time, approaches too soon after that. A six-year term would permit the government and implement and the policies upon which he was elected.

Opponents of this idea argue that a six year term is too long and that voters should have an earlier opportunity to effect a change in administration if they so desire. The brief history of the state demonstrates that voters are quite ready to change governors before they have completed two full successive terms; in fact, Hammond is the only exception.

Section 7: Lieutentant Governor

Members of the constitutional convention committee on the executive branch did not want a lieutenant governor who would mainly "lay corner-stones and address chamber of commerce luncheons". To prevent that, they proposed that the position be closely tied to that of the governor, assuring both a working relationship and a logical succession. The idea was accepted in the constitution, which provides that the people would have the opportunity to select their lieutenant governor by vote in the primary and that he then run jointly with the governor in the general election, thus assuring that both would be of the same political party while having been popularly selected. This decision was arrived at after considering other alternatives such as an independently elected lieutenant governor or one appointed by the governor.

Although there has not been much public discussion of the lieutenant governor's roel or method of selection (except during election times by candidates for that office), most panelists evaluating the executive branch during the 1976 constitutional review conference were of the opinion that the lieutenant governor should be selected by the gubernatorial candidate prior to the election and then run as a team. References to the existing selection process described it as "ridiculous, a sham" where the two candidates "run in a half-baked fashion together" (John Hellenthal), a "non-buddy system" which "guarantees the second best" and creates a testing ground for "grade D" politicians (John Havelock), a system where if something happens to the governor "we'd wind up with the second, third, fourth, tenth best person" (Andy Warwick). Reference was also made to clashes between incumbents in

the two top offices and even occasional hatred between them.

No constitutional amendment to change the lieutenant governor selection process has been introduced so far. The present method was devised by the constitutional convention to overcome the practice of ticket balancing that also frequently results in not such good candidates in the second elective position. Under the current method at least, the lieutenant governor candidates, as well as the candidate for governor, is initially selected by the voters in primary election. (Independent candidates, who do not run in the primary, do run on a self-selected basis.)

Section 13: Succession

Constitutional provision is made for succession of the lieutenant governor in case of a vacancy in the office of the governor. Further provision is to be made by the legislature for succession to the governor's office and for an acting governor in the event the lieutenant governor is unable to succeed to the office or act as governor. (What is the problem? Why further constitutional language proposed? What?)

Section 25: Election of Attorney General

Heads of all principal executive departments are appointed by the governor. That constitutional provision includes the office of attorney general, head of the state department of law. However, proposals for election of the attorney general have been made many times since statehood.

Election, rather than gubernatorial appointment, is usually favored by those who are displeased with activities of the state administration, including the governor's political opposition. But, even when the "outs" have advocated making the attorney general an elective office, they quickly abandoned the idea once they were "in". For internally, the appointive method seems to work well for the operation of the executive branch, with the attorney general usually one of the closest policy advisors to the governor. That has not, however, let the issue die, for there are still continuing questions about the various roles of the attorney general, particularly those pertaining to the administration of justice.

1955 convention delegates discussed at length whether the attorney general should be elected or appointed. A problem in that debate was lack of agreement about functions of an attorney general. Some viewed his role as strictly that of a legal advisor to the governor and to other officers in the executive branch. Others believed he performed similar functions with respect to the legislature. Yet others felt that because the attorney general prosecutes cases on behalf of the state, he should be independent of those (including the governor) responsible for administering the state's police functions. And some further argued that a major purpose of the attorney general's office was to keep the executive honest. Despite these disagreements about functions and responsibilities, however, delegates overwhelmingly rejected proposals for making the attorney general elective or subject to nomination through the judicial council in a method similar to that provided for judges.

It would be difficult to resolve the attorney general issue without reaching at least some agreement about the role of that office. One possible approach would be to establish two seperate offices or departments to divide responsibilities for functioning as legal counsel to the executive branch and for administration of justice.

Election of the attorney general remains another option, though it would be viable only if that office were divorced from serving as the governor's legal advisor. The election option had been rejected by the constitutional convention principally to avoid politicizing state admistration of justice and potentially creating power conflicts between the governor and attorney general.

Further proposals have been made to elect district attorneys and state prosecutors. This idea had not even been considered by constitution writers as it would have been counter to the basic principle of focusing responsibilities in a limited number of department heads and, ultimately, in the governor. The arguments applied against election of the attorney general and judges -- opening positions involved in the administration of justice to all the undesirable aspects of partisan and elective politics -- would certainly have also been brought to bear to defeat such proposals in the convention.

ARTICLE IV: THE JUDICIARY

Alaska has a unified judicial system under the constitution. It consists of the supreme court, superior court, and other courts established by the legislature. The entire court system is under the rule-making authority of the supreme court; the chief justice is the administrative head of all state courts.

Three amendments to the judiciary article have been adopted. Two of them, approved in 1970, were designed to avoid abuse of power by the chief justice. An amendment to Section 2 provided for selection of the chief justice by a majority vote of the supreme court justice, rather than having him designated by the governor; it also limited service as chief justice to one consecutive three-year term. Section 16 was changed to specify that the court's administrative director serves at the pleasure of the whole supreme court, rather than just at the pleasure of the chief justice. In 1968, the original section dealing with removal of incapacitated judges was repealed, and a new section creating a commission on judicial qualifications and establishing a revised process was enacted in its place.

Other proposed revisions to the article have dealt with election of judges and composition of the judicial council.

Section 5 & 6: Selection and Retention of Judges

The existing judiciary article of the constitution embodies a nonpartisan plan for selecting judges that is based on the American Bar Association and Missouri Plan models. Under it, the governor appoints judges from nominees

presented to him by the judicial council, which is composed of three laymen appointed by the governor with the consent fo the legislature, three attorneys named by the organized state bar and the chief justice, who serves as chairman. Three years after his first appointment, a judge must submit his name to the voters for approval or rejection. Once approved, a superior court judge goes before the voters for reconfirmation every six eyars, and a supreme court justice stands for popular approval every ten years. The purpose of this provision is to make judges responsible to the people without subjecting them to partisan politics or competitive campaigns for election or reelection.

Although the alternative of electing judges was debated at the 1955 convention, the appointment process was approved by 51 to 2 vote. Despite that overwhelming approval of the appointment process by convention delegates, the proposal to elect judges rises periodically. Numerous resolutions have been introduced in the legislature to provide for election of judges. The argument for this method is generally related to achieving greater responsiveness of judges to the public wishes and values. The counterargument, of course, is the reverse side of the coin: elections would subject judges to partisan politics and competitive campaigns for election or reelection. It has been estimated that at least 90 percent of state bar association favor the judicial appointment system over elections.

In the retention election held three years after initial appointment and periodically thereafter, judges run unopposed on a non-partisan ballot. The reconfirmation process has been criticized because without traditional party

guidelines and the clash of personalities, the generally low visibility of court-related issues precludes voters from making an informed decision about on-the-bench performance of a judge. Unless they hear news of serious criminal charges concerning an incumbent judge, typical voters will either cast an automatic "yes" ballot or not bother to vote at all. Inevitably, the outcome of such "merit retention" election has been a heavy majority in favor of retention, subject only to the possibility that some special interest group might mount enough of a campaign against a judge to provide the decisive element in a low-turnout, majority "no" vote.

The validity of these criticisms turns in large part upon the problem whether the public is informed about the record and qualifications of retention candidates. A recent survey sponsored by the judicial council showed that Alaska voters do want to know more about the justices and judges they are voting on. In particular, people want to know more about judges' performance records, their personal attributes, and their positions on key laws and issues. Alaska is the only state that has a statutory requirement for judicial evaluation.

To deal with the problem of providing information to the public, the legislature in 1975 required the Alaska judicial council to evaluate judges and provide the information to voters. Currently, the council evaluates judges according to a list of criteria that includes legal knowledge, reasoning ability, sentencing factors, equal treatment of all individuals, restraint from favoritism, a basic sense of fairness and compassion, willingness to work diligently, and integrity. Evaluations themselves are determined with the help of polls among a variety of groups, including attorneys, peace officers,

and jurors who have served under a particular judge. Rural problems have arisen in evaluation of judicial performance, due primarily to lack of objective measures. The judicial council is now investigating measures to bring about more effective and useful evaluations and better means of informing the public.

Giving more information may not, however, still the criticism of the retention process. The record to date shows that only one justice has been rejected by the voters, a person respected by his peers and by knowledgeable attorneys; on the other hand, judicial council recommendations for non-retention of judges have been ignored by voters. It has, therefore, been suggested that the judicial qualifications commission would provide a more valuable and efficient instrument for screening out judges who should be removed or disciplined. A further suggestion is that th commission also be entrusted with initial screening of judgeship candidates, so that both the nominating and the evaluation responsibilities would be lodged in the same body, thus assuring consistent application of standards.

Section 8: Judicial Council

The judicial council performs a key role in the selection of judges and conducts studies for improvement of the administration of justice. The council consists of seven members: three attorney members appointed for six year terms by the board of governors of the Alaska Bar Association, three non-attorney members appointed for six-year terms by the governor subject to confirmation by the legislature, and the chief justice of the supreme court, who is chairman of the council.

At the end of the constitutional convention, some criticism of the judicial article was voiced by a group of convention consultants. Specifically, they felt that the article went "a long way toward withdrawing the judicial branch from the control of the people of this state and placing it under that of the organized bar. No state constitution has ever gone this far in placing one of the three coordinate branches of the government beyond the reach of democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is necessary or safe in putting them in the hands of a private professional group, however public-spurted its members may be." The consultants suggested a number of revisions that would, in their view, democratize the proposed system by providing for legislative confirmation of attorney members of the judicial council, adding a superior court judge and another lay member to the membership of the council, and other changes. In view of the late hour of their suggestions, none of them reached full convention consideration.

Among more recent proposals for revision in the memberhsip of the judicial council was one to increase its membership from seven to fifteen. The change proposed by Senator Hjalmar Kerttula in 1969 would have left the three attorney members, increased the number of non-attorney members from three to five, and provided for non-attorney members of the legislature, two from each house; in addition, one superior court judge and one district court judge would be appointed for six-year terms by the chief justice. Although, these proposals for council expansion have been made to reduce the

influence of the bar association, Alaska judicial council executive director Michael Rubenstein and other legal specialists believe the present composition is satisfactory and that lay members are not overpowered or dominated by lawyers. Rather, he sees the lay members as having full understanding of what goes on and as being characterized by individualistic, independent thinking and common sense attitudes. Thus, he sees council composition as being quite satisfactory.

Section 10: Commission on Judicial Qualifications

The commission is composed of five judges (one supreme court, three superior court, and one district court), two attorneys selected by the state bar association and two lay individuals appointed by the governor and confirmed by the legislature. Suggestion has been made that the commission's composition be changed by constitutional amendment to include only three judges and to increasing attorney and lay membership to three each, leaving the total commission membership at nine. This is deemed to provide a better balance and would accord with the American Bar Association model for judicial qualification commissions.

ARTICLE V: SUFFRAGE AND ELECTIONS

Voter qualification provisions set forth in the first section of this article has been amended three times, more changes than have been made to any other section of the constitution. In 1966, an amendment was approved to permit the residency requirements for voting for the President and Vice-President of the United States to be prescribed by law. A 1970 change lowered the voting age from 20 to 18, something that was proposed during but not approved by the 1955-56 constitutional convention. The third amendment, also approved in 1970, eliminated the requirement of ability to read or speak the English language as a prerequisite to voting.

No further changes to this article have been proposed during the past decade. Has anything constitutional in nature emerged from legislature and lieutenant governor deliberations on electoral reforms?

ARTICLE VI: LEGISLATIVE APPORTIONMENT

Alaska's original constitution established an apportionment system under which the house of representatives largely, but not completely, based on population. The senate was designed to reflect geographic/regional components of Alaska. The districting and apportionment provisions of the 1955-56 constitution were evolved after much dessension and through hard fought compromise between those who pursued the one-man one-vote principle (which had not yet been sustained by the U.S. Supreme Court) and those who were concerned that people of sparsely settled and remote areas also be represented in the legislature.

Now, however, much of the article is obsolete in view of the U.S. Supreme Court's one-man one-vote rule (Baker vs. Carr). Thus, the use of "methods of equal proportions" (Sections 5, 6, and 7) and limitation on changes in senate districts and apportionment (Section 7) are no longer in force. It is problematical what degree of freedom, if any, the Alaska constitution can have to deviate from a one-man one-vote under the U.S. constitution. Strong arguments ahve been made that the geographic and demographic characteristics of Alaska are such as to necessitate adjustments to usher rural areas and native population of adequate representation. This problem will become ever more serious as urban concentrations in Alaska continue to grow and include an ever increasing proportion of Alaska's total population.

It is questionable what constitutional changes can be made in Alaska to resolve this situation. Probably all that can be done with the article is to delete and revise obsolete and inapplicable matter.

ARTICLE VII: HEALTH, EDUCATION & WELFARE

Section 1: Public Education

In part, Section 1 provides: "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." An even tougher provision (which would have prohibited "direct and indirect" benefits to any religious or other private educational institution) was rejected in order not to restrict help to children to attain the fullest level of individual development through programs, such as free lunches and bus transportation. However, court interpretation of the constitution has strictly limited the assistance that could be provided to non-public institutions, in effect maintaining a very strict line between expenditures for public and private educational purposes.

The constitutional provision was primarily aimed at institutions and was not meant to restrict assistance available to students. Furthermore, convention consideration of this issue was directed exclusively at primary and secondary school education, whereas current questions revolve mainly around state aid to higher education.

Section 2: University of Alaska

An issue that may well require constitutional resolution is the emerging conflict between the legislature and the University of Alaska. The University claims that under Section 2, it has special status within the overall structure of state government and that legislative authority over the university and the board of regents is limited. The issue is now before the court as

a result of a lawsuit brought by the University of Alaska to establish its freedom from legislative control. While the state supreme court may eventually rule on the respective authorities under the constitution, a change in the constitution's language may be necessary to resolve the conflict and accommodate the disparate interests, a resolution that can probably not emerge from the legislature, since it is a direct party in interest.

Section 2 of Article VII reads:

> The University of Alaska is hereby established as the state university and constituted as a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law.

The university has claimed that the legislature is given only limited jurisdiction under this provision and that the manner in which it manages its finances is not subject to specification by law. The legislature, on the other hand, has continued to specify in significant detail how the university will administer its funds, and has thus established a basis for controlling operations of the university.

A proposed constitutional amendment was introduced in the legislature to specify that funds appropriated to the University of Alaska, as well as its property, shall be administered and disposed of according to law.

ARTICLE VIII: NATURAL RESOURCES

According to terms of Alaska statehood bills pending at the time of the 1955 convention, more than 100 million acres of land would be transferred from federal to state ownership upon statehood. Alaska would also receive title to subjerged lands in contiguous waters and to lands under inland navigable waters. The state would assume ownership of all mineral resources on and under its land. It would take control over commercial and sport fisheries and wildlife resources. Thus, it is no wonder that the drafting of provisions covering the natural resources of the future state was viewed as one of the great challenges for the constitutional convention.

In preparing the natural resources article, the convention was conscious of how the federal government as well as older state governments had failed to conserve and properly develop land and water resources. Likewise, the convention was mindful of the inadequacy of federal management of Alaska's resources. It recognized the need to provide a harmonious balance between comsumption and preservation of resources, while at the same time preventing inappropriate exploitation or subversion of resources by special interests.

In drafting the resources article, the convention had no precedents to work with. Most state constitutions are silent on the subject. The few that deal with it cover only limited topics such as water rights, minerals, or land management. As a result, Alaskans had to "invent" their own constitutional provisions. This they di on the basis of modern resource

management principles and their own experience in Alaska.

An important factor to remember is that both the federal government and Alaskans in general viewed resources as the future economic foundation for the state. In order to assure its financial viability, the statehood bills being considered by congress were providing Alaska with a far greater share of federal lands than had been granted to any other state. Delegates and others similarly saw resources as the means by which the people and the state government would eventually be supported.

The '50s were a period of optimism and hope for Alaskans. The economy had been booming as the result of defense activities, and population had increased significantly. At the same time, Alaska was still a very undeveloped country with less than 200,000 people. The resultant emphasis was on economic development, and this direction is clearly reflected in Section 1 of the resources article:

> It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Section 2 pursues this statement of policy through a broad statement of legislative authority:

> The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

In this context, "conservation" refers to wise use of resources rather than their preservation, and "maximum benefit of its people" was designed to emphasize the greatest economic benefit to the most citizens. Further sections of the article pursued these basic concepts.

Conditions have significantly changed since the constitution was written and Alaska became a state. The dream of resource based economy has been realized: oil development has made Alaska a wealthy state. Although, economic aversification is still a goal being pursued, the viability of the state is no longer an issue. Concurrently with wealth, and partly as a result of it, there is an increasing concern about the quality of life and the environment. While partly reflecting national trends, it is also a factor closely related to the special characteristics of Alaska's people and their values.

As a result of these changes, the policies underlying the constitution natural resources article have been called into question. Various proposals have been made to change the statement of policy included in Section 1. Thus, one proposal would have substituted "wise use" for "maximum use" of natural resources as the basis of state policy and would have substituted the policy of protecting the natural environment for the present statement encouraging settlement of land and development of resources. (SSJR 60, Sixth Legislature, Second Session). While not all would substitute an environmental philosophy for the development thrust underlying the present constitution, others too have suggested creating more of a balance between these principles.

Some of the resource management concepts have also been called into question. For example, Section 4 specifies that replenishable resources -- fish, forests, wildlife, and others -- should be managed for "sustained yield." Delegates realized that the meaning of this term was vague and subject to

individual interpretation. And so it has proven, providing no basis for establishing specific standards or gauging limits for management purposes. The problem has been compounded by the evolution of such variances as "optimum sustained yield", "maximum sustained yield", and the like.

Similarly, delegates wanted the concept of "multiple use" of land applied wherever practicable. However, application of this concept is not easy in the real world. Emphasis on highest and best use has been increasingly substituted as a management principle, even though popular lip service continues to be given to the multiple use idea. The reason for the change is the infrequency of situations where different uses of land can be truly compatible and carried on concurrently. It has been found that realistically one use or another is considered better or preferred, with other uses then occurring so long as they do not interfere with the principal use.

The significance of any of these issues may be questioned. State management of its resources has not blatantly followed constitutional concepts when these were obviously inapplicable. The policy language of Article VIII is sufficiently qualified to allow for significant leeway. Thus, Section 1 modifies the land settlement and resource development policy by stating that their maximum use would have to be "consistent with the public interest." Similarly, the development emphasis of Section 2 is stated to be "for the maximum benefit of its people," and where the "maximum benefit" might lie on the side of environmental preservation, then the result could obviously move in the direction of non-development. Likewise, although the sustained yield and multiple use principles may be difficult to define, in

practice resource managers have had significant flexibility in administering state land and resource programs. Which, of course, leads to another criticism levied at the resources article: its lack of effective guidelines for managing the state's resources and environment.

Major developments of the past fifteen years were, of course, not taken into account by the constitution writers, principally Alaska Native land claims, major oil development, and the national energy crisis. Some participants at the 1976 constitutional review conference expressed the opinion that these are sufficiently significant to justify a review and updating of the resources article, if not necessarily the entire constitution.

* * *

Aside from issues of major policy directions and emphases, there do not appear to be significant problems with the resources article. Only one amendment has been made so far: revising the prohibition of exclusive rights of fisheries to permit establishing a limited fisheries entry program when in the interest of conservation, protecting the economic welfare of fishermen, or promoting agriculture.

A few other issues might, however, arise in a current review of natural resources article provisions.

Section 3: Common Use of Resources

Section 3 provides: "Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use." With increasing population and resultant greater pressures on game, relatively fewer

wildlife resources are available to the people of Alaska. This has created problems and conflicts, particularly between sports hunters and people depending on game to meet their basic food needs. The common use provision of Section 3 has been to argue against giving subsistence users a preferential right to game. Thus, in

the superior court found that sportsmen and other hunters from outside a region could not be prevented from taking game in an area that the state was by regulation reserving to local subsistence users. (But wouldn't Section 17 regarding equal application of regulations to all people similarly situated provide a ready way of providing for subsistence users; should the state wish to do that?)

Section 9: Land Disposal

A broad grant of authority is given to the legislature under Section 9 to provide for the sale or grant of state lands; Section 8 authorizes the leasing of lands. There are no policies, directions, or restrictions that would provide a basis for specific programs of land disposal by the state.

The only constitutional issue might arise in response to popular pressures for large scale land disposal. Dissatisfied with the level of state land transfers to individuals, advocates of increased state land divestiture might resort to the constitution as a means toward attaining their objective. (An initiative designed to promote land disposal, the so-called Beirne initiative of 1978, was ruled unconstitutional by the supreme court under Section 7 of Article XI, which prohibits the use of initiatives

to make appropriations.) While not specific, the constitution is certainly broad enough now to accomodate any policy or level of land distribution.

ARTICLE IX: FINANCE AND TAXATION

The finance and taxation article has been revised only once. It was amended in 1976 to establish the permanent fund as a means of preserving some of the state's oil revenues to privide income in the future.

Principal constitutional issues are potential establishment of limits on taxes and expenditures, increases in the share of petroleum revenues accruing to the permanent fund, and possible changes in the process of incurring state debt.

Section 1: Taxing Power

Alaska's constitution contains no limitation on the state's ability to levy taxes. Section 1 basically requires that the power of taxation will not be surrendered, suspended, or contracted away. Section 2 states that property of non-resident citizens may not be taxed at a higher rate than that owned by residents of the state.

Elimination or significant reduction of state income taxes has been proposed in legislation and in a pending initiative. Elimination and reduction of property taxes, now levied principally by municipalities, have also been suggested. Other proposals for sharing current oil wealth with citizens are also under discussion.

Some action in the area appears likely during the 1980 legislative session. No constitutional amendments to restrict taxation have been proposed. Since no taxes are levied by the constitution, the direct recourse,

of course, is through the legislative route. Lack of legislative action may, however, lead to public pressures for constitutional tax limitation.

Section 8: State Debt

Every two years, Alaska voters are asked to approve a large array of general obligation bonds. This they are required to do under the Section 8 provision that: "No state debt shall be contracted unless authorized by law for capital improvements and ratified by a majority of the qualified voters of the State who vote on the question." Section 9 exempts revenue bonds from the requirement for voter approval.

Bond issues are placed before the electorate as a result of legislative action. Generally, the legislature groups capital projects by major categories that provide something for each region and balance various interests. The result has been approval of almost all bond pro-positions.

This process has come under increasing criticism, for no one assumes responsibility for bonding proposals and increasing the state debt. The governor makes his recommendations to the legislature, which sometimes accepts his suggestions but generally develops its own bonding packages. Thus, the governor is only suggesting projects for legislative consideration.

Legislators, however, also assume no responsibility. All they do is put the propositions before the voters for approval. The voters, in turn, assume the legislature had a purpose in proposing the particular bond packages and so, since the proposals always contain something for everybody, they add their stamp of approval.

A discussion pertinent to this issue occurred during the 1955 constitutional convention. It was proposed that contracting of debt be authorized

either by two-thirds vote in each house of the legislature or, as now provided in the constitution, by majority approval in the legislature and voter ratification in statewide referendum. It was pointed out that a number of states already authorized borrowing by a super-majority vote and that this alternative would streamline bond consideration and save money in instances before approving a bond issue not supported by the required majority of legislatures.

The convention, however, chose to require that the public vote in all instances on creation of general obligation debt. Experience since then does indicate that the alternative would put a far greater responsibility on legislators when approving an increase in state debt. Furthermore, it would alert voters to obvious questions in those instances where lack of extraordinary majority in the legislature forces bond issues onto the ballot.

Section 12: Budget

In November 1978, the governor identifed creation of a constitutional limit on the size of the state budget as his top legislative priority for 1979. He did not, however, pursue the proposal.

Actually, the governor already has the means to limit growth of the state budget and of state government. Under the constitution (Section 12), the governor initiates the state budget. Experience over the years has shown that this budget becomes the basis for legislative consideration of expenditures, and the final budget is usually predicated on the governor's proposals. Even more important to the control of expenditures is the

governor's constitutional authority to exercise his veto power to strike or reduce items in appropriation bills (Article II, Section 15). Thus, control of excessive budget growth is within the power of the governor.

Popular desire to limit budget browth beyond any controls exercised by the governor and the legislature may well lead to proposals for establishing constitutional limitations. Few states, however, have so far found the kind of limiting language that does not concurrently hamstring effective, and frequently economical, operations of government.

Section 15: Permanent Fund

Restrictions against earmarking of state revenues were considered to be the most innovative feature of the constitution's finance article. In prohibiting dedication of funds (unless earmarking existed at time of ratification of the constitution or was required to participate in a federal program) delegates were following a principal tenet of public finance. Experience had shown that proliferation of dedicated funds could create a situation when neither the governor nor the legislature has any real control over the finances of a state. Thus, in one state the legislature was free to appropriate only 17 percent of tax collections; the rest were dedicated. Before statehood, close to 30 percent of territorial funds were earmarked.

Appearance of massive oil revenues gave rise to a constitutional amendment, approved in 1976, to authorize establishment of the Alaska permanent fund. Its objective was to save at least part of the state's mineral revenues for the future. The new Section 15 of the finance article

requires that at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds bonuses and federal mineral revenue sharing payments, be placed in the permanent fund. The principal of the fund is to be used only for income producing investments as specified by the legislature. Income from the permanent fund is to be deposited in the general fund unless otherwise provided by the legislature. Revenue from the sources now going into the permanent fund constitute only about half of direct state income from petroleum resources; the balance is derived from severance and property taxes. The share of oil and gas revenues being set aside is thus actually only one eighth (1/8) of the total being received by the state. Proposals have been made to increase this amount to anywhere from one fourth (1/4) to one half (1/2) of total petroleum income received by the state.

While the legislature can deposit into the permament fund more than the constitutionally specified minimum of petroleum revenues, such action would in no way guarantee that subsequent legislatures would follow similar action. Since part of the philosophy behind establishing a permanent fund is to segregate the fund from other monies available for legislative appropriation, an amendment of Section 15 would be required to effect a mandatory appropriation beyond the current ratio.

ARTICLE X: LOCAL GOVERNMENT

It took many years for the local governance system established under the constitution to be accepted by the general public. At the time of statehood, local government units consisted only of cities, independent school districts in the larger urban areas, and a few public utility districts; Congress had prohibited Alaska from creating counties. The constitution established a new areawide unit -- the borough -- and specified that the local government system will consist only of cities and boroughs. It was several years following statehood before implementation of the borough concept began. The legislature, as the constitutional convention, saw the borough as an evolving governmental form that would adapt itself to the differing needs of the various areas and regions of the state. Due to school bonding problems, however, the mandatory borough law was enacted in 1963 to create boroughs in Alaska's major urban areas. The people in these areas were generally not in favor of creating the new borough units, principally because need for them had not yet been established.

Fifteen years later, boroughs are an accepted part of the governmental system of Alaska. The continuing conflicts between boroughs and cities that characterized the first ten years have pretty well evaporated. Aside from time itself, a big factor in this has been city-borough unification.

However, the borough system has not yet been implemented in rural areas; the only non-urban borough is on the North Slope. The process of dividing the single unorganized borough into regional unorganized boroughs, as

contemplated by the constitutional convention, has begun. If this process is carried on, citizens in rural areas will obtain the instrumentalities for participating in local governance that is contemplated under Article X. Once the unorganized borough problem is dealt with in a manner suited to rural Alaska, the basic implementation of the article will be complete.

At this juncture in time, no constitutional issues face the local government article. The rural borough situation can be dealt with by the legislature. Extention and expansion of home rule powers of local government can also be accomplished by law. The only topic falling into the constitutional realm is one of philosophy: to what extent should greater reliance be placed on the local end of the government spectrum -- should more state powers and state funds be channeled to local governments -- is this an appropriate means of holding down the growth of state government, of "big government"?

ARTICLE XI: INITIATIVE, REFERENDUM AND RECALL

Of this article's three components, constitutional revision suggestions have been made only in the case of the initiative. The referendum and recall provisions have been used in only a few instances. The initiative, however, has proven a fairly popular instrument, its use increasing greatly during the last few years.

Depending on people's point of view, initiative petition requirements should either be tightened or relaxed. Under the constitution, a petition requires signatures equal in number to ten percent of those who voted in the preceding general election and resident in at least two-thirds of the state's election districts. The variuos capitnl move initiatives have shown that it is easy enough for a dedicated group to obtain this percentage and distribution of signatures. More novel ideas have had a more difficult time meeting qualifications. It is not likely, however, that any particular set of different signature requirements would have a major effect upon the popularity of the iniative device.

Suggestions have also been made to establish stronger safeguards against legislative recision of initiatives enacted by the voters. The record in this matter has been quite uneven. In the case of capital move initiatives, the legislature has generally refused to make any changes in popularly enacted laws, even when and where authorized by the constitution to do so. On the other hand, advocates of election reform have held that the legislature has been excessively liberal in revising initiatives beyond orifinal language and intent. Here again, drawing clear lines would seem to be particularly difficult.

Similarly complex is the matter of assuring proper wording and constitutionality of initiative proposals. As it is, a bill drafted by proponents of an initiative is not subjected to any kind of legal or drafting review or scrutiny prior to being put before the voters for enactment. This sets the basis, as with the Beirne land disposal initiative, for a potential supreme court finding of unconstitutionality. Similarly, poor drafting has also caused the serious implementation problems of other initiatives. These complications can be overcome by subjecting proposed initiative legislation to review by either the attorney general or legislative counsel or both prior to presentation to the voters. A constitutional amendment would be required to accomplish this.

It is interesting to note that the National Municipal League, which publishes the model State Constitution, is currently recommending the so called "indirect" initiative in preference to the "direct" initiative. Under the "direct" initiative, a measure can be placed on a ballot simply by obtaining signatures of a set percentage of registered voters or some similar requirement. NML argues that all too often "direct" initiative measures are ambiguously worded, violate either the state or federal constitution, or involve side effects their authors may not have intended. This happens because the language has not been subject to the scrutiny, debate, and compromise typical of the legislative process. MNL suggests that the "indirect" initiative is less likely to involve such problems. The "indirect" method requires submission of an initiative to the legislature, where it will be subject to examiniation and debate. If approved

by the legislature, it becomes law just as any other bill. If the legislature refuses to approve it or changes the initiative bill in a way unacceptable to the sponsors, the latter still have the right to have the measure submitted to the people for a vote.

Under this differentiation, Alaska would be classified as having the "indirect" initiative, since an iniative is placed on the ballot only if the legislature fails to enact substantially the same measure as the proposed initiative law. Obviously, however, that has not eliminated the problem of initiatives that are poorly worded or constitutionally inadequate.

ARTICLE XII: GENERAL PROVISIONS

This article has given cause to no issues or suggestions for change. However, it is in the context of this article that two major state issues might arise as constitutional matter. These are the relationship between the State of Alaska and the United States of America and the location of the state capital.

Section 13 provides: "All provisions of the act admitting Alaska to the Union which reserves rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people." In effect, the people of Alaska agreed to become a state just as any other state of the Union. Despite this agreement entered into in the 1950s, many Alaskans have increasingly felt that Alaska's sovereignty as a state has not been respected by the federal government. This has resulted in a movement for Alaska's independence from the United States, as well as an initiative designed to review the relationship between Alaska and the United States. While nothing specific has yet emerged that could provide the basis for a different relationship, it is the provision for consent to the act admitting Alaska to the Union that provides a context for further discussion of this issue.

In the state constitution, location of Alaska's capital is dealt with in Article XV, transitional measures. It was placed there as a compromise between those delegates who wanted to affirm Juneau's continuance as the capital city within the body of the constitution and those who wanted to

specify that the matter be left to a future capital location study commission or be left out of the constitution altogether. Delegates decided to postpone the capital location decision until after statehood so as not to make it a divisive issue in constitutional ratification and statehood. To do this, they included a transitional provision for Juneau to be Alaska's capital. However, because transitional measures only have the force of the law, the question of capital location has been subject to repeated initiatives. The matter may still not become a constitutional issue unless those who wish to keep the capital in Juneau or those who are trying to get it moved decide that the only way they can assure success for their cause is by establishing it via constitutional mandate.

ARTICLE XIII: AMENDMENT AND REVISION

Alaska's constitution provides three methods of changing the state's constitution:

1. Amendments can be initiated by two-thirds vote of both houses of the legislature.
2. The legislature may call constitutional convention.
3. A constitutional convention may be called by the state's voters approving the proposition in a referendum after any ten-year period during which no convention had been held.

In each case, constitutional changes are subject to ratification by the voters.

Delegates to the 1955-56 convention provided for constitutional call by referendum in order to overcome a problem then evident in the majority of states: legislative unwillingness to deal with changing conditions. This was shown principally in their resistence to legislative reapportionment and to constitutional changes that would reflect the changing demography of the United States and of individual states. Of course, that was before Baker v. Carr, which established the one-man one-vote principle and resulted in legislatures that were at last representative of their states' populations. Today, the ten-year referendum may not be as crucial as it was two decades ago. Proposals to extend the period to as long as twenty years, as were made during the convention, might be more pertinent today.

Probably a more current question is whether the constitution should authorize amandments via the initiative process. Convention delegates

specifically withheld that authority under the constitution. They deemed the changing of the constitution of sufficient gravity to require an extraordinary majority of the legislature or deliberation by a constitutional convention, with voter ratification in both instances. Authorizing amendment by existing constitutional initiative could bring about revision of this state's fundamental law without the benefit of careful deliberation and drafting either as part of the legislative or constitutional process. It would appear, therefore, that while amending the constitution through initiative might be a popular device, it could hold serious dangers to the integrity and quality of the constitution itself.

A way of overcoming some of the possible disadvantages and dangers of using the initiative to amend the constitution would be by (1) subjecting proposed changes to review by the attorney general or the courts prior to a vote on the initiated amendment and (2) requiring an extraordinary majority for approval of the amendment, either two-thirds or three-fourths affirmative vote of those voting on the issue or participating in the election.

(Note: The subjects of constitutional revision and organizing a constitutional convention are dealt with in separate papers.)

ELIMINATION OF OBSOLETE MATTER

Approximately one-third of the constitution consists of materials that need not be part of Alaska's constitution. Eliminating these parts would help streamline the constitution and reduce it to articles and sections pertinent to Alaska today and in the future. The cleanup of the constitution would principally affect the following parts:

Article XIV: Apportionment Schedule

This article was initially included in the constitution to delineate election districts and senate districts. Districts for electing members of the house of representatives were designed to stand until the first reapportionment. Senate districts were to remain, in accordance with Article VI, essentially the same, even though modifications could be made to reflect changes in election districts.

Under the U.S. Supreme Court, a decision establishing the one-man one-vote rule (Baker v. Carr), both house and senate districts have to be apportioned on a strict population basis. Accordingly, the original senate districts are of no continuing significance, and reapportionment had in any case resulted in revision of house district.

The apportionment schedule currently in the state constitution is that established by the reapportionment proclamation of the governor dated June 14, 1974, as modified by the Alaska Supreme Court in Groh v. Egan, 526 P. 2d 863 (9/13/74). There is no reason whatsoever for reapportionment schedules to be a part of the constitution. They simply reflect a proclamation of the governor and in no way constitute constitutional matter.

Article XV: Schedule of Transitional Measures

This article was included in the constitution to provide an orderly transition from the territorial to the state form of government. This transition has long been effected. Most provisions, such as election of the first legislature and establishment of the courts, are irrelevant today. If any provisions have any continuing pertinence (e.g., saving of existing rights and liabilities), they could be included in Article XII, General Provisions.

Should a new convention be held and major revisions made in the constitution, new transitional measures might, of course, be required.

Ordinances

Convention delegates appended three ordinances to the constitution. They dealt with ratification of the constitution, establishment of the Alaska-Tennessee Plan, and abolition of fish traps. These ordinances have served the purpose and are now obsolete. They need no longer be attached to the constitution.

Miscellaneous Provisions

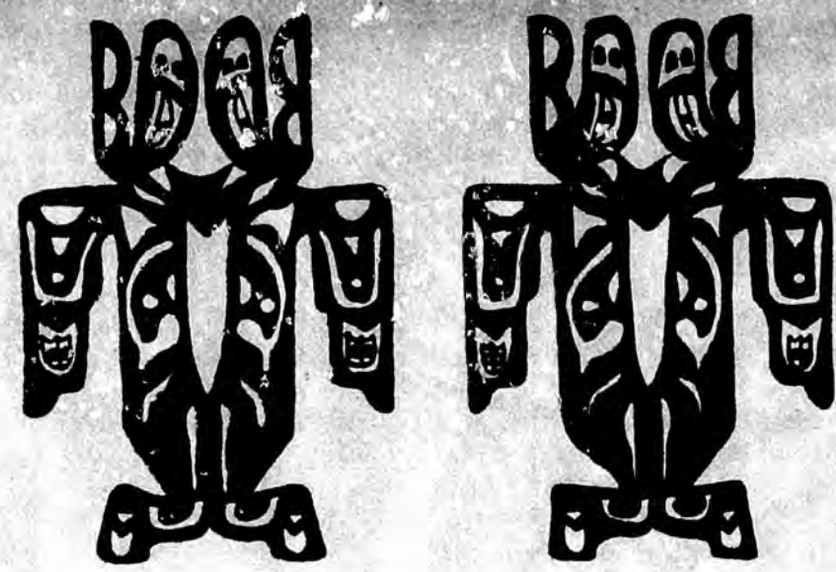
There are a number of additional sections that probably need not be in the constitution. Thus, Article XII, Section 13, consents to the act admitting Alaska to the Union. Despite this provision, the statehood act required another vote on the part of Alaska's people agreeing to the terms and conditions of the act of admission. This was done, and the constitutional provision is irrelevant.

In an entirely different category is a provision such as Article I, Section 20, which provides that members of the armed forces shall not in time of peace be quartered in any house without the consent of the owner or occupant, a provision included in the U.S. Constitution in response to abuses during American colonial days. Topics such as these don't need to be in a modern constitution.

A NEW CONSTITUTIONAL CONVENTION FOR ALASKA?

(Some interim thoughts)

by
Victor Fischer



Alaska's constitution was written twenty-four years ago as part of the statehood movement. Since 1959, the constitution has functioned as the fundamental law of the State of Alaska. The question before us now is whether the guarantees of individual rights, the structure of government, and other parts of the constitution are still adequate to serve the state and the people today in the foreseeable future. Or should we consider revising the constitution in view of changed values and different conditions in Alaska?

This question is real, for in 1982 Alaskans are scheduled to ballot on whether or not to hold a new constitutional convention. Their answer may have far-reaching effects on Alaska's future. It is, therefore, none too early to consider the issues entailed in calling a convention and to evaluate alternative courses that we might pursue.

The Interim Committee on the Constitutional Convention was established by the 1979 legislature to explore the issues entailed in providing answers to these questions and to make recommendations to the legislature about the means of preparing for the forthcoming convention referendum; the committee is co-chaired by Senator George Hohman and Representative Brian Rogers. Part of the material in this paper is derived from my work for this committee.

Accomplishing an objective analysis of constitutional convention issues may not be easy. Alaska's life nowadays abounds with a multitude of issues of importance to significant numbers of people: the fiscal situation of the state — too much money now, not enough in the future, give it away, lower taxes, save it; oil and gas development vs. environmental protection; jobs, unemployment, local hire; right-to-life vs. abortion choice; economic development — petrochemicals, renewable resources, mining, etc.; loans, subsidies, incentives; land distribution; growth and development vs. subsistence and protection of lifestyles; big government, lack of adequate services; federal domination of Alaska; capital move; etc., etc., endlessly.

Some of these issues existed in the 1950's, when the constitution was adopted and statehood came to Alaska. But the mood is quite different now from what it was then. The unity, spirit, idealism, and deep belief in democracy that characterized and sustained the stathood movement and motivated the constitutional conventon do not exist in Alaska today. And nothing has taken their place, at least nothing positive or constructive. Rather, public dialogue and responsiveness to issues are characterized by dissension, divisiveness, anger, and extremism. Whereas twenty-plus years ago a common general philosophy and broad purpose underlay the striving for statehood, as the nation, Alaska is now characterized by single or narrow issue campaigns that ignore everything else about them. And added to all that is a negativism and know-nothingism that characterizes the reaction of many media, groups, and individuals to any consideration of public issues or of the future of the state, its communities and neighborhoods.

This current climate is not particularly healthy for considering the basic philosophies and structures upon which the state's

democratic institutions are founded. And yet, it is possible that the very consideration of state goals and purposes that would accompany preparations for and the conduct of a constitutional convention might help overcome the "malaise" that is said to characterize our public spirit today. Above all, the choice doesn't exist: the constitution requires that we decide whether or not to have a convention, and our purpose should be to make the best of this requirement, to try and make a positive opportunity of it.

Toward that end, this paper reviews Alaska's only constitutional convention and the means it established to update the document, examines constitutional changes that have been suggested, and delves into possible ways of dealing with the gamut of questions entailed in accomplishing desirable revisions and judging whether or not to call a new constitutional convention.

1955-56 Constitutional Convention

Political scientists and constitutional experts consider Alaska's constitution the best in all the states, a true model. In discussing the results of the 1955-56 Alaska constitution writing process, the nation's top specialist on state constitution, John Bebout, stated:

> The convention produced a document that was a rare blend of the classic principles embodied first and best in th U.S. constitution and of modern or innovative features altogether compatible with those principles which made the Alaska constitution more distinctly appropriate to its time and place then any other state constitution.

A number of factors helped determine the character and quality of the Alaska constitution. It was written as part of and in furtherance of statehood, and the idealism inherent in the statehood movement served to inspire convention delegates and Alaska's people. Statehood was the cause and goal of the constitutional convention, and those planning the document saw the necessity to draft a constitution that would clearly demonstrate to the nation and to the Congress that Alaska was politically mature and ready to assume the responsibilities of managing a state.

Once delegates met in convention, statehood was no longer their principal aim, although it provided the context for their work. Rather, creating the best possible foundation for the future state became the overpowering and all-encompassing purpose. The enthusiasm, dedication, and idealism aroused by the statehood issue were thus turned toward drafting a constitution that would serve Alask'a future.

Another aspect of the Alaska convention that contributed to the success of its product was the fact that it took place before statehood was achieved. It functioned outside the realm of conventional political pressures and realities. The convention was future oriented and had little to do with current territorial affairs: it did not directly affect jobs, business, or allocation of power. Delegates were viewed as a group of idealists working for great cause and dealing with isuses that generated, with few exceptions, no pressures from those lobbies and special interests that regularly pursue their particular objectives at legislative sessions. This kind of detachment could have been dangerous, but since it was carried out by men and women who were realists as well as idealists, it provided a milieu that engendered freedom and creativity.

Out of this enviornment emerged a stated intent that the constitution be a document of fundamental principles of basic government and contain only the framework for state government. Drafting the constitution was largely predicated on making each branch of state government effective and strong in its own right. The underlying purpose was to achieve not just an adequate system of checks and balances in the traditional sense, but also to bring about the establishment of executive, legislative, and judicial branches that each function effectively and adequately serve the needs of the state and its citizens. At the same time, personal rights and the individual liberties of the people were to be assured through a strong and liberal bill or rights. I believe these objectives were achieved quite successfully.

Amendment and Revision

Despite high-minded aims and the resultant well-regarded document, convention delegates never considered that the constitution they created was at all sacrosanct. Throughout, delegates strove to deal with general concepts, allowing for future flexibility and adjustment. The constitution itself was designed not to be static. Its vitality was to be achieved by designing a general structure of state

government adapatable to changing needs and conditions. And, in case these measures proved inadequate, they provided for an amendment and revision process to make possible changes in the constitution itself.

Amendments to the constitution are made by two-thirds vote of each house of the legislature and voter approval by majority vote. Since statehood, sixteen amendments have been so recommended by the legislature and ratified by Alaska voters. These amendments dealt with such basic issues as the right of privacy, non-discrimination on account of sex, voter qualifications, limited entry in fisheries, and establishment of the Alaska Permanent Fund. These and other changes demonstrate that updating of the constitution and meeting current needs can take place through the amendment process.

Individual amendments are, however, but one method of changing the constitution: it can also be revised by calling a constitutional convention. There are two ways of obtaining a state constitutional convention. The legislature may call a convention at any time by simple majority vote. Alternatively, Alaska voters can decide to hold *a* convention. If during any ten year period a convention has not been held, the question: "Shall there be a Constitutional Convention?" is placed on the ballot at the next general election. A majority "yes" vote results in a convention. On the other hand, if a majority votes in the negative, the question is not placed on the ballot again until the end of the next ten year period.

The provision for convention call by referendum was principally in response to problems that generally don't exist anymore. When the constitution was written in 1955-56, most state legislatures were extremely malapportioned, with urban areas highly underrepresented. As a result, legislatures avoided constitutional conventions and did not modernize their constitutions in fear that revision could result in reapportionment and loss of legislators' seats. Alaska convention delegates wanted to assure that the constitution would be responsive to the needs and the will of the people even if the legislature were unresponsive to them. Since the constitution was written, however, the U.S. Supreme Court, in *Baker vs. Carr*,established the one-man one-vote rule, requiring state legislatures to be apportioned strictly in accordance with population. In theory, at least, the legislature is fully representative of the people and will represent them both in enacting legislation and, as necessary, amending the constitution.

Even though we are now only in our twentieth year of statehood, Alaskans have already twice voted on the question of calling a constitutional convention. The first decennial referendum on the issue was held in 1970. The trouble then was that the question "as required by the Constitution of the State of Alaska", Article III, Section 3 was posed thus: "Shall there be a constitutional convention?" The convention call was narrowly approved by the voters. Upon a challenge, the Supreme Court held that by adding "As required by the Constitution..." to the constitutionally required language, the phrasing of the proposition was sufficiently biased to justify nullifying the referendum. When voters once more balloted on the question in November, 1972, the convention call was rejected.

Alaskans are once more faced with the decision of whether or not to call a convention. In November 1982, unless the legislature initiates a convention in the interim, the ten-year question will be on the ballot at the general election: "Shall there be a Constitutional Convention?" The rest of this paper is devoted to considerations that should go into possible responses to this question.

Potential Subjects of Constitution Change

Alaska has so far utilized only the amendment process to make changes in the constitution; we have not yet had the experience of constitutional revision via the amendment process.

The difference between changing the constitution by amendment as against convention is great indeed. When the legislature recommends an amendment it deals with a specific item, such as the manner of selecting the chief justice of the Supreme Court. While the subject matter may be broader than that, it is certain to be confined to a specific topic.

A constitutional convention, on the other hand, has plenary powers, subject only to ratification by the people. This means that a convention, whether called by referendum or by the legislature, can amend or revise any and all parts of the constitution. In other words,

once called, a convention can rewrite every section and article and can add any new matter it desires, subject of course to ratification by the electorate.

In view of the tremendous power that a convention possesses, it is important to distinguish between the types of changes that may call for a convention as against those that can be effected through amendment. Concurrently, it vital to have a clear understanding of the difference between constitutional and legislative matter, for the latter is, by definition, something that should be handled through legislation and not changing the constitution. (This distinction, by the way, was ever-present concern of the 1955 convention as it tried to restrict the constitution to fundamental law, excluding trivia and special interest provisions.)

Revision by Convention

The rationale for a convention needs to rest on a significant purpose beyond amendments that can be routinely handled by the legislative amendment route. Such a purpose can be (1) making changes that the legislature cannot or is not likely to accomplish, (2) dealing with major issues of philosophy and policy undergirding the fabric of state government, and (3) accommodating or defusing public pressures that are not being satisfied by the legislature. While from a constitutionalist or political science viewpoint only the first two reasons might be considered legitimate, popular pressure may be at least as important a factor as the other two in bringing about a convention.

There are few changes that the legislature cannot be expected to deal with through the amendment process other than those that affect the legislature itself and those that are too big or too complex to be dealt with as part of the legislative process. The prime example fo the first category is the proposal to change the legislative structure from a two-house to a unicameral system. This suggested change has been repeatedly approved by the state house of representatives, but it has yet to see positive action by the senate. Even after voters approved of the concept in a statewide advisory referendum, the legislature has refused to act. And, it is highly unlikely that it will approve this basic change in the structure of the legislature, if for no other reason than the fact that it would lead to a reallocation of legislative power and more than a few legislators would be jeopardized.

Other structural changes might be similarly difficult to obtain via legislative initiative, especially if they limit the powers of the legislature or restrict its ability to exercise its will. Among these is the oft-repeated proposal to limit the length of legislative sessions, another idea that has seen wide approval by the electorate. Yet, this generality needs to be approached with caution, for in 1976 the legislature did approve a constitutional amendment to establish the permanent fund. The effect of this action was to put a substantial protion of petroleum revenues beyond direct reach and disposal by the legislature. This proves that lawmakers can move to limit their own prerogatives when either purpose or popular will so require.

A more difficult area to define as a basis for potential constitutional revision is possible desire or need to change the fundamental philosophy or grounding of the constitution. Nothing of this sort has as yet clearly emerged, though one could speculate about attitudes that could lead to efforts for basic changes in the constitution. Ideas in that direction were initiated several years ago when proposals were made to revise the natural resources article to eliminate the existing pro-development bias and substitute therefor a policy of environmental protection. Another type of pressure may emerge as a result of increasing sentiment, in Alaska and the nation, against government in general and against taxes and government expenditures in particular. These examples deal with subject matter already in the constitution. Potential new areas of basic constitutional concern could be the preservation of Alaska lifestyles, Native culture, and the subsistence way of making a living off the land; or Alaskans may decide to try restructuring their concept of government and the state's relationship to the United States.

Whatever such fundamental issues might be, they are obviously not suited to resolution as part of the routine legislative process. This is not due to lawmaker's lack of concern for major policy. Rather, the hundreds of bills and financial management responsibilities are more than enough to occupy legislators' time both diring sessions and during their interim. Therefore, if pressures for fundamental changes do arise, their resolution will almost certainly lie within a constitutional convention or some other vehicle established to deal with them.

These two categories — matters that affect the legislature and issues of underlying philosophy — are logical bases for calling a constitutional convention. However, given the fact that a convention opens the constitution to massive revision, routine and other changes are best handled through the legislative amendment process.

Constitutional Amendments

A plethora of amendments has been proposed to change specific parts of the state's constitution. A very few, such as unicameralism of limiting legislative sessions, may require a convention to resolve. Most others appropriately stand or fall through action or inaction by the legislature and confirmation or rejection by Alaska's voters. (Should a convention be held, such changes could, of course, be considered as part of comprehensive constitutional revision.)

A survey of specific amendments that have been proposed or might be considered is being undertaken as part of an analysis sponsored by the legislature's Interim Committee on the Constitutional Convention. The items are truly too numerous to enumerate here. Changes have been proposed, either formally in the legislature or informally in other media, to every article of the constitution. Some can be justified, but certainly not all.

Here is a small sampling. Suggestions have been made that the grand jury, provided for in Article I, is obsolete and should be superseded by methods that are more expeditious and fairer to defendants. But, while the change could be made by amending the constitution, it could far more simply be put into practice through a rule promulgated by the State Supreme Court.

Article II covers the legislature and has seen a number of proposals that might, as already mentioned, be difficult to get through the legislature, assuming they were worthy pursuit. These deal not only with a one-house legislature and time limit on annual sessions, but also with such matters as legislative pay, qualification of members, and the like.

The executive article covers such controversial proposal as election of the state attorney general and district attorneys/prosecutors, and establishing a single, six-year term for the governor. Suggestions have also been made to elect judges and change the composition of the judicial council. There are those who want to authorize state funding of students in private schools. Changes in resources policy have been proposed. Suggested revisions of the finance and taxation article include establishment of tax and expenditure limits, extension of the permanent fund to cover more state revenues, and creation of a more responsible general obligation binding process. Other proposed amendments include allowing use of the initiative process to amend the consitutition.

Any of these and other suggested amendments can be routinely handled by the legislature whenever sufficient justification exists for a specific proposal. The fact that many oft-suggested changes, such as selecting members of the judiciary, have not made it through the legislature is due exclusively to lack of support for the idea.

Special Issues

Since lawmakers do not necessarily endorse and act on all issues that come before them, many groups are dissatisfied with the legislative process and its responsiveness to their desires. A constitutional convention can potentially provide a medium through which such groups can try to achieve their objectives. And, in these days of single-issue politics, massive pressures can be marshalled. In Alaska, the lands issue provides a good example; nationally it is the support of environmental causes.

Principal Alaskan causes of the day include moving the state capital, outlawing abortions, repealing the income tax, and distributing state lands, though the latter issue appears dormant at this time. Frustrated by lack or inadequacy of legislative response, proponents of such cause might well try to obtain instant remedy and satisfaction by writing their cause into the constitution. Thus, those who have been trying for years to get the capital moved could mandate the change by a specific clause in the constitution. The same aims might be pursued by "right-to-life" proponents and advocates of other causes.

There are two prospective problems that could result from this situation. First, the subjects these interest groups are pursuing are

not bona fide constitutional matter, though they could make it such by marshalling sufficient votes. Second, and by far more serious, single-issue groups and candidates could well beget a consititutional convention that cared only about satisfying their specific wants and paid little attention to the fundamental purposes and concepts of the constitution itself. A convention dominated by narrow special interest is scary to contemplate, for the basic fabric and institutions of the state could thus be endangered and undermined. But the potentials for the happening do exist, and one needs to examine ways of approaching constitutional revision in a constructive and positive manner, particularly since the 1982 referendum looms not far away.

Alternative Approaches to Constitutional Revision

A review of Alaska's experience under the consitution and its adequacy to serve the state in the future was conducted in 1976, twenty years after the document was written and ratified. The review was sponsored by delegates to the 1955-56 convention. But the examination of the constitutional experience was carried out by individuals who had worked under it or observed it closely: legislators, state and local government officials, judges, newspaper editors, rural representatives, businessmen, and the like. With some exceptions, the general opinion was that the constitution had served the new state well and that no overall revisions were necessary for it to remain a viable document.

Today, people who have taken positions on the matter hold strong opinions on the need for a new constitutional convention, and they fall on both sides of the issue. Convention proponents generally base their stand on specific areas of change, such as establishment of a unicameral legislature, provisions for rural Alaska and subsistence, or changes in the finance article; a few want the whole consitutional structure of Alaska to be reviewed. The opposition to a convention is satisfied with the present state constitution and fears that a convention, with its plenary powers, could end up making extensive, unnecessary, undesirable and damaging revisions.

It is fair to assume that the vast majority of Alaskans is unaware of and unconcerned with the convention issue. That is the way it was in 1970, when the first convention referendum was voted on. With the exception of information from League of Women Voters and some newspaper editorials, the general public had little basis for voting on the convention call. That was not a healthy state of affairs then. But lack of public understanding of the issues would be much more serious today in view of the general tenor of the times and the shrillness of recent single-issue campaigns.

Public education, information, and knowledge are keys to successful democratic governance. These factors together with the overriding statehood purpose provided the foundation for a successful convention twenty-five years ago. And they can do so again.

Striving for a knowledgeable electorate should be the goal of those convention proponents and opponents who are serious in their striving for a good constitution for the state. That is the surest way, in fact the only way, to insure that special interest groups will now sway the public and control a convention if called. Providing the basis for an intelligent response to the whole subject of constitutional revision is, of course, a principal purpose of the legislature's Interim Committee on the Constitutional Convention.

An essential ingredient in preparing the voting public as well as laying the groundwork for a convention is the establishment of an appropriate preparatory commission. In 1955, the Alaska Statehood Commission performed that task. In the future, a special constitutional convention commission could provide the vehicle for these purposes. Most states have used such commissions as an initial stage preceding a convention or even a decision on holding a convention. Commissions of this sort are usually composed either of a mixture of public officials and citizens appointees or appointed citizens only. Generally, their task is establishing two-way communication with the electorate and doing preparatory research for the contemplated convention.

A newly emerging device used by a number of states is the constitutional revision commission, which is charged with actually proposing changes to be made in the state consitutuion. This instrumentality has evolved since Alaska's constitution was written, but it may have applicability in Alaska. A commission of this sort undertakes a study of possible constitutional changes and proposes amendments or packages of revisions to the legislature, which can, in turn, recommend them for voter approval. In effect,

this method constitutes a process of comprehensive revision utilizing the regular amendment process without recourse to a consitutional convention. A disadvantage of this approach is that it does not in the first instance involve delegates elected by the people. However, proposed changes do go through the scrutiny of elected lawmakers, and recommended revisions are eventually voted on by the people of the state. The approach represents a compromise between holding a constitutional convention, which can propose wholesale revisions, and the legislative amendment process, which, as mentioned, does not lend itself well to major constitutional policy analyses and revisions.

The decision of how to initially approach constitutional revision is up to the state legislature. A preparatory commission would have to be established by law. So would a constitutional revision body. Also, the legislature can use the regular amendment process and it can initiate a constitutional convention of its own volition.

It is quite possible that the most practical course would be for the legislature to determine what changes are needed in the constitution, (possibly using a constitutional study commission), recommend a package of amendments to the people, and thus eliminate possible justifications for a convention. The legislature may still have to face head-on the special interest pressures that might develop for a convention, but these could be defused by legislative action, public information, or a combination of these.

Another alternative available under the constitution is for the legislature itself to issue a convention call. This course might be taken if either the case for a convention became extremely strong or public approval of a referendum appeared inevitable, or both. Under such circumstances, a legislative call might simply eliminate the need for a potentially devisive referendum campaign and help set a higher tone of unity for the constitutional convention than might otherwise be achieved. At the same time, such a course might cause a convention to be held when none might be called by vote of the people, had they a chance to express themselves on the matter.

At this juncture, the wisest course to pursue might just be to wait another year or two before taking firm steps in any of the above directions. Continuing exploratory work would be appropriate, together with a broadening program of public information and involvement. And then, as the 1982 referendum time approached, the public and the legislature will be in a better situation for setting a constitutional revision course than we are today.

A Personal Postscript

Several months of looking at the constituional revision question have not helped me decide what position to take about a new constitutional convention. The constitution is essentially sound; no critical changes appear necessary. At the same time, some issues will not be resolved without a convention being held, the unicameral legislative structure being a prime example. But, while issues such as that remain undecided, Alaska can certainly continue on its present course without great suffering. From this standpoint, again, constitutional revision is not vital to Alaska's welfare.

Yet a constitutional convention — including both the process leading to it and the actual proceedings — have the potential of providing the kind of uplifting experience and unity that Alaska so badly needs. Although there is a danger that special, single-issue interest might capture and derail a convention, I am not really afraid of that. First, voters generally do exercise good judgment in the people they elect. Second, I have time and again seen people, when challenged, rise to heights far greater than one might have expected. Thus, my intrinsic belief in democracy, together with an innate optimism, makes me unafraid of what a convention, even under the worst of circumstances, might do to Alaska's constitutions, the best in the nation.

And so, at least for the time being, I straddle the fence.

Biographical Sketch

Victor Fischer was a delegate to the 1956 Alaska Constitutional Convention and has written a book on the state constitution. Fischer was the director of the Institute of Social and Economic Research (ISER) for many years and is now a private consultant, currently working with several legislative committees.

HOLISTIC ALASKA

By Glenn A. Olds, President
Alaska Pacific University

Cheshire Puss," she began, rather timidly . . .
"Would you tell me, please, which way ought I go to from here?"
"That depends a good deal on where you want to get to," said the cat.
"I don't much care where —" said Alice.
"Then, it doesn't much matter which way you go," said the cat.
Lewis Carroll — *Alice's Adventures in Wonderland*

"If the human race is to survive, it will have to change its ways of thinking more in the next 25 years than in the last 25,000."
Kenneth Boulding

"I can't believe God plays dice with the cosmos."
Albert Einstein

"It shall be required of this generation."
Luke 11:50-51

Historical Perspective

Alaska, "the great land" stands as a fascinating and unique link in human history. Anchored as it is in a past and a culture that were historically holistic, integrated and whole, it has escaped much of that sweeping, scientific specialization of the modern day that has left our world fragmented and narrowly professionalized. Alaska, as a bridge between East and West, absorbs the best of both continents without adopting the extremes of either.[1]

As technology continues to shrink our world, Alaska has the unique prospect of averting the dangerous dicotomies and narrow specializations that haunt and divide our time. Because of Alaska's holistic past not yet suberted, we can pursue a more vital holistic culture and development for the future.

Alaska's future may well celebrate T.S. Elliot's classic line, "And we may return to the beginning, and know it for the first time." This means that the remarkable holistic outlook and life style of the original Alaskan native may become the saving form and function against an overly specialized, segregated world.

Back in 1851 Seattle, Chief of the Suquamish and other tribes of the Northwest, wrote to the President of the United States. In beautiful simplicity, he expressed the holistic sense of the relationship of nature, human nature, and the Divine, the connectedness of all things, and the insight of his native culture containing 40,000 years of wisdom. He painted a picture[2] which mirrored in miniature in Alaska, reaches for a new unity.

The fact and graphic necessity of this whole new view was brought home to me on that eventful day, July 20, 1969, when our first astronaut landed on the moon. I was in the chair as Ambassador to the United Nations Economic and Social Council in Geneva representing the United States and was asked to say a word appropriate to that occasion. It seemed so obvious, and yet so prophetic, to acknowledge man was now able, for the first time to see the whole earth from beyond itself, from the moon; and know it for what it is, in its precious, precarious, finite wholeness to see it as our radically interdependent, *integrative, holistic* home.

The bankruptcy of our recent scientific legacy of specialization leads to dangerous dichotomies:

between	person	—	and	—	nature
between	mind	—	and	—	matter
between	subject	—	and	—	object
between	freedom	—	and	—	security
between	self	—	and	—	society
between	private	—	and	—	public
between	development	—	and	—	conservation
between	quality	—	and	—	quantity

CONSTITUTIONAL AMENDMENTS

INTRODUCED IN THE LEGISLATURE

FROM 1960 TO 1979

Prepared For

INTERIM COMMITTEE
on the
CONSTITUTIONAL CONVENTION
of the
ALASKA STATE LEGISLATURE

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January 11, 1980

INTRODUCTION

Since the first legislature of the State of Alaska convened in 1959, legislators have attempted to change the constitution by amendment. The following report lists the proposed amendments by the chamber in which they were introduced, and by the year of introduction. The report also gives a brief summary of each amendment and whether it passed, failed, or died in the legislative process. Of the 228 proposed amendments, nineteen have passed both houses of the legislature and have been submitted to the electorate. Sixteen of those amendments have been approved by the voters of the State, and have become part of the State Constitution.

Several of the proposed amendments have been introduced consistently throughout the period of this report, thus reflecting substantial interest in these issues. The champion issue relates to establishing a specific length of the regular session of the legislature. Amendments relating to this subject have been introduced a total of twenty-three times. Running a close second are the amendments to have the Attorney General elected, introduced eighteen times. Establishing a unicameral legislature has been introduced thirteen times, as have been amendments dealing with bail, grand jury indictments, and jury membership. Amendments establishing and relating to a type of permanent investment fund have been introduced twelve times, and amendments relating to initiative, referendum, and recall have been introduced eleven times.

It is hoped, by reviewing this report, the reader will become familiar with the constitutional issues which have concerned the people of the State and the legislature during the last two decades.

Guy A. Van Doren
DOUGLAS RESEARCH

January 11, 1980

1960

HOUSE

HJR 28 — Article X, Section 12
Local Government

Changes legislative action regarding boundary commission recommendations as follows:

"The changes shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, if approved [UNLESS APPROVED] by a resolution concurred in by a majority of members of each house." [FAILED HOUSE].

1961

HOUSE

HJR 8 — Article III, Section 7
The Executive

Establishes the office of the Attorney General, the qualifications, and term of office. Section 8 provides for the election of the Attorney General. [FAILED HOUSE].

HJR 13 — Article III, Section 7
The Executive

Provides for the establishment of the office of Controller General. [FAILED HOUSE].

1961

SENATE

SJR 2 — Article V, Section 1
Suffrage and Elections

Establishes a ninety (90) day residency requirement and requires that a person file a declaration of intent to establish Alaska as the principal place of residence to vote for President and Vice President of the United States in any national election. [DIED HOUSE].

SJR 8 — Article V, Section 1
Suffrage and Elections

To the section dealing with elections and voter qualifications, adding the underlined words to the existing section:

"Additional voting qualifications may be prescribed by law for bond issues elections of the state and its political subdivisions; . . ." [DIED HOUSE].

SJR 23 — Article XI, Section 3
Initiative, Referendum, and Recall

Changes the number of qualified voters necessary for a petition from [TEN] to "five" percent of those who voted in the preceding general election and changes the words [AND RESIDE IN] to "in each of" at least two-thirds (2/3) of the election districts of the state. [DIED HOUSE].

SJR 30 — Article XI, Section 3
Initiative, Referendum, and Recall

Changes the percentage of signatures of voters required on an initiative petition from "[TEN] to five percent of those who voted in the preceding general election in each of [AND RESIDENT IN] at least two-thirds of the election districts of the state." [DIED SENATE].

SJR 32

Article VII, Section 1
Health, Education, and Welfare

Allows state funds to be provided for transportation of children to religious or private educational institutions. [DIED HOUSE].

1962

SENATE

SJR 40 — Article XI, Section 3
Initiative, Referendum, and Recall

Changing the number of qualified voters necessary to petition, from [TEN] to five percent of those who voted in the preceding general election and changing the words [AND RESIDE IN] to in each of, at least two-thirds of the election districts of the state. [FAILED HOUSE].

SJR 43 — Article IX, Section 8
Finance and Taxation

In this section, the following language was added to permit the state to contract debt without ratification in order to assume the general obligation bond indebtedness incurred for public school construction by a political subdivision if a political subdivision should fall into arrears in paying this bonded indebtedness:

"The state may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the state in war, meeting natural disasters, assuming secondary liability for payment of general obligation bonds issued by political subdivisions for the purpose of constructing public schools. [FAILED SENATE].

1963

SENATE

SJR 7 — Article XI, Section 3
Initiative, Referendum, and Recall

Changes the section to read as follows:

"After certification of application, a petition containing a summary of the subject matter shall be prepared by the Lt. Governor for circulation by the sponsors. If signed by the qualified voters residing in less than 13 election districts and [,] equal in number in each such district to twenty [TEN] percent . . ." [DIED HOUSE].

SJR 13 — Article II, Section 1
The Legislature

Providing for uneven membership of both houses of the legislature. Under the amendment, the senate membership would have been twenty-one members and the house forty-one. [DIED SENATE].

1964

HOUSE

HJR 32 — Article IX, Section 6
Finance and Taxation

Added new language as follows:

"Every act of the legislature imposing a new tax or increasing an existing tax shall be referred to the voters of the state for approval or rejection at the first statewide election held more than 90 days after its enactment. The act shall be referred in the same manner as an act referred according to Article XI and it may not take effect until 60 days afters its approval."
[DIED HOUSE STATE AFFAIRS].

HJR 51 — Article III, Sections 7 and 8
The Executive

Providing for the election of the Attorney General.
[FAILED HOUSE].

SENATE

SJR 35 — Article XI, Section 6
Initiative, Referendum, and Recall

Provides that an act rejected by referendum may not be re-enacted within two years after its rejection. [DIED SENATE JUDICIARY].

SJR 38 — Article II, Section 18
The Legislature

Relating to the effective date of an act when action for a referendum on the act has been initiated. The amendment added the following language in a new section of Article XI:

"Section 9. If an application for a referendum on an act is filed, that act does not take effect until denial of certification of the application has become final, or the act has been finally declared to be one to which the referendum may not be applied, or ninety days have elapsed since the adjournment of the session without a valid petition being filed, or the referred act fails to be rejected by the voters, whichever occurs first. The act may not, however, take effect before the date established for it according to Section 18, Article II of the constitution." [DIED SENATE JUDICIARY].

SJR 51 — Article II, Section 9
The Legislature

Relating to special sessions of the legislature. Provides that:

"The legislature may not call itself into special session after December 1 of an even numbered year." [DIED SENATE JUDICIARY].

SJR 64 — Article IV, Section 15
The Judiciary

Changes the section as follows:

"The legislature, by law, may delete, change, and add to rules governing the administration of all

courts and rules governing practice and procedure in civil and criminal cases in all courts." from [THESE RULES MAY BE CHANGED BY THE LEGISLATURE BY TWO THIRDS VOTE OF THE MEMBERS ELECTED TO EACH HOUSE].
[DIED SENATE JUDICIARY].

1965

HOUSE

HJR 1 — Article V, Section 1
Suffrage and Elections

Permits the residency requirements for voting on issues and persons other than for President and Vice President, to be prescribed by law. [DIED HOUSE].

HJR 4 — Article XIII, Section 1
Amendment and Revision

To permit amendment of the constitution by initiative. [DIED HOUSE].

HJR 14 — Article III, Section 25
The Executive

Providing for the qualifications, election, and term of office for the Attorney General, and adding three new sections, 28, 29, and 30, to the article. [DIED HOUSE].

HJR 21 — Article IV
The Judiciary

Providing for the election of supreme court justices and superior court judges. [DIED HOUSE].

HJR 35 — Article III, Section 7
The Executive

Providing for the election of district attorneys. [DIED HOUSE].

HJR 50 — Article IV, Section 8
The Judiciary

Relating to the judicial council. Repeals and re-enacts Section 8 as follows:

"The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Four nonattorney members shall

be elected at large by the people of the state for six-year terms. Vacancies shall be filled for the unexpired term of attorney members by appointment of the organized bar. Vacancies for the unexpired nonattorney members shall be filled by appointment by the governor. Appointments and elections shall be without regard to political affiliation and with due regard to area representation. No member of the judicial branch of the government shall serve as a member of the judicial council and no member of the judicial council may hold any other office or position of profit under the United States or the state. The judicial council shall set by concurrence of four or more members and according to rules which it adopts." [DIED HOUSE].

1965

SENATE

SJR 1 — Article V, Section 1
Suffrage and Elections

Permits the residency requirements for voting on persons and issues other than for President and Vice President, to be prescribed by law. [PASSED LEGISLATURE, PASSED VOTER APPROVAL].

SJR 2 — Article X, Section 4
Local Government

To permit cities of the first class, and each city of any other class designated by law, to be represented on the Borough Assembly by persons other than members of the council. Adds the underlined words to the following existing sentence:

"Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council, unless provided otherwise by charter or ordinance." [DIED SENATE].

SJR 8 — Article V, Section 1
Suffrage and Elections

Permits persons who have been residents in the state for thirty (30) days or more to vote for the President and Vice President of the United States. [DIED SENATE].

SJR 20 — Article XI, Section 6
Initiative, Referendum, and Recall

Provides that an act rejected by referendum may not be re-encacted within two (2) years after its rejection. [DIED SENATE].

SJR 54 — Article II, Sections 1, 2, 3, 12, 15, 18, and 20
The Legislature

Providing for a unicameral legislature. [DIED SENATE].

1966

HOUSE

HJR 58 — Article XII, Section 12
General Provisions

Establishing a biennium budget for the State of Alaska. [DIED HOUSE].

HJR 68 — Article X, Section 4
Local Government

Requiring the election of all members of the Assembly of an organized borough. [DIED HOUSE].

HJR 76 — Article II, Sections 1, 2, 3, 12, 14, 15, 16, 18, and 20
The Legislature

Providing for a unicameral legislature. [DIED HOUSE].

HJR 85 — Article IX, Section 8
Finance and Taxation

Requiring that bond issues submitted to the qualified voters of the state for ratification specify places of use with the state of bond proceeds. [DIED HOUSE].

HJR 98 — Article X, Section 10
Local Government

Creating school districts as political subdivisions of the state with tax assessing and collecting powers. [DIED HOUSE].

1966

SENATE

SJR 79

Article II, Section 15
The Legislature

Relating to the veto powers of the Governor. Adds the words which are underlined:

"He may veto, strike or reduce items in appropriation bills, <u>except items appropriating to the judicial or legislative branches of the government</u>." [FAILED HOUSE].

1967

HOUSE

HJR 1 — Article II, Sections 1, 2, 3, 12, 14, 15, 16, 18, and 20
The Legislature

Providing for a unicameral legislature. [DIED HOUSE].

HJR 3 — Article III, Section 7
The Executive

Providing for the election, term of office and qualifications of the Attorney General. [DIED HOUSE].

HJR 5 — Article III, Section 7
The Executive

Changing the name of the Secretary of State to Lt. Governor. [DIED HOUSE].

HJR 13 — Article X, Sections 2, 7, 9, 10, 11, and 13
Local Government

Abolishing the borough and establishing certain districts. Creates school districts and public utility districts. [DIED HOUSE].

HJR 28 — Article III, Section 25
The Executive

Election of District Attorneys. [DIED HOUSE].

1967

SENATE

SJR 4 Article X, Sections 2, 7, 9, 10, 11, and 13
Local Government

Abolishing boroughs and establishing certain districts; school districts and public utility districts. [DIED SENATE].

1968

HOUSE

HJR 48 — Article II, Section 5
The Legislature

Requires a person to resign as a legislator before seeking or holding office as Governor, Lt. Governor, or member of Congress. [DIED HOUSE].

HJR 66 — Article III, Section 7
The Executive

Providing for the election of the Attorney General. [DIED SENATE].

HJR 71 — Article V, Section 1
Suffrage and Elections

Relating to qualifications for voting in state bond issue elections. Provides that a person must own real property in the state to be qualified to vote for bond issues. [DIED HOUSE].

HJR 74 — Article IV, Section 10
The Judiciary

Providing for the disqualification, suspension, removal from office, retirement and censure of justices and judges, and providing for a committee on judicial qualifications. [PASSED LEGISLATURE, PASSED VOTER APPROVAL].

HJR 82 — Article IV, Section 2
The Judiciary

Providing for the location of the office and residence of the Chief Justice of the Supreme Court. Provides that the Chief Justice shall be elected by all the justices, shall serve only one (1) three-year term in succession and his office and residence shall be in Anchorage. [FAILED HOUSE].

1968

SENATE

SJR 41 — Article III, Sections 7, 25 and New Sections 28, 29, and 30
The Executive

Providing for the election of the Attorney General. [FAILED SENATE].

SJR 42 — Article IV, Section 10
The Judiciary

Providing for the disqualification, suspension, removal from office, retirement and censure of justices and judges, and providing for a commission on judicial qualifications. [DIED SENATE].

1969

HOUSE

HJR 2 — Article II, Sections 1, 2, 3, 12, 14, 15, 16, 18, and 20
The Legislature

Providing for a unicameral legislature. [DIED HOUSE].

HJR 7 — Article V, Section 1
Suffrage and Elections

Establishing the voting age at 18. [PASSED LEGISLATURE, PASSED VOTER APPROVAL].

HJR 11 — Article IV, Section 2
The Judiciary

Provides that the Chief Justice shall be elected by a majority vote of the justices of the supreme court and shall hold the office for a three year period. [PASSED LEGISLATURE, PASSED VOTER APPROVAL].

HJR 23 — Article III, Section 28
The Executive

Providing for the election of District Attorneys. [DIED HOUSE].

HJR 27 — Article IV, Section 8
The Judiciary

Changes the number of members on the Judicial Council from seven to fifteen members. Provides for five rather than three nonattorney members. Provides for four members of the Legislature who are not lawyers or retired judges to be appointed to the council. Provides for one superior court and one district court judge to be appointed by the Chief Justice. [DIED HOUSE].

HJR 30 — Article X, Section 4
Local Government

Requires borough assemblymen representing a first class city or other class of city designated by law, to be elected by city voters rather than being appointed by and from the city council. [DIED HOUSE].

HJR 49 — Article II, Section 1
The Legislature

Providing for one additional member of the State House and one additional member of the State Senate. [DIED HOUSE].

HJR 51 — Article V, Section 1
Suffrage and Elections

Eliminating the requirement that a person must be able to read and write English as a prerequisite to voting. [PASSED LEGISLATURE, APPROVED BY VOTERS].

HJR 52 — Article VIII
Amendment and Revision

Adding a new section to this article establishing a permanent fund from the proceeds of state oil and gas leases for application to the university, public schools and highway purposes. [DIED HOUSE].

HJR 58 — Article III, Section 7
The Executive

Providing for the election of the Attorney General. [FAILED HOUSE].

HJR 63 — Article II, Sections 1, 2, and 3
The Legislature

Providing for a unicameral legislature. [DIED HOUSE].

HJR 67 — Article IX
Finance and Taxation

Adding a new section creating a permanent resourse fund from revenue derived from nonrenewable resources in excess of $60,000,000 per year. The appropriations shall be exclusively for retirement of the gereral bonded indebtedness of the state and for such other permanently benefiting purposes as may be provided by law. [DIED HOUSE].

HJR 72 — Article II, Section 8
The Legislature

Limiting the length of regular legislative sessions. [DIED HOUSE].

HJR 73 — Article II, Section 12
The Legislature

Relating to the rules of the legislature governing absent members. Provides if a member is absent more than five (5) consecutive days without just cause, he shall forfeit his membership unless his absence is excused by two-thirds (2/3) roll call of his house. [DIED HOUSE].

HJR 74 — Article II, Section 8
The Legislature

Limiting the length of the legislative sessions. DIED HOUSE.

1969

SENATE

SJR 1 — Article II, Section 5
The Legislature

Relating to disqualifications for the office of legislator. Allows a teacher, school administrator by the state or a political subdivision of the state, or the University of Alaska, to serve as a legislator. [DIED SENATE].

SJR 2 — Article III, Section 7
The Executive

Changing the name from Secretary of State to Lt. Governor. [PASSED LEGISLATURE, APPROVED BY VOTERS].

SJR 3 — Article III, Section 7
The Executive

Provides for the election of the Attorney General. [DIED SENATE].

SJR 6 — Article V, Section 1
Suffrage and Elections

Establishing the voting age at 18 years. [DIED HOUSE].

SJR 19 — Article VIII
Natural Resources

Adds a new section to provide a permanent fund for educational purposes and provides for the state to set aside lands exclusively for support of state educational needs. [DIED SENATE].

SJR 40 — Article V, Section 1
Suffrage and Elections

Relating to voter qualifications. Repeals the requirement that a person must be able to read or speak the English language in order to vote. [DIED HOUSE].

SJR 57 — Article IX
Finance and Taxation

Adding a new section to establish a permanent fund consisting of revenue received from nonrenewable petroleum and mineral resources. The appropriations shall be used for retirement of the general bonded indebtedness of the state and for other permanently benefiting purposes as may be provided by law. [DIED HOUSE].

SJR 59 — Article II, Section 8
The Legislature

Limiting the regular sessions of the legislature to sixty (60) days. [DIED HOUSE].

1970

HOUSE

HJR 91 — Article II, Section 9
The Legislature

Provides for allowing special sessions of the legislature to be called by the President of the Senate and the Speaker of the House. [DIED HOUSE].

HJR 94 — Article I
Declaration of Rights

Adding a new section to create an "environmental bill of rights", to conserve and protect the natural resources and scenic beauty, and to encourage the development and improvement of the agricultural lands of the state. It provides for the abatement of air, water, and noise pollution. It further provides for lands to be set aside as wilderness areas, parks, historical sites and refuge areas. [DIED HOUSE].

HJR 97 — Article XI, Section 7
The Executive

Eliminating certain restrictions in the right of initiative. This amendment eliminated the restriction that the initiative may not be used to dedicate revenues, or make or repeal appropriations. [DIED HOUSE].

HJR 127 — Article II, Section 8
The Legislature

Limits the legislative session to ninety (90) days. [DIED HOUSE].

SENATE

SJR 60 Article VIII, Section 1
Natural Resources

Establishing a conservation policy. The amendment repeals and re-enacts Section 1 to read as follows:

"Section 1. STATEMENT OF POLICY. It is the policy of the state to protect and uphold the right of each of its citizens to a natural environment of clean air, clean water, and scenic beauty, and to encourage the wise use of natural resources consistent with the public interest. The legislature, in implementing this policy, shall include adequate provision for the abatement of all forms of air, water, and landscape pollution and degradation." [FAILED SENATE].

SJR 74 Article IX
Finance and Taxation

Adding a new section to Article IX, establishing the Alaska Resources Permanent Fund.

"Sec. 15. ALASKA RESOURCES PERMANENT FUND. The Alaska Resources Permanent Fund created by the Second Session of the Sixth Legislature, including any additions by appropriations, shall be permanent and not subject to appropriation. It shall be made in accordance with the standards observed by men of ordinary prudence, discretion, intelligence, and experience, when investing, and not speculating with, their own funds. Income becomes part of the fund. An amount equal and limited to five per cent of its market value shall be withdrawn from the fund annually and thereafter be subject to appropriation for general purposes. No other withdrawals may be made from the fund, except for payment of expenses of administration." [FAILED SENATE].

SJR 87 — Article IV
The Judiciary

Relating to the office of Chief Justice of the Supreme Court, proposing new language which states:

"The office of the Chief Justice shall rotate among the justices every three years." [DIED HOUSE].

SJR 97 — Article VIII, Section 15
Natural Resources

Repeals this section which is the "exclusive right of fishery" provision. [FAILED SENATE].

SJR 98 — Article I
Declaration of Rights

Adding a new section clarifying the "inherent right to life", with the following language:

"Section 22. INHERENT RIGHT TO LIFE. The personal right to a natural environment as close to the natural state as possible when all of man's needs are considered is inherent in the right to life and may not be denied. The legislature shall implement this section." [DIED HOUSE].

1971

HOUSE

HJR 1 — Article III, Section 25
The Executive

Election, term of office, and qualifications of the Attorney General and District Attorneys. [DIED HOUSE].

HJR 2 — Article II, Section 1
The Legislature

Increasing the membership of the Legislature to twenty-one (21) Senate members and forty-one (41) House members. [DIED SENATE].

HJR 7 — Article II, Sections 1, 2, 3, 12, 13, 14, 15, 16, 18, and 20
The Legislature

Establishing a Unicameral Legislature. [DIED SENATE].

HJR 31 — Article VIII, Section 15
Natural Resources

Amending the "exclusive right of fisheries" provision by adding the following words to the Section:

". . . except as authorized by law."
[DIED HOUSE].

HJR 38 — Article X, Section 4
Local Government

Requires borough assemblymen representing a first class city or other class of city designated by law, to be elected by city voters rather than be appointed by the city council. Adds the words:

"Assemblymen elected from and by the qualified voters of the city," and deletes [MEMBERS OF ITS COUNCIL].

The committee substitute for this resolution changed the language as follows:

". . . or by assemblymen elected from and by the qualified city voters by an ordinance prescribed by law to authorize such direct election of assemblymen." [DIED HOUSE].

HJR 50

Article II, Section 5
The Legislature

Relating to office holding. Adds the words:

". . . or a political subdivision of the state" to the disqualification clause so that a person could not be a legislator and also work for a city or borough." [FAILED HOUSE].

HJR 52

Article I, Section 11
Declaration of Rights

Relating to the size of juries. Adds the word "six" for the number or jurors and deletes:

[TWELVE, EXCEPT THAT THE LEGISLATURE MAY PROVIDE FOR A JURY OF NOT MORE THAN TWELVE, NOR LESS THAN SIX IN COURTS NO OF RECORD].

and

Article I, Section 16

Changes the section as follows:

"Section 16. CIVIL SUITS: TRIAL BY JURY. In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of six [TWLEVE] is preserved to the same extent as trial by jury [IT] existed at common law. The legislature may make provision for a verdict by not less than three-fourths of the jury [AND, IN COURTS NOT OF RECORD, MAY PROVIDE FOR A JURY OF NOT LESS THAN SIX OR MORE THAN TWELVE]." [FAILED HOUSE].

HJR 75

Article X, Section 4
Local Government

Relating to the composition and apportionment of borough assemblies. Changes this section as follows:

"Section 4. ASSEMBLY. The governing body of the organized borough shall be the assembly, and its composition and apportionment shall be established by law or charter. Assembly composition and apportionment, including voting procedures based on the apportionment, may be prescribed in any manner consistent with the equal representation standards of the Constitution of the United States. [EACH CITY OF THE FIRST CLASS AND EACH CITY OF ANY OTHER CLASS DESIGNATED BY LAW, SHALL BE REPRESENTED ON THE ASSEMBLY BY ONE OR MORE MEMBERS OF ITS COUNCIL. THE OTHER MEMBER OF THE ASSEMBLY SHALL BE ELECTED FROM AND BY THE QUALIFIED VOTERS RESIDENT OUTSIDE SUCH CITIES.] [DIED HOUSE].

HJR 77

Article VII, Section 1
Health, Education, and Welfare

Relating to education. Deletes the following language [NO MONEY SHALL BE PAID FROM PUBLIC FUNDS FOR THE DIRECT BENEFIT OF ANY RELIGIOUS OR OTHER PRIVATE EDUCATIONAL INSTRUCTION]. [DIED HOUSE].

HJR 79

Article II, Section 8
The Legislature

Limiting regular sessions of the Legislature to ninety (90) days. [DIED HOUSE].

SENATE

SJR 1 — Article II, Section 5
The Legislature

Relating to disqualifications for the office of legislators. Allows a teacher or school administrator to be a legislator. [DIED SENATE].

SJR 2 — Article II, Section 5
The Legislature

Limiting legislators seeking or holding other public office. Changes the language of this section as follows:

"SECTION 5. DISQUALIFICATIONS. No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit under the State which has been created, or the salary or emoluments of which have been increased, unless by general law applying to all salaried officers of the State, while he was a member. A legislator may not seek [THIS SECTION SHALL NOT PREVENT ANY PERSON FROM SEEKING OR HOLDING] the office of governor, or lieutenant governor, without first having resigned his seat in the legislature [OR MEMBER OF CONGRESS]. This section shall not apply to employment by or election to a constitutional convention, or to service on or at the behest of an interim committee of the legislature. [DIED SENATE].

SJR 10 — Article VIII, Section 15
Amendment and Revision

Amending the exclusive right of fisheries provision.

"SECTION 15. NO EXCLUSIVE RIGHT OF FISHERY. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the

power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [PASSED LEGISLATURE, APPROVED BY VOTERS].

SJR 32

Article IX
Finance and Taxation

Adding a new section to Article IX, establishing the continuing revenue fund with the following language:

"SECTION 15. CONTINUING REVENUE FUND. There is created the continuing revenue fund which consists of all bonuses received by the state from the leasing of oil and gas and other mineral lands after January 1, 1973. This fund is not subject to appropriation. It shall be invested for maximum long-term total return. Investments shall be made in accordance with the standards observed by men of ordinary prudence, discretion, intelligence, and experience, when investing, and not speculating with, their own funds. Income becomes part of the fund. An amount equal and limited to five per cent of its market value shall be withdrawn from the fund annually and thereafter be subject to appropriation for general purposes. No other withdrawals may be made from the fund, except for payment of expenses of administration. The administration of the fund shall be prescribed by law. [DIED SENATE].

1972

HOUSE

HJR 92 — Article XIII, Section 1
Amendment and Revision

Relating to the amendment section of the Constitution to allow amending the Constitution by initiative. [DIED SENATE].

HJR 102 — Article I, Section 3
Declaration of Rights

Relating to the Civil Rights section, adds the word "sex" to the section quaranteeing civil rights. [PASSED BY LEGISLATURE, PASSED VOTER APPROVAL].

HJR 103 — Article I, Section 8
Declaration of Rights

Grand Jury; changes the language of this section as follows:

"SECTION 8. GRAND JURY. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, or unless a complaint or information has been filed and a judge has found, after preliminary hearing, that there is probable cause to believe that the accused person has committed the crime, except in cases arising in the armed forces in time of war or public danger. [INDICTMENT MAY BE WAIVED BY THE ACCUSED. IN THAT CASE THE PROSECUTION SHALL BE BY INFORMATION.] The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended." [FAILED HOUSE].

HJR 104 — Article III, Section 25
The Executive

Relating to the selection of the Attorney General and District Attorneys. Adds new sections for term, qualifications, and election of these positions. [DIED HOUSE].

HJR 106 — Article VII, Section 3
Health, Education, and Welfare

Relating to the University of Alaska. Provides for a "Chancellor" instead of a President and makes him the "Chief" Executive of the Board of Regents. [DIED HOUSE].

HJR 110 — Article X, Section 12
Local Government

Requires that annexation of territory to a city be approved by a majority of the qualified voters of the territory to be annexed. [DIED HOUSE].

HJR 115 — Article IX
Finance and Taxation

Adding a new section establishing the Alaska Permanent Fund as follows:

"Section 15. ALASKA PERMANENT INVESTMENT FUND. There is created the Alaska Permanent Investment Fund which consists of $500,000,000 in bonuses received by the State from the leasing of oil and gas lands in 1969 and oil money in excess of $100,000,000 a year received by the State from the sale of nonrenewable resources after this amendment becomes effective. This fund is not subject to appropriation but nothing prevents the full faith and credit of the fund from being used as security for present and future indebtedness of the State or its political subdivisions. The fund shall be invested for maximum long-term return with particular attention to be given investments in Alaska. Investments shall be made by the commissioner of revenue in accordance with the standards observed by men of ordinary prudence, discretion, intelligence, and experience, when investing, and not speculating with, their own funds. Income produced from investments becomes part of the general fund. Amounts may be withdrawn as needed to pay for bonds in default for which the fund has been given as security. No other withdrawals may be made from the fund, except for payment of expenses of administration. [DIED HOUSE].

HJR 116

Article X, Section 6
Local Government

Establishing the legislature as the assembly for the unorganized borough with new language as follows:

"SECTION 6. UNORGANIZED BOROUGHS. The legislature, in joint session sitting as a unicameral body, and acting in the manner prescribed by law, is the assembly for the unorganized borough. It shall provide for the performance of services it considers [DEEMS] necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough." [DIED HOUSE].

HJR 120

Article IV, Sections 12 and 16
The Judiciary

Relating to the administration and financing of the State Court System.

"SECTION 16. COURT ADMINISTRATION. The supreme court shall exercise administrative jurisdiction over [THE CHIEF JUSTICE OF THE SUPREME COURT SHALL BE THE ADMINISTRATIVE HEAD OF] all courts. The supreme court shall appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system. The administrative director, with the approval of the supreme court, may assign judges from one court or division thereof for temporary service. The administrative director shall prepare an annual budget for the judicial system [HE MAY ASSIGN JUDGES FROM ONE COURT OR DIVISION THEREOF TO ANOTHER FOR TEMPORARY SERVICE. THE CHIEF JUSTICE SHALL, WITH THE APPROVAL OF THE SUPREME COURT, APPOINT AN ADMINISTRATIVE DIRECTOR TO SERVE AT THE PLEASURE OF THE SUPREME COURT AND TO SUPERVISE THE ADMINISTRATIVE OPERATIONS OF THE JUDICIAL SYSTEM].

*Sec. 2. Sec. 12, art. IX of the Constitution of the State of Alaska is amended to read:

SECTION 12. BUDGET. (a) The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

(b) The administrative director of the judicial system shall submit an annual budget and supporting information for the judicial system to the governor at the time and in the form designated for budget submissions by the principal departments in the executive branch. The governor shall submit to the legislature as a part of his budget and general appropriation bill his budget and appropriation recommendations for the judicial system, accompanied by the initial budget request submitted to the governor by the administrative director of the judicial system. [DIED HOUSE].

HJR 126

Article V, Section 1
Suffrage and Elections

Regarding the residency requirements for voting in state and local elections. Deletes the language requiring one year residency. [PASSED LEGISLATURE, PASSED VOTER APPROVAL].

HJR 141

Article II, Section 8
The Legislature

Providing limits on regular sessions of the legislature. [DIED HOUSE].

1972

SENATE

SJR 33 — Article II, Section 2
The Legislature

Relating to the age requirements for legislators. Under this amendment, members of the Senate shall be twenty-two (22) and House members shall be nineteen (19). [WITHDRAWN].

SJR 44 — Article II, Section 2
The Legislature

Relating to residency and age requirements of state legislators. The following changes were proposed:

"SECTION 2. MEMBERS: QUALIFICATIONS. A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of an area which is, or at one time was, a portion of the district from which elected for at least six months, [ONE YEAR, IMMEDIATELY] preceding his filing for office. A member of the legislature [SENATOR] shall be at least [TWENTY-FIVE YEARS OF AGE AND A REPRESENTATIVE AT LEAST] twenty-one years of age. [FAILED HOUSE].

SJR 51 — Article II, Section 2
The Legislature

Relating to minimum age requirements for legislators; Senators twenty-one, House members eighteen. The amendment to this resolution totally eliminated any age requirement. [FAILED HOUSE]

SJR 52 — Article X, Section 4
Local Government

Relating to representation of cities on borough assemblies. Allows each borough to establish composition of the borough assembly by law or charter. [PASSED LEGISLATURE, PASSED VOTER APPROVAL].

SJR 55 Article VI, Section 1
Legislative Apportionment

Revising the procedure and method for redistricting the Senate and House of the State Legislature.

"SECTION 1. LEGISLATIVE DISTRICTS. (a) Members of the senate and the house of representatives shall be elected by the qualified voters in the legislative districts established in the manner provided in this article. A legislative district consists of at least one senate and two representative districts. If a legislative district elects two or more senators or two or more representatives, the legislative district shall be either (1) subdivided into separate single-member senate or representative districts, or (2) the senate and representative seats shall be designated separately by letter or number.

(b) Legislative districts, senate and representative districts, shall consist of compact, contiguous territory and shall be as nearly equal in population as may be.

(c) To the extent population equality requirements permit, each legislative district shall contain, as nearly as practicable, a relatively integrated socio-economic area. In the formation of legislative districts, consideration shall be given to local government boundaries. Whenever possible, drainage basins and other identifiable geographic features shall be used in describing legislative district boundaries.

(d) In this article, to the extent population equality requirements, geographic considerations and transportation services and routes permit

(1) "contiguous" means that every part of every legislative district shall be accessible by land, by state highway or marine highway route, scheduled commercial airline or air taxi route from every part of the same district without passing through any other district of like purpose;

(2) "compact" means that the boundaries of every legislative district shall be as close to equidistant from the geographic center of the district as is practicable.

(e) Following redistricting, the term of office of a member of the senate is not affected by a change in the boundaries of the district from which he was elected.

(f) The census taken under the direction of the Congress of the United States in 1970, and every ten years thereafter, shall be the basis for legislative redistricting.

SECTION 2. REDISTRICTING. The governor shall redistrict the senate and house of representatives in the manner prescribed in this article immediately following the official reporting of a decennial federal census.

SECTION 3. REDISTRICTING ADVISORY BOARD. (a) The governor shall appoint a redistricting board to act in an advisory capacity to his. It shall consist of five members who shall be qualified voters in the state. However, (1) no more than three members of the board may be members of the same political party as the governor, and at least one member shall be a member of the opposite political party; (2) none of the members of the board may be public officers or employees; and (3) no members of the board are eligible for election to the legislature until four years after the redistricting in which they participated becomes effective. At least one member shall be appointed from the southeastern, southcentral, central and western or northwestern regions of the state.

(b) The board shall elect one of its members chairman and one vice chairman and may employ temporary staff. The board shall adopt its own rules of procedure, but a majority of the members constitutes a quorum. The concurrence of three members of the board is required for a ruling, determination or the adoption of a redistricting plan.

(c) The lieutenant governor shall be the ex officio secretary of the board without vote and shall furnish, at the direction of the board or the governor, all necessary technical services. The lieutenant governor shall keep a public record of all the proceedings of the board and shall be responsible for the publication and distribution of the redistricting plan proposed by the board and proclaimed by the governor. The attorney general is the legal counsel for the board; he shall advise the board and the governor and represent them in any litigation concerning legislative redistricting.

(d) The meetings of the board are open to the public except as otherwise provided by law. The board shall hold public hearings on legislative redistricting throughout the state.

(e) The board and its staff shall be compensated and shall receive actual and necessary expenses as provided by law. The legislature shall appropriate funds to enable the board to carry out its duties.

SECTION 4. REDISTRICTING PLAN. (a) Within ninety days following the official reporting of a decennial federal census, the board shall submit its redistricting plan to the governor and make it public. Within sixty days after receipt of the plan, the governor shall issue a redistricting proclamation which shall become law in the same manner, and subject to the same provisions for referendum, as apply to an act of the legislature. The governor shall accompany the redistricting plan he proclaims with a statement explaining any change from the plan presented to him by the board. The redistricting plan shall be effective for the election of members of the legislature until the official reporting of the next decennial census.

(b) If in a referendum on the redistricting plan proclaimed by the governor, a majority of the qualified voters voting on the question reject the

redistricting plan, the governor, within sixty days following the election, shall redraft the redistricting plan in the manner provided in this article.

SECTION 5. JUDICIAL ENFORCEMENT. Original jurisdiction is vested in the supreme court, on the petition of any qualified voter in the state to compel the governor or the redistricting advisory board, by mandamus or otherwise, to perform his redistricting duties under this article.

SECTION 6. JUDICIAL REVIEW, CORRECTION. (a) Original jurisdiction is vested in the supreme court, on the petition of any qualified voter in the state, filed within thirty days after the governor proclaims a redistricting plan, to review, or to compel correction of an error in the redistricting plan. The cause shall be reviewed on the law and the facts.

(b) If the supreme court determines that the plan thus reviewed complies with the provisions of this article it shall dismiss the petition by written opinion within thirty days after the filing of the petition and the governor's redistricting plan shall become law upon the date of the opinion.

(c) If the supreme court determines that the redistricting plan does not comply with the provisions of this article, the plan is void, and the supreme court shall direct the governor to redraft the redistricting plan under the provisions of this article, and return the plan to the supreme court within sixty days after the filing of the petition. The supreme court shall review the plan returned to it and if it complies with the provisions of this article, shall file it with the lieutenant governor within ninety days after the filing of the petition, shall order it published in the manner provided by law and the redistricting shall become effective upon the date of filing.

(d) If the supreme court determines that the plan returned to it by the governor under (c) of this section does not comply with the provisions of this article, the supreme court shall return it immediately to the governor accompanied by a writen opinion specifying with particularity wherein the

plan fails to comply with the requirements of this article. The opinion shall further direct the governor to correct the plan in those particulars and no others, and to file and publish the corrected redistricting plan in the manner provided by law within ninety days after the filing of the petition and it shall become law upon the date of the corrected redistricting plan. [DIED SENATE].

SJR 68 — Article I
Declaration of Rights

Adding a new section relating to the individual's right of privacy as follows:

"The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." [PASSED HOUSE, PASSED VOTER APPROVAL].

SJR 71 — Article II, Section 1
The Legislature

Increasing the membership of the legislature; senate members twenty-one (21), house members forty-one (41). [DIED SENATE].

SJR 73 — Article II, Section 8
The Legislature

Limiting the length of the regular session of the legislature to ninety (90) days. [FAILED HOUSE].

1973

HOUSE

HJR 1 — Article X, Section 12
Local Government

Relating to boundary changes. Requires boundary changes to be submitted to the qualified voters of the area affected by the proposed changes. [DIED HOUSE].

HJR 2 — Article II, Section 2
The Legislature

Reducing the residency requirements for election to the State Legislature. New language would require one (1) year residency in the state and ninety (90) days in the district. [DIED HOUSE].

HJR 3 — Article IX
Finance and Taxation

Proposing a new section to Article IX establishing the general revenue fund.

"SECTION 15. GENERAL REVENUE FUND. The general revenue fund created by the First Session of the Eighth Legislature, including any additions by appropriations, shall not be subject to appropriation. It shall be invested for maximum long-term return. Investments shall be made in accordance with the standards observed by men of ordinary prudence, discretion, intelligence, and experience, when investing, and not speculating with, their own funds. Income becomes part of the fund. An amount equal and limited to five per cent of its market value shall be withdrawn from the fund annually and thereafter be subject to appropriation for general purposes. No other withdrawals may be made from the fund, except for payment of expenses of administration of the fund." [DIED HOUSE].

HJR 4 — Article II, Section 8
The Legislature

Providing for a ninety (90) day regular legislative session and a thirty (30) day extension if approved by two thirds majority of each house. [DIED HOUSE].

HJR 9 — Article III, Section 25
The Executive

Relating to the selection of the Attorney General and District Attorneys. [DIED HOUSE].

HJR 20 — Article XIII, Section 1
Amendment and Revision

Proposing an amendment to the amendment and revision section of the constitution with the following language:

"SECTION 1. AMENDMENTS. Amendments to this consitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor. [PASSED LEGISLATURE, PASSED VOTER APPROVAL].

HJR 33 — Article II, Sections 1, 2, 3, 12, 14, 15, 16, 18, and 20

Relating to a unicameral legislature. [DIED HOUSE].

HJR 39 — Article II, Section 10
The Legislature

Relating to legislative sessions with the following language:

"SECTION 10. ADJOURNMENT. Neither house may adjourn or recess for longer than three days unless the other concurs <u>except that either house after being in session 90 days or longer may by a majority vote of either house adjourn the legislature subject to being called immediately back into special session by the governor</u>." [DIED HOUSE].

HJR 44

Article IX
Finance and Taxation

Adding a new section to establish the Alaska Permanent Investment Fund with the following language:

SECTION 15. ALASKA PERMANENT INVESTMENT FUND. There is created the Alaska Permanent Investment Fund which consists of (1) gifts, (2) appropriations, (3) all money in excess of $100,000,000 received by the State each fiscal year from bonuses, royalties, rentals under leases, and sales of nonrenewable resources after July 1, 1976, and (4) bonuses received by the State from the leasing of oil and gas lands in 1969 which are in the general fund on July 1, 1976. This fund is not subject to appropriation but nothing prevents the fund from being used as security for the full faith and credit of the State (1) for present and future indebtedness of the State or its political subdivisions, and (2) other purposes authorized by law. The fund shall be invested for maximum long-term return with particlar attention to be given investments in the State. Investments shall be made by the commissioner of revenue in accordance with the standards observed by men of ordinary prudence, discretion, intelligence, and experience, when investing, and not speculating with, their own funds. Except for amounts needed to pay the expenses of administration, all income produced from investments becomes part of the general fund. Amounts may be withdrawn as needed to pay for bonds in default and other purposes authorized by law for which the fund has been given as security. No other withdrawals may be made from the fund." [DIED HOUSE].

HJR 49

Article III, Section 2
The Executive

Relating to age qualifications of Governor, Lt. Governor and Legislators. If the amendment was enacted, there would be no minimum age requirement for these offices. [DIED HOUSE].

HJR 53

Article I, Section 3
Declaration of Rights

Deletes the word [SEX] from the civil rights section relating to discrimination. [DIED HOUSE].

HJR 56 Article IX, Section 8
Finance and Taxation

Relating to debts of the state. Repeals Section 8 relating to bonded indebtedness. [DIED HOUSE].

1973

SENATE

SJR 1 — Article II, Section 1
The Legislature

Limiting legislators seeking or holding other public office. Provides that a legislator seeking the office of Governor, Lt. Governor, or a seat in the United States Congress must forfeit the remainder of his legislative term. [DIED SENATE].

SJR 2 — Article II, Section 8
The Legislature

Limiting the length of a regular legislative session to ninety (90) days. [FAILED SENATE].

SJR 3 — Article

Provides for the election of the Commissioner of Education. [DIED SENATE].

SJR 4 — Article III, Section 25
The Executive

Provides for the election of the Attorney General. [DIED SENATE].

SJR 18 — Article I, Section 3
Declaration of Rights

Deletes [SEX] from the civil rights section. [DIED SENATE].

SJR 23 — Article II, Sections 1, 2, 3, 12, 14, 15, 16, 18, and 20
The Legislature

Providing for a unicameral legislature. [DIED SENATE].

SJR 32 — Article XI, Sections 2, 3, 4, 5, and 6
Initiative, Referendum, and Recall

Establishes the position of "chief elections officer of the state". [DIED SENATE].

HOUSE

HJR 58 — Article VI
Legislative Apportionment

Repealing and re-adopting Article VI, revising the method and procedure for redistricting the Senate and House of Representatives of the state legislature. [DIED HOUSE].

HJR 66 — Article I, Section 11
Declaration of Rights

Relating to release on bail. New language inserted as follows:

" . . . and the court finds upon substantial evidence that, if released, the accused will pose a danger to other persons and to the community." [FAILED HOUSE].

HJR 67 — Article I, Section 11
Declaration of Rights

Relating to release on bail. Changes the section as follows:

"The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for [CAPITAL] offenses <u>for which a penalty of imprisonment in excess of eight years may be imposed upon conviction, and then only</u> when proof is evident or the presumption is great; . . ." [DIED HOUSE].

HJR 68 — Article I, Section 11
Declaration of Rights

Relating to juries in criminal prosecutions. Deletes [IN COURTS NOT OF RECORD] in the section relating to the amount of members on a jury. [DIED HOUSE].

HJR 71 — Article 1, Section 12
Declaration of Rights

Relating to excessive punishment. Adds the following underlined language:

"Penal administration shall be based on principle of reformation, [AND] upon the need for

SENATE

SJR 39 — Article IX, Section 12
Finance and Taxation

Limiting annual appropriations so as not to exceed annual revenues. New langauge as follows:

". . . for new or additional revenues. Appropriations made by the legislature for a fiscal year may not exceed the total estimated revenue of the State for that fiscal year; except that in the event of war or a natural disaster, as declared by the legislature, the application of this limit may be suspended by passage of a concurrent resolution by a vote of two-thirds of the membership of each house. The suspension shall only be effective for the two-year term of the legislature which passes the resolution." [DIED SENATE].

SJR 45 — Article I, Section 12
Declaration of Rights

Excessive punishment. Inserts new language as follows:

"Penal administration shall be based on the principle of reformation, [AND] upon the need for protecting the public and the need for proper punishment as a deterrent to the commission of future crimes." [DIED SENATE].

SJR 46 — Article I, Section 11
Declaration of Rights

Relating to the rights of accused persons. Changes the section as follows:

"SECTION 11. RIGHTS OF ACCUSED. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of six [TWELVE; EXCEPT THAT THE LEGISLATURE MAY PROVIDE FOR A JURY OF NOT MORE THAN TWELVE NOR LESS THAN SIX IN COURTS NOT OF RECORD]. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for [CAPITAL] offenses for which a penalty of imprisonment in excess of eight years may be imposed upon

conviction when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." [DIED SENATE].

SJR 51

Article I
Declaration of Rights

Adds a new section to read:

"SECTION 23. RIGHT TO EDUCATION IN NATIVE LANGUAGE. The Native peoples of the State have the inherent right, through the system of public education, to foster and preserve their linguistic and cultural heritage which still exists in substantial form among those peoples by being taught required courses of instruction in the public schools of the State in their Native tongue. The legislature shall implement this section by appropriate legislation." [DIED SENATE].

SJR 55

Article I, Section 11
Declaration of Rights

Restricting the right to bail when convicted of a prior criminal offense. The following language was added:

"SECTION 11. RIGHTS OF ACCUSED. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except (1) that, in his discretion the judge may refuse bail when the person charged with a criminal offense has either (A) been convicted of a prior criminal offense or (B) been charged with a prior criminal offense that has not reached a final determination by the time he is subsequently charged; . . . ." [DIED SENATE].

1975

HOUSE

HJR 1 — Article II, Sections 1, 2, and 3
The Legislature

Creating a unicameral legislature. [DIED SENATE JUDICIARY].

HJR 3 — Article 1, Section 8
Declaration of Rights

Grand Jury. Adds new language which if adopted would allow a person to be held to answer for a crime without grand jury indictment if a complaint or information has been filed and a judge has found, after preliminary hearing, that there is probable cause to believe that the accused person has committed the crime. [DIED HOUSE JUDICIARY].

HJR 4 — Article III, Section 4
The Executive

Relating to the term of office of the Governor. Changes the term of office of Governor to one six year term. If the Lt. Governor succeeds to the office of Governor and serves four or more years, he may only serve one term. [FAILED HOUSE].

HJR 10 — Article I, Section 1
Declaration of Rights

Inherent Rights -- New language added to this section to read:

"SECTION 1. INHERENT RIGHTS. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; that all persons have an inalienable right to a beautiful environment in which the ecological quality of air, water and land, and the condition of natural resources, wildlife, scenic beauty and quiet shall be protected by the State; and that all persons have corresponding obligations to the people and to the State. [FAILED SENATE].

HJR 11 — Article II, Section 9
The Legislature

Providing for consideration of vetoed bills during special sessions of the legislature. Allows bills vetoed by the Governor to be considered during a special session of the legislature. [PASSED BY LEGISLATURE, PASSED VOTER APPROVAL].

HJR 15 — Article VII, Section 2
Health, Education, and Welfare

Relating to the University of Alaska. Adds to this section the underlined words:

". . . its property, <u>including but not limited to the funds appropriated to it by the legislature and restricted funds</u>." [DIED SENATE JUDICIARY].

HJR 19 — Article IV, Section 1
The Judiciary

Relating to judicial districts. Changes this section as follows:

"Judicial districts shall be established by <u>the legislature or by the supreme court</u> [LAW]. <u>Judicial district boundary changes proposed by the supreme court shall be presented to the legislature during the first ten days of a regular session and shall be effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house</u>." [DIED SENATE JUDICIARY].

HJR 20 — Article III, Section 23
The Executive

Relating to the term, qualifications and election of the Attorney General. [DIED HOUSE JUDICIARY].

HJR 23 — Article III, Section 4
The Executive

Relating to the office of Governor. Under the section relating to the term of office, makes the following changes:

"Unless the legislature provides otherwise, it begins[BEGINNING] at noon on the second [FIRST] Monday in December four years later. [DIED HOUSE JUDICIARY].

HJR 33 — Article II, Section 8
The Legislature

Provides for a ninety (90) day session with a thirty (30) day extension if concurred in by a two thirds majority of each house. [DIED HOUSE STATE AFFAIRS].

HJR 36 — Article II, Section 5
The Legislature

Regarding the disqualification of legislators for certain positions. Changes the section by deleting the following language:

"[DURING THE TERM FOR WHICH ELECTED AND FOR ONE YEAR THEREAFTER, NO LEGISLATOR MAY BE NOMINATED, ELECTED, OR APPOINTED TO ANY OTHER OFFICE OR POSITION OF PROFIT WHICH HAS BEEN CREATED, OR THE SALARY OR EMOLUMENTS OF WHICH HAVE BEEN INCREASED, WHILE HE WAS A MEMBER. THIS SECTION SHALL NOT PREVENT ANY PERSON FROM SEEKING OR HOLDING THE OFFICE OF GOVERNOR, SECRETARY OF STATE, OR MEMBER OF CONGRESS.]" [DIED HOUSE JUDICIARY].

1975

SENATE

SJR 1 Article II, Sections 1, 2, 3, 12, 14, 15, 16, 18, and 20
The Legislature

Providing for a unicameral legislature. [DIED SENATE STATE AFFAIRS].

SJR 2 Article IX, Section 7 and adding a new section
Finance and Taxation

Establishing the Alaska Permanent Investment Fund. Adding a new section as follows:

SECTION 15. ALASKA PERMANENT INVESTMENT FUND. There is created the Alaska Permanent Investment Fund which consists of (1) gifts, (2) legislative appropriations, (3) all money in excess of $500,000,000 received by the State each fiscal year from bonuses, royalties, rentals under leases, and sales of nonrenewable resources after January 1, 1976, (4) bonuses received by the State from the leasing of oil and gas lands in 1969 which are in the general fund on January 1, 1976, and (5) the unappropriated and unencumbered balance of the general fund remaining at the expiration of six months after the end of each fiscal year. This fund is not subject to appropriation but nothing prevents the fund from being used as security for the full faith and credit of the State (1) for present and future indebtedness of the State or its political subdivisions, and (2) other purposes authorized by law. The fund shall be invested for maximum long-term return with particular attention to be given investments in the State. Investments shall be made by the commissioner of revenue in accordance with the standards observed by men of ordinary prudence, discretion, intelligence, and experience, when investing, and not speculating with, their own funds. Except for amounts needed to pay the expenses of administration, all income produced from investments becomes part of the general fund. Amounts may be withdrawn as needed to pay for bonds in default and other purposes authorized by law for which the fund has been given as security. No other withdrawals may be made from the fund. [DIED SENATE STATE AFFAIRS].

SJR 14 — Article III, Section 4
The Executive

Relating to the office of Governor. Under the section relating to the term of office, makes the following changes:

"Unless the legislature provides otherwise, it begins [BEGINNING] at noon on the second [FIRST] Monday in December four years later. [DIED SENATE JUDICIARY].

SJR 16 — Article I, Section 1
Declaration of Rights

Amending the inherent rights section. Adding new language as follows:

"This section includes the recognition that inherent in the right to life, liberty, and the pursuit of happiness is the need of all persons for a livable environment of clean air, clean water, clean land, scenic beauty and quiet. The right of every person to fulfill this need is inalienable." [DIED SENATE RESOURCES].

SJR 19 — Article IV, Section 1
The Judiciary

Relating to judicial districts. Adds new language to this section as follows:

"Judicial districts shall be established by the legislature or by the supreme court [LAW]. Judicial district boundary changes proposed by the supreme court shall be presented to the legislature during the first ten days of a regular session and shall be effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house." [DIED SENATE JUDICIARY].

SJR 35 — Article II, Section 8
The Legislature

Limiting the regular session to ninety (90) days with provisions for thirty (30) day extensions if approved by a majority of the members of each house. [DIED SENATE RULES].

1976

HOUSE

HJR 39 Article IX, Section 7 and adding a new section Finance and Taxation

Establishing the Alaska Permanent Fund for certain proceeds derived from nonrenewable resources; adds a new section to Article IX which creates the fund. [PASSED LEGISLATURE, APPROVED BY VOTERS].

HJR 40 Article IX, Section 7 and adding a new section Finance and Taxation

Establishing the Alaska Resources Investment Fund with language as follows:

"SECTION 15. ALASKA RESOURCE INVESTMENT FUND. There is created the Alaska Resource Investment Fund which consists of all money in excess of $500,000,000 received by the State each fiscal year from a combination of bonuses, severance taxes, royalties, rentals under leases, and sales of nonrenewable resources. This fund is subject to appropriation only upon approval of two-thirds majority of each house of the legislature, but nothing prevents the fund from being used without legislative approval as security for the full faith and credit of the State (1) for present and future indebtedness of the State or its political subdivisions, and (2) other purposes authorized by law. The fund shall be invested for maximum long-term return with particular attention to be given investments in the State. Investments in other than common or preferred stocks shall be made by the commissioner of revenue in accordance with the standards observed by men of ordinary prudence, discretion, intelligence, and experience, when investing, and not speculating with, their own funds. Except for amounts needed to pay the expenses of administration, all income produced from investments becomes part of the general fund. Amounts may be withdrawn as needed to pay for bonds in default and other purposes authorized by law for which the fund has been given as security. No other withdrawals may be made from the fund. [DIED HOUSE FINANCE].

HJR 42 — Article II, Section 7
The Legislature

Relating to an increase of salary for legislators. Adds the following language to this section:

"The salary of a legislator may not be increased before the first general election following the term in which the increase in salary was enacted." [DIED HOUSE STATE AFFAIRS].

HJR 48 — Article I, Section 16
Declaration of Rights

Relating to the right to trial by jury. Amending this section to read:

"In civil cases, except as may be provided by law for those in which the claim is based on the professional services by a health-care provider, where the amount in controversy exceeds two hundred fifty dollars, the right of trial by jury of twelve is preserved to the same extent as it existed as common law. [DIED HOUSE JUDICIARY].

HJR 49 — Article II, Section 8
The Legislature

Limiting the length of regular sessions of the legislature to ninety (90) days and providing for extensions of twenty (20) days each with concurrence by a two-thirds majority of each house. [DIED HOUSE JUDICIARY].

HJR 63 — Article VII, Section 1
Health, Education, and Welfare

Contracting with educational institutions; adds the words:

" . . . but this does not preclude payment for services under contract with accredited private institutions for educational and research services." [DIED HOUSE JUDICIARY].

HJR 66

Article II, Section 18
The Legislature

Relating to the effective date of acts subject to referendum. The section changes as follows:

"SECTION 18. EFFECTIVE DATE. Laws passed by the legislature may not become effective until ninety days have elapsed following adjournment of the legislative session at which they were enacted. Dedications of revenue, appropriations, or local or special acts may become effective at an earlier date by concurrence of two-thirds of the membership of each house. Any other act may become effective at an earlier date only if it is necessary for the immediate preservation of the public peace health or safety. The circumstances constituting this necessity shall be stated in a separate section of the act, and the act shall be approved by a two-thirds vote of the membership in each house.
*Sec. 2 Article II. sec. 5, Constitution of the State of Alaska is amended to read:

SECTION 5. REFERENDUM ELECTION. A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. An act referred may not become effective until it has been approved by the voters. The lieutenant governor shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first statewide election held more than one hundred eighty days after adjournment of that session.
*Sec. 3. Article II, sec 5, Constitution of the State of Alaska is amended to read:

SECTION 6. ENACTMENT. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void [THIRTY DAYS AFTER CERTIFICATION]. Additional procedures for the initiative and referendum may be prescribed by law. [DIED HOUSE JUDICIARY].

HJR 73 — Article VII, Section 1
Health, Education, and Welfare

State aid to private institutions. Deletes the words [OR OTHER PRIVATE] from this section. [PASSED LEGISLATURE, FAILED BY VOTERS].

HJR 74 — Article VII, Section 1
Health, Education, and Welfare

State aid to private institutions. Adds the words underlined to this section:

"No money shall be paid from public funds for the direct benefit of any religious or proprietary educational institution or other pre-school, elementary, or secondary educational institution." [DIED HOUSE JUDICIARY].

HJR 75 — Article VII, Section
Health, Education, and Welfare

Public education; adds the following underlined language:

"No money shall be paid from public funds for the direct benefit of any religious or other private educational institution, however, money may be paid from public funds for the direct benefit of accredited, degree-granting, nonprofit, private, post-secondary educational institutions in a manner prescribed by law." [DIED HOUSE JUDICIARY].

SENATE

SJR 42 — Article I, Section 16
Declaration of Rights

Relating to the right to trial by jury, amending this section to read:

"In civil cases, except as may be provided by law for those in which the claim is based on the professional services by a health-care provider, where the amount in controversy exceeds two hundred fifty dollars, the right of trial by jury of twelve is preserved to the same extent as it existed at common law." [DIED SENATE JUDICIARY].

SJR 45 — Article VIII, Section 10
Natural Resources

Relating to the disposal or lease of state land or interest therein. Changing this section to read as follows:

"SECTION 10. PUBLIC NOTICE AND LEGISLATIVE APPROVAL. No disposals or leasing of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law. The legislature may by law require legislative approval of disposals or leases of state lands or interests therein." [PASSED LEGISLATURE, FAILED BY VOTERS].

SJR 52 — Article VII, Section 1
Health, Education, and Welfare

Relating to contracting with private educational institutions. New language as follows:

". . . but this does not preclude payment for services under contract with accredited private educational institutions for educational and research services." [DIED SENATE RULES].

SJR 55 Article II, Sections 5 and 6
The Legislature

Relating to measures submitted by the legislature to the voters. Changes these two sections as follows:

"SECTION 5. REFERENDUM ELECTION. A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. The legislature may submit an act that it has passed or a resolution that it has adopted to the voters for approval or rejection. An act or resolution submitted by the legislature may not become effective until it has been approved by the voters. The lieutenant governor shall prepare a ballot title and proposition summarizing the act or resolution and shall place them on the ballot for the first statewide election held more than one hundred eighty days after adjournment of that section.

*Sec. 2. Article XI, sec. 6, Constitution of the State of Alaska, is amended to read:

"Section 5. ENACTMENT. If a majority of the votes cast on the proposition favor its adoption, the initiated measure, or the act or resolution submitted by the legislature, is enacted or adopted. If a majority of the votes cast on the proposition favor the rejection of an act referred or an act or resolution submitted, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. Unless otherwise provided in the act or resolution, a submitted law or resolution becomes effective ninety days after certification and may be amended or repealed at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative, [AND] referendum and measures submitted by the legislature may be prescribed by law." [DIED HOUSE JUDICIARY].

1977

HOUSE

HJR 4 — Article II, Section 8
The Legislature

Relating to limiting regular legislative sessions to ninety (90) days. [DIED HOUSE STATE AFFAIRS].

HJR 7 — Article II, Sections 1 2, 3, 12, 14, 15, 16, 18, and 20
The Legislature

Providing for a unicameral legislature with sixty-one (61) senators with four (4) year terms. The sessions would be limited to one hundred twenty (120) days but extended in ten (10) day increments by majority vote. [FAILED HOUSE].

HJR 13 — Article III, Section 4
The Executive

Relating to term of office of the governor, making it six (6) years, and providing that a governor cannot serve consecutive terms. [DIED HOUSE JUDICIARY.

HJR 18 — Article II, Sections 2 and 3
The Legislature

Relating to election of state senators and election districts. Calls for senators to be elected at large within their districts and sets senatorial districts as those constitutionally prescribed as of January 3, 1959. [DIED HOUSE STATE AFFAIRS].

HJR 24 — Article II, Section 8
The Legislature

Relating to session limitation of one hundred (100) days, with extensions of ten (10) day increments by vote of two-thirds of the legislators. [DIED HOUSE JUDICIARY].

HJR 28 — Article II, Section 11
The Legislature

Relating to work of interim committees of the legislature. Allows interim committees to approve jointly with the governor, revisions to the appropriated state budget. [DIED HOUSE JUDICIARY].

HJR 30 — Article I, Section 11
Declaration of Rights

Relating to bail; this section would disallow a person to be released on bail if his release will pose a danger to other persons and the community. [DIED HOUSE JUDICIARY].

HJR 31 — Article Section

Relating to legislative confirmation authority; makes members of a board, commission, or agency, etc., to administer the fund created under Section 15 of Article IX, subject to confirmation by a majority of the members of the legislature, meeting in joint session. [DIED SENATE JUDICIARY].

HJR 33 — Article II, Section 10
The Legislature

Relating to adjournment and recess of the legislature. Would require the legislature to recess sixty-five (65) days after the governor submits the budget to the legislature, unless a resolution to continue the session without a recess passes by three-quarters (3/4) vote of membership of each house. This section would further require that the legislature shall reconvene on the date set by the presiding officer of either house and the principal order of business shall be the general appropriation bill. The committee substitute changed HJR 33 as follows:

Relating to limiting the regular legislative sessions to one hundred twenty (120) days, including recess; may be extended one (1) twenty (20) period by two-thirds (2/3) majority of legislature in joint session. Provides for a recess from the 80th day to 91st day. [FAILED HOUSE].

HRJ 38

Article VII, Section 2
Health, Education, and Welfare

Relating to the University of Alaska. Includes funds appropriated to the University of Alaska in property which shall be administered and disposed of according to law. [DIED HOUSE HEALTH, EDUCATION, AND SOCIAL SERVICES].

HJR 40

Article XIII, Section 1
Amendment and Revision

Relating to submission of constitutional amendments by iniative. Would allow amendments to the constitution by initiative. [DIED HOUSE STATE AFFAIRS].

1977

SENATE

SJR 1 — Article II, Section 8
The Legislature

Limiting legislative sessions to ninety (90) days. Provides for extension of twenty (20) days by vote of majority of each house and an additional period of ten (10) days or less by two-thirds (2/3) majority of each house. [DIED SENATE JUDICIARY].

SJR 2 — Article II, Sections 1, 2, 3, 12, 14, 15, 16, 18 and 20
The Legislature

Provides for a unicameral legislature consisting of sixty-one (61) senators, serving four (4) year terms. Provides that no vote on final passage of a bill can be taken until five days after its introduction and at least one day after the date publicly announced for it to appear on the calendar. Repeals Article VI and sets up new guidelines for re-districting. [DIED SENATE JUDICIARY].

SJR 3 — Article I, Section 12
Declaration of Rights

Relating to standards of sentencing and penal administration. Provides that sentencing practice and penal administration shall be based on the principles of just punishment, deterrence, reformation, and the need for public protection. It adds the words "just punishment" and "deterrence." [DIED SENATE JUDICIARY].

SJR 4 — Article I, Section 11
Declaration of Rights

Relating to bail in felony cases involving violence. Provides that a person may not be eligible for bail for non-capital felonies involving violence when the accused has been twice convicted of violent felonies when after a hearing the judge determines that there is evidence substantially showing guilt. [DIED SENATE JUDICIARY].

SJR 14 — Article III, Section 25
The Executive

Relating to the Office of Attorney General. Provides for election of Attorney General for same term as Governor, and stipulates that the Attorney General does not serve at the pleasure of the Governor. [DIED SENATE JUDICIARY].

SJR 16 — Article II, Section 11
The Legislature

Relating to work of interim committees of the legislature. Provides for an interim committee which would approve jointly with the governor, revisions to the appropriated state budget, including revisions authorizing the receipt and expenditures of federal and other receipts as defined by law. [PASSED LEGISLATURE, FAILED VOTER APPROVAL].

SJR 23 — Article III, Section 25
The Executive

Relating to the Attorney General. Prohibits the Governor from making any changes in any unit of the Executive Branch which is headed by the Attorney General, and disallows the Governor to supervise any unit headed by the Attorney General. Provides for qualifications, election, term of office, compensation, vacancy, and duties of the Attorney General. [FAILED SENATE].

SJR 27 — Article II, Section 3
The Legislature

Relating to terms of state senators. Provides that all state senators shall be elected at the first general election held after the proclamation of legislative reapportionment and redistricting issued by the governor under Article VI, Section 10. [DIED SENATE JUDICIARY].

SJR 29 — Article IV, Sections 2, 4, 5, 6, and 7
The Judiciary

Providing for the election of supreme court justices and superior court judges. Adds number of judges to total 5. Chief justice may only serve one term. The terms shall be limited to six years. Superior court judges shall be elected from their districts for four year terms. [FAILED SENATE].

SJR 30

Article II, Section 8
The Legislature

Relating to regular and special sessions; limiting session to ninety (90) days. Special sessions limited to subjects designated in the call by concurrent resolution of legislature or request of governor. No limit on the number of special sessions. [FAILED SENATE].

1978

HOUSE

HJR 44 — Article III, Section 25
The Executive

Relating to the Attorney General. Prohibits the Governor from making any changes in any unit of the Executive Branch which is headed by the Attorney General, and disallows the Governor to supervise any unit headed by the Attorney General. Provides for qualifications, election, term of office, compensation, vacancy, and duties of the Attorney General. [DIED HOUSE JUDICIARY].

HJR 61 — Article IV, Section 8
The Judiciary

Relating to prosecuting attorneys. Provides that the Judicial Council shall nominate one or more prosecuting attorneys from each judicial district to be appointed by the Attorney General. Further provides the prosecuting attorney chosen does not serve under the supervision of the Governor. [DIED HOUSE JUDICIARY].

HJR 62 — Article IX, Section
Finance and Taxation

Relating to investments of the state. Provides that no loan procedure or evidence of a loan made by the state or state agency shall be made from the treasury except in accordance with appropriations made by law. [DIED HOUSE STATE AFFAIRS].

HJR 71 — Article II, Section 1
The Legislature

Increasing membership of each chamber of the legislature; senate twenty-five (25) members and house fifty-one (51) members. [DIED HOUSE STATE AFFAIRS].

HJR 74

Article II, Section 5
The Legislature

Eliminating certain restrictions on former legislators holding offices or positions of profit in government. Eliminates the one year provision for holding position of profit for ex-legislators. The committee substitute changed HJR 74 as follows:

Limiting length of legislative session to one hundred twenty (120) days, with extensions of ten (10) day increments by majority of membership of each house. [DIED SENATE JUDICIARY].

1978

SENATE

SJR 44 Article II, Section 1
The Legislature

Increasing the membership of each house of the legislature; Senate 25, House 51. [DIED SENATE RULES].

1979

HOUSE

HJR 1 — Article II, Sections 1, 2, 3, 12, 14, 16, 18, and 20
The Legislature

Providing for a unicameral legislature. [IN SENATE STATE AFFAIRS].

HJR 3 — Article II, Section 8
The Legislature

Regarding the length of the legislative session. [IN HOUSE STATE AFFAIRS].

HJR 5 — Article XII,
General Provisions

Adding a new section designating Juneau as the state capital. [IN HOUSE STATE AFFAIRS].

HJR 6 — Article III, Section 23
The Executive

Relating to the Attorney General. Provides that the Governor may not reorganize the office of the Attorney General and provides for the election of the Attorney General. [IN HOUSE STATE AFFAIRS].

HJR 7 — Article IV, Section 2 and adding new sections
The Judiciary

Providing for the election of Supreme Court Justices and Superior Court Judges. Establishes five rather than [THREE] justices. Provides that a justice may not serve more than one term or one portion of a term.

New sections: (18) provides for election of Supreme Court Justices;
(19) Provides that a Justice may only serve two consecutive terms;
(20) Provides for election of Superior Court Judges;
(21) Provides for term of office of Superior Court Judges;

(22) Provides for maximum of three consecutive terms;

(23) Provides for term of office for existing Justices and Judges;

(24) Provides for replacement when vacancy occurs. [IN HOSUE STATE AFFAIRS].

HJR 8 — Article III, Section 4
The Executive

Relating to the term of office of the Governor, changing term of office to one six-year term. If Lt. Governor succeeds Governor for longer than four years, he may not serve another term. [IN HOUSE JUDICIARY].

HJR 11 — Article VII, Section 1
Health, Education, and Welfare

Relating to state aid to private educational institutions. Deletes [NO MONEY SHALL BE PAID FROM PUBLIC FUNDS FOR THE DIRECT BENEFIT OF ANY RELIGIOUS OR OTHER PRIVATE EDUCATIONAL INSTITUTION]. [IN HOUSE H.E.S.S.].

HJR 18 — Article II, Sections 9 and 10
The Legislature

Relating to legislative sessions. Section 9 deletes [SPECIAL SESSIONS ARE LIMITED TO THIRTY DAYS]. Section 10 provides for a 120 day session and for ten day extensions with approval of two-thirds of membership of each house. [IN HOUSE JUDICIARY].

HJR 19 — Article VII, Section 1
Health, Education, and Welfare

Relating to tax credits for tuition expenses. Changes the section with new language underlined:

"No money shall be paid from public funds directly to [FOR THE DIRECT BENEFIT OF] any religious or other private educational institution. The legislature shall provide for a tax credit for tuition paid to all nonsectarian educational institutions in the state." [IN HOUSE H.E.S.S.].

HJR 20

Article III
The Executive

Proposing a new section relating to the confirmation and term of officers:

"Section 28. CONFIRMATION AND TERM OF OFFICE. The confirmation by a majority of the members of the legislature in joint session of officers and board and commission members whose appointment and confirmation are not otherwise provided in this article shall be as provided by law. An officer or board or commission member subject to confirmation by the legislature under this article who is not serving in an office for which a definite term is established by law is removed from office at the expiration of the term of the governor in office at the time of his appointment. The officer or board or commission member may be reappointed, but a reappointment is subject to confirmation by a majority of the members of the legislature in joint session." [IN HOUSE JUDICIARY].

HJR 23

Article IX, Section 15
Finance and Taxation

Relating to finance; proposes seventy-five rather than [TWENTY-FIVE] percent of all mineral lease rentals, royalties, royalty sale proceeds and federal mineral revenue sharing payments and one hundred percent of all revenue received by the state from the sale of land, except land sale revenue pledged, before or after the effective date of this amendment, to repay bonds, . . ." [IN HOUSE PERMANENT FUND COMMITTEE].

HJR 26

Article IX, Section 12
Finance and Taxation

Providing for biennial budgeting for operating expenditures. Adds language as follows:

"Section 12. BUDGET. In each odd-numbered year the governor shall submit to the legislature, at a time fixed by law, a budget setting forth all proposed capital expenditures for the next fiscal year. In each even-numbered year the governor shall submit to the legislature, at a time fixed by law,

a budget setting forth all proposed capital expenditures for the next fiscal year. Each biennial budget submission shall set forth anticipated income of all departments, offices and agencies of the State [THE GOVERNOR SHALL SUBMIT TO THE LEGISLATURE, AT A TIME FIXED BY LAW, A BUDGET FOR THE NEXT FISCAL YEAR SETTING FORTH ALL PROPOSED EXPENDITURES AND ANTICIPATED INCOME OF ALL DEPARTMENTS, OFFICES, AND AGENCIES OF THE STATE]. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues. [IN HOUSE FINANCE].

HJR 37 Article IX, Section 1 and adding a new section
Finance and Taxation

Limiting tax levies by the state and its political subdivisions. Provides that:

(a) The state as a political subdivision may not collect tax revenues which exceed the amount collected for fiscal year 1978, plus a change to reflect both.

(1) Percentage of change of the population of the state or political subdivision between the two fiscal years; and

(2) The percentage of change of the cost-of-living index for the state or political subdivision between the two fiscal years as that index is defined by law.

(b) Other tax percentages during each subsequent fiscal year.

(c) Provides for exception by vote of the people.

(d) Sets up restrictions
[IN HOUSE STATE AFFAIRS].

HJR 38 Article IX, Adds a new section
Finance and Taxation

Relating to tax limitations:

"SECTION 16. LIMITATION ON TAXING POWER. No tax shall be levied by the State except for the taxes

existing upon the date of ratification of this section by the people of the State nor shall the rate of an existing State tax be increased above the rate in effect on January 1, 1979 except for taxes or increases necessary for emergency purposes and which are in effect for not more than one year and except for State taxes or increases levied to pay or secure the payment of general obligation bonds whether or not the bonds are in default or in danger of default. [IN HOUSE STATE AFFAIRS].

HJR 45 Article XI, Section 7
Initiative, Referendum, and Recall

Relating to initiative and referendum; provides (1) that the initiative shall not be used to repeal appropriations of state money; (2) that referendum shall not be applied to appropriations of state money. [IN HOUSE STATE AFFAIRS].

1979

SENATE

SJR 2 — Article II, Section 5
The Legislature

Relating to disqualification of legislators:

"SECTION 5. DISQUALIFICATIONS. No legislator may hold any other office or position of profit under the United States or the State during [. DURING] the term for which elected [AND FOR ONE YEAR THEREAFTER, NO LEGISLATOR MAY BE NOMINATED, ELECTED, OR APPOINTED TO ANY OTHER OFFICE OR POSITION OF PROFIT WHICH HAS BEEN CREATED, OR THE SALARY OR EMOLUMENTS OF WHICH HAVE BEEN INCREASED, WHILE HE WAS A MEMBER]. This section shall not prevent any person from seeking or holding the office of governor, lieutenant governor [SECRETARY OF STATE], or member of Congress. This section shall not apply to employment by or election to a constitutional convention. [IN HOUSE RULES].

SJR 3 — Article IV, Section 2
The Judiciary

Providing for the election of supreme court justices and superior court judges.

(1) Providing for five rather than [THREE] justices;
(2) Provides that the chief justice may only serve one term;
(3) Provides for election of supreme court justices;
(4) Provides for term of office of supreme court justices;
(5) Provides maximum of two consecutive terms for supreme court justices;
(6) Provides for election and terms of superior court judges;
(7) Provides a maximum of three consecutive terms for superior court judges;
(8) Provides for term of office for judges and justices presently in office;
(9) Provides mechanism for filling vacancies. [IN SENATE JUDICIARY].

SJR 4

Article III, Section 23
The Executive

Relating to the Attorney General.

(1) Provides that the governor may make no changes in the organization or function of the office of the attorney general.

(2) Provides for term of office, qualifications, and election of the attorney general. [IN SENATE JUDICIARY].

SJR 8

Article II, Sections 7, 9, and 10
The Legislature

Relating to sessions of the legislature.

(1) Provides legislators will receive per-diem expenses for the first one hundred twenty consecutive calendar days of a regular session.

(2) Removes thirty (30) day limit on special sessions;

(3) Provides for adjournment after ninety (90) calendar days;

(4) Provides for one extension of twenty (20) calendar days and one extension of ten (10) calendar days by majority vote of legislature meeting in joint session;

(5) Provides for adjournment in ten (10) calendar days for a special session;

(6) Provides if the legislature adjourns before a budget is passed, it shall convene for no longer than fifteen (15) calendar days in special session for considerations of only the budget;

(7) Provides in Article IX, Section 12 that the finance committee shall issue its report on the budget by the seventieth legislative day and that a free conference on the budget shall have fifteen (15) days to issue its report. [IN SENATE STATE AFFAIRS].

SJR 9

Article II, Section 9
The Legislature

Relating to sessions of the Legislature.

(1) Provides for one hundred twenty (120) calendar days for the regular session with extensions of ten (10) day increments by concurrence of a majority of the membership of each house. [IN SENATE STATE AFFAIRS].

SJR 10

Article II, Section 3
The Legislature

Relating to terms of legislators.

(1) Provides for term of representatives to be four years and senators to be six years. [IN SENATE STATE AFFAIRS].

SJR 19

Article III, Section 4
The Executive

Relating to the Governor and Lt. Governor. He may serve again after one term has intervened.

(1) Provides for one six year term for Governor;

(2) If Lt. Governor succeeds Governor for four years or more, he may only serve one term;

(3) Lt. Governor shall hold office for six years, may only serve one term, and can be re-elected after one full term has intervened. [IN SENATE STATE AFFAIRS].

SJR 21

Article VII, Section 1
Health, Education, and Welfare

Relating to state aid to private educational institutions. Deletes [NO MONEY SHALL BE PAID FROM PUBLIC FUNDS FOR THE DIRECT BENEFIT OF ANY RELIGIOUS OR OTHER PRIVATE EDUCATIONAL INSTITUTION]. [IN SENATE JUDICIARY].

SJR 24 Article IX, Adding a new section
Finance and Taxation

Limiting increases in appropriations from the general fund:

"SECTION 16. APPROPRIATION GROWTH LIMIT. The annual general fund budget presented by the governor to the legislature for a fiscal year shall not exceed the amount appropriated from the general fund for the previous fiscal year by more than nine per cent. The total amount appropriated from the general fund for a fiscal year by the legislature shall not exceed the amount appropriated from the general fund for the previous fiscal year by more than nine per cent. These limitations may be exceeded for the purpose of meeting natural disasters, repelling invasion, or suppressing insurrection." [IN SENATE JUDICIARY].

SJR 26 Article IX, Section 15
Finance and Taxation

Relating to finance:

"SECTION 15. ALASKA PERMANENT FUND. At least seventy-five [TWENTY-FIVE] per cent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments, one hundred per cent of all [AND] bonuses received by the State, and one hundred per cent of all revenue received by the State from the sale of land, except land-sale revenue pledged, before or after the effective date of this amendment, to repay bonds, shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law."

SJR 35 Article IX, Section 1
Finance and Taxation

Limiting tax levies by the state and its political subdivisions.

"SECTION 16. LIMITATION ON TAXING POWER. No tax shall be levied by the State except for the taxes

existing upon the date of ratification of this section by the people of the State nor shall the rate of an existing State tax be increased above the rate in effect on January 1, 1979 except for taxes or increases necessary for emergency purposes and which are in effect for not more than one year and except for State taxes or increases levied to pay or secure the payment of general obligation bonds whether or not the bonds are in default or in danger of default." [IN SENATE STATE AFFAIRS].

STATE CONSTITUTIONAL CONVENTIONS

DURING THE 1970's

Prepared For

INTERIM COMMITTEE
on the
CONSTITUTIONAL CONVENTION
of the
ALASKA STATE LEGISLATURE

By

Guy A. Van Doren
DOUGLAS RESEARCH
Box 41
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January 11, 1980

STATE CONSTITUTIONAL CONVENTIONS DURING THE 1970's [1]

In the United States, the Constitutional Convention is a traditional method of revising an old constitution or writing a new one. Since the beginning of the republic, at least 230 constitutional conventions have been convened in the fifty states. In forty-one states, constitutional conventions are expressly authorized in the constitution. In other states, constitutional conventions are sanctioned extraconstitutionally by judicial interpretation and practice.

This report focuses on state constitutional conventions convened during the 1970's. It compares the notable features of these conventions, identifies major innovations in their proposals, and extracts information from the experience in state constitution-making during the past decade which may be of value to the State of Alaska in planning for the possible upcoming constitutional convention.

NUMBER AND TYPES

Twelve constitutional conventions have been held in ten states during the 1970's. Seven of these were unlimited conventions with no restrictions on their power to propose revisions: One each in Hawaii, Illinois, Montana, New Hampshire, and North Dakota, and two in Arkansas. Five were limited constitutional conventions, whose powers were restricted to specific areas or subjects: One each in Louisiana, Rhode Island, and Texas, and two in Tennessee.

In addition, a limited convention was called in Arkansas without popular referendum in 1975, but was declared unconstitutional by the Arkansas Supreme Court.

Two of the twelve conventions during the 1970's were called in states whose constitutions have no provision for a constitutional convention. The voters in these states approved the constitutional amendment to call the conventions. In all other states, except Louisiana, the convention call was approved by the electorate. Louisiana's Eleventh Constitutional Convention was called by a legislative act and signed by the governor.

MEMBERSHIP AND COST

The membership of unlimited conventions differs little from that of limited conventions. The number of delegates to the twelve conventions ranged from ninety-eight in North Dakota, up to four hundred in New Hampshire. The constitutional amendment authorizing the Texas convention provided that the members of the legislature would constitute the convention membership. In all other instances, except for twenty-seven of the thirty-two delegates in Louisiana, members of the conventions were elected. House Districts were used to elect delegates in all states except Illinois and Rhode Island where Senatorial Districts were the basis for representation. Election of delegates to the conventions was nonpartisan except in Montana, Rhode Island, and Texas.

Compensation of the delegates varied from $3.00 per day plus mileage for the four hundred new Hampshire delegates, (who met only 12 days) up to the $1,000 per month (but not more than $4,000 total) plus per diem allowance paid to the Hawaiian delegates. Comparative figures on compensation are somewhat unrealistic because of the inflation factor throughout the 1970's

Appropriations to finance conventions during the past decade likewise varied greatly. Funding for both unlimited and limited bodies ranged from $20,000 appropriated for the Rhode Island limited convention to the highest for unlimited conventions of $2.88 million in Illinois, $2.91 million in Louisiana, and $3.8 million for the limited Texas convention.

PREPARATION, ORGANIZATION AND PROCEDURE

All states with successful conventions during the 1970's recognized the value of careful preparatory research. In preparation for extensive constitutional revision, most states created special study commissions with mandates to study the constitution and recommend needed changes. One of the greatest efforts was made in Texas where extensive studies were made and a report including the draft document was prepared by a thirty-seven member commission supported by a $900,000 legislative appropriation. A similar report prepared by a study commission in Arkansas' Seventh Constitutional Convention

(1969-1970) was useful to their Eighth Constitutional Convention. Illinois and Montana also produced an elaborate series of studies. Some states relied on the staff of the Legislative Council for preparatory studies. In Hawaii, the Legislative Reference Bureau updated the extensive series of 17 background studies designed initially to provide information for the 1968 convention. Few special research efforts were made in preparation for most limited conventions with restricted mandates.

The leadership structure of most conventions varies little, differing mainly in the number of vice-presidents. All conventions have a president or chairman, at least one vice-president, a secretary, sometimes a treasurer, a sergeant of arms and often various assistants to these officers, and a staff. Size and specialization of the staff vary greatly, depending mainly on the convention's mandate. Texas had the largest staff of the recent conventions; it ranged from 58 to as many as 266 at various times.

All conventions have a committee organization--most commonly of two types or classes: (1) substitive to cover the subject areas of studies; (2) procedural, to deal with auxiliary matters and functions. Sometimes a steering committee provides the structural framework for the convention's leadership, as in the Louisiana convention. Normally, the substitive committees follow the principal subject matter areas

of the constitutional system. Every convention operates under a set of rules. Some more recent conventions (for example Hawaii) also have a code of ethics for delegates.

CONVENTION PROPOSALS

Invariably, the products of constitutional conventions are featured by reduced verbiage. For example, the new constitution proposed by the Seventh Arkansas Convention in 1970 had 13,573 words in the main body and 3,190 in the schedule, compared with 46,000 words in the 1874 document, as amended. Similar reductions were affected in other proposed constitutions. The Louisiana Convention proposed a new constitution of 26,300 words to reduce its bulky predecessor with an estimated 256,500 words. Other common characteristics of new and revised constitutions are improved style, organization, and format; greater consistency with the federal counterpart, and elimination of much obsolete and statutory matter.

Convention proposals range from a proposed new or revised constitution, through submission of varying numbers of amendments, to a single amendment. All proposals of conventions held in the 1970's have been submitted to the voters; none were proclaimed in effect without popular referendum. The twelve conventions used three principal forms of submission:

(1) Arkansas and North Dakota submitted proposed new constitutions in a single package, and with no alternate proposals. Both were rejected. (2) In three states--Illinois, Louisiana, and Montana--a new document was submitted, with controversial issues separated and voted on individually. The voters approved all three. (3) Five conventions in four states--Hawaii, New Hampshire, Rhode Island and Tennessee--submitted a series of amendments, each addressed to a particular matter or series of related matters. Some were approved and some were rejected.

Twelve of the thirteen proposed amendments by the 1977 Tennessee Limited Convention were approved by the voters. The thirty-four Hawaii proposals were the most successful of all; all were adopted. Because of the success of the Hawaii proposals, the manner of their presentation on the ballot merits some attention. They were presented in two parts on the ballot. The voter had to choose one; he could not vote on both. In the first part, the voter had to vote for or against all proposals collectively as a unit. In the second part, the 34 proposals were listed individually by short title. The voter was instructed to indicate only those items that he opposed; all unmarked items were counted as approved by the voter. The same ballot format had been used successfully in 1968, when the voters approved 22 of 23 proposals.

It should be noted, however, that in the case of Hawaii, a court action has been filed seeking to invalidate the results

of the November 7, 1978 general election dealing with those amendments to the state constitution. That case is now in the Supreme Court of the State of Hawaii, and has not been resolved as of the date of this report.

The remaining convention not yet mentioned is the 1974 Texas Convention of State Legislators/Delegates. The reason--it made no proposals. The convention rules required approval of proposals by a two-thirds majority of the delegates for submission to the voters. The draft constitution of 17,000 words (as compared with 64,000 words in the 1876 document), incorporating many modernizing features (such as the "sunset" provision for the government agencies) failed by three votes to receive the required two-thirds majority. Thus, the Texas Legislature Convention became the first convention in history to kill its own product, eliciting such labels as "five million dollar bad dream",[2] and even more uncomplimentary titles. Under heavy pressure and mounting public criticism after adjournment of the convention, the Texas Legislature incorporated the principal substance of the revised constitution into eight constitutional amendments, which were submitted to the electorate the following year. All eight were rejected by a margin of about two and one-half to one.

INNOVATIVE PROPOSALS

The basic ingredients of a "good" constitution long recommended by constitutional reformers are well known to have been incorporated in such successive editions of the Model State Constitution. In his introduction to the revised sixth edition of the model, however, John Bebout reminds constitution makers that, "Strictly speaking, there is no such thing as a model state constitution, because there is no model state".[3] Every state is unique and has its own traditions and particular problems. No single set of solutions will fit every state. In full recognition that each innovation must be weighed and evaluated in the light of local needs, some major innovations recommended in convention proposals of the 1970's can be identified. These are grouped in the following paragraphs according to major constitutional areas.

Bill of Rights

Practically all new or revised state constitutions provide added protection for individuals against discrimination, (racial and, in some instances, sexual). The ill fated Texas document would have added "the handicapped". Illinois forbids unequal enforcement and administration of the law. Similarly,

unreasonable invasion of privacy is expressly forbidden in Hawaii, Illinois and Montana. Tennessee eliminated the prohibition against interracial marriages. The propcsed North Dakota document would have guaranteed the right of candidates for public office to a fair election.

Suffrage and Elections

Continuing the trend toward liberalizing the requirements for voting and office holding that begin with the adoption of the first state constitutions, the new organic laws include provisions for relaxing residency requirements, establishment of a bipartisan state board of election, reduction of the age of majority to 18, reduction of age qualification for all state offices to 21, and legislative determination of residency and registration requirements for voting.

Reflecting recent problems relating to political campaigns, a Rhode Island constitutional provision requires all candidates for top state offices to disclose election campaign expenditures, and a newly adopted Hawaii amendment requires the legislature to provide for partial public financing of political campaigns and to establish campaign spending and contribution limits.

Legislative Branch

Proposals affecting the legislative branch include: public legislative sessions and committee meetings, annual legislative sessions, reapportionment by bipartisan commission,

election of legislators from single-member districts, authorization for the legislature to convene itself in special session, increase in the term of House members from two to four years, automatic veto sessions, establishment of a legislative compensation commission, staggered terms for senators, and reduction of the required age for candidates for the legislature to 21. Separate alternative proposals in Montana and North Dakota give the voters the option unicameralism vs. bicameralism.

Executive Branch

Many features relating to the executive reinforce the principals of executive unity and functional integration. Proposals in recent new and revised constitutions include: joint election of governor and lieutenant governor, reduction in the number of elective state constitutional officers, election of state officers in nonpresidential years, two consecutive-term limit for the governor, gubernatorial power to reorganize state agencies subject to legislative veto, reduction of the age qualifications for governor and lieutenant governor from 30 to 25, specified procedures for determining gubernatorial disability, amendatory veto power for the governor and elimination of the pocket veto, and limitation of number of executive departments to a stated number, usually 20. The "sunset" provision of the Texas

document provided for periodic legislative review of the executive agencies with requirement that they be abolished unless renewed.

Judiciary

Few, if any, articles of a constitution seem to cause revisers more trouble than the judicial department--perhaps because lawyers comprise most of the membership of convention committees on the judiciary. Among the major proposals are creation of a judicial standards or qualifications commission, and establishment of a salary commission for the courts. The long term standards of judicial reform continue to be highly controversial subjects of constitutional reform; a unified system of courts, appointive or elective judges, promulgation of procedural rules by the state supreme court, and others.

Local Government

Similarly, relatively few innovations have been proposed recently for the solution of the problems of local government other than tax relief. Most proposals in this area provide for extended powers of local home rule for both counties and municipalities. Provision for inter-governmental cooperation and consolidation and reorganization of local government. Few sections of the state constitution are more politically sensitive than those relating to local officers and their powers, and, hence, more difficult to change. In a

number of states, constitutional reform efforts have been wrecked by the opposition of local vested interests.

Finances and Taxation

No area matches taxation and finance in the number of reform proposals. Currently, the most attention is focused on limitations on state and local taxation, spending, and debt. Tennessee, for example, has just approved a formula for limitation of state spending related to increases in the state's economy. Hawaii also has a similar spending limit tied to the growth of the state's economy. Other recent amendments to the Hawaii constitution limits state debt to a percentage of general fund revenues, requires payment of general obligation bonds within 25 years, gives the legislature permissive authority to authorize issuance of special-purpose revenue bonds, establish a tax revenue commission, authorize the legislature to conform state income tax laws to federal income tax laws, and extend the exclusive power to tax real property to the counties.

The most far-reaching change in the area of taxation was California's Proposition 13, initiated by petition and approved last June. This initiative measure, which limits real property taxes to one percent of value, inspired a revolt that has affected all parts of the nation. In 1978, in addition to California, voters approved tax or spending restrictions, or both, in at least eight states. Related

financial proposals were rejected in at least five states.

State Functions

Education has received more attention than any other state function in recent constitutional revisions. Attention has been focused especially on broad protection against discrimination, equalization of educational opportunity, and creation of an effective state board of education.

At least five of the proposed new constitutions expressly state the policy to maintain a healthful environment, and at least three extend to individuals the right to sue polluters. Hawaii now has a constitutional requirement for legislative approval for construction of a nuclear plant and disposition of radio active material.

Subjects of other amendments include lotteries, gambling, the death penalty, authorized interest rates, codes of ethics, and creation of the offices of consumer counsel and ombudsmen. One of the most encouraging provisions for lay citizens is Hawaii's new constitutional requirement that plain language be used in governmental writing.

Constitutional Revisions

Finally, the article that usually receives the least attention of constitution-makers, but is one of the most important parts of the organic law, is the article on amendment and revision of future chagnes. At least six of the proposed new constitutions provided for periodic submission of the

question of calling the constitutional convention to the voters (at intervals of twenty years in three states, ten years in Rhode Island, and thirty years in North Dakota and Texas). The new Montana constitution omits the former limitation on the number of proposed amendments on any one ballot. Montana and Illinois authorized constitutional initiative, and the Texas document would have included the provisions for calling a constitutional convention. Illinois reduced the size of the majority required to adopt amendments.

SOME GUIDELINES

What possible lessons can be learned from the constitutional reform efforts in the 1970's? Careful evaluation of recent state experiences suggest certain guidelines.

1. The experience reported in all states that have achieved constitutional reform heavily emphasizes the importance of careful advance preparation and competent research service during the convention.

2. The development of a positive public image enhances a convention's chance of success. The experience with the Texas legislator/convention in 1974 which had image problems strongly supports this theory.

3. The convention delegates have a responsibility to educate the people on constitutional issues as well as to

receive their proposals. For most people, constitutional revision is a vague, uninteresting term of little real and practical meaning. An effective public relations and educational program is of prime importance in state constitution-making.

4. Developing effective organization and procedures may have an important bearing on the success or failure of a convention. Placing unrealistic burdens to time, voting requirements, or limitations on delegates may prove too high a hurdle, resulting in failure to place a successful proposal before the public.

5. The best method for placing the convention proposals before the people must be explored and evaluated.

6. Every effort should be made to gain bipartisan support of the proposals and the backing of key people, especially the governor.

7. Although the Constitution of the State of Alaska mandates that the convention be an unlimited one, the use of unlimited conventions has diminished somewhat over the past twenty years principally because of voter rejection of the total proposal. Perhaps the legislature may wish to look into the possibility of amending the constitution to allow limited constitutional conventions.

SUMMARY

In conclusion, unless the legislature calls for a constitutional convention prior to 1982, the question of whether or not to have a constitutional convention will appear on the ballot. It is hoped that this report, dealing with the experience in other states during the '70's will give the legislature and the people of Alaska some ideas as to the pros and cons of having a convention, subjects to explore in constitutional revision, problems encountered by other states and possible solutions, attitudes of the voters, and hints on conducting a successful convention and proper submission of the proposals to the voters.

FOOTNOTES

1. Some of the material in this report have been influenced by the writings of Albert L. Sturm, University Research Professor, Center for Public Administration and Policy, Virginia Polytechnic Institute and State University, Blacksbury, Virginia.

2. State Senator Ron Clower quoted in the Dallas News.

3. Model State Constitutions, 6th Ed., Revised (New York, N.Y.: National Municipal League 1968).

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Chairman
Rep. Brian Rogers

Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Hayes

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

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Staff
Guy Van Doren
Admin. Asst.

October 9, 1980

Members of the Constitutional
Convention Committee

Dear Members:

Enclosed, please find the report submitted to the Committee at the meeting in Juneau on September 24th, as well as the minutes of that meeting, and a letter from the National Municipal League explaining the meeting in Houston.

In conjunction with the meeting in Houston, recognized authorities in constitutional revision will be holding a seperate meeting with me and any of the committee members who wish to attend.

During the September meeting, a mojority of the committee authorized me and any members of the committee to attend the New York meeting, November 6th and 7th, and/or the Houston Meeting November 14th-18th. If any member wishes to attend either of these meetings with me, please contact me as soon as possible in order that I can make the necessary arrangements. I can be contacted at our office number during the day, or 364-3442 in the evenings.

Since I will be in the East on November 11th, Chairman Rogers will probably hold the next meeting after the Houston meeting.

If you have any questions please contact me or Chairman Rogers.

Sincerely,

Guy A. Van Doren
Administrative Assistant,
Interim Committee on the
Constitutional Convention

GAVD/me

Encl.

P.S. Enclosed is a travel request if you want to attend.

CONSTITUTIONAL CONVENTION COMMITTEE
Minutes of Meeting of September 24, 1980
Juneau, Alaska

The Meeting of the Legislative Interim Committee of the Legislative Council Committee of the Alaska State Legislature regarding Constitutional Convention was called to order at 2:00 p.m. by Representative Brian Rogers, Chairman.

Present were Representatives Rogers, Gardiner and Hayes and Senators Ziegler and Mulcahy. Also present were Guy A. Van Doren, Administrative Assistant, and Doug Pope, Attorney.

Retention of counsel was discussed by the committee members. Mr. Pope briefed the committee on Mr. Wagstaff's draft opinion regarding the exclusion of minors for cash distribution of permanent fund dividends.

Mr. Van Doren gave a summary of the work he has completed and stated that he had contacted people who are recognized experts in the field of constitutional conventions. Letters have been sent to the National Municipal League; he has received a list of 15 recommendations; six people had contacted him expressing interest in meeting with this committee. There was a summary of questions in packets given to the committee members. Mr. Van Doren stated that the National Municipal League will meet in Houston in November and that other people from other states will be in attendance and available to meet with this committee the day before.

Representative Rogers stated that the bill relating to the calling of a constitutional convention and establishing a constitutional convention committee was vetoed by the Governor last year because members of the Commission included legislators and administration people and there was a question of separation of power. He stated the meeting with the recognized experts is a good idea. After discussion, it was decided that Representative Hayes and Guy A. Van Doren would meet with experts in New York.

Translation to Yupik of materials pertaining to the constitutional convention was discussed. A contract with the University of Alaska will be available for consideration at the next meeting. The booklet published in Hawaii for Hawaii's constitutional convention was discussed.

The question of continuing the $25,000 contract for the memorandum on constitutional constraints into the second phase was discussed. Senator Ziegler stated that the committee should wait and keep expenditures down to a minimum. It was agreed by the members of the committee to table the second phase and advise Mr. Wagstaff not to proceed until requested to do so.

we are to approve today grants private inholders carte blanche access across national forest and public lands nationwide.

These are a few of the flaws in the Senate bill. They are serious but not fatal. They should not keep us from passing this bill; but we should not forget these flaws either. It is my hope that in the months ahead we can move to correct some of the more glaring omissions and errors. Passage of this bill brings to a close a great debate on Alaska and our proper stewardship of its national resources. But it should not deter us from continuing our agenda to safeguard this unique environmental heritage for the American people.

Mr. UDALL. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. FISHER).

Mr. FISHER. Mr. Speaker, I rise to support the proposal that is being put forward. It is not my first choice for a bill on this subject, but it is a good position, an honorable one, and I certainly think we should adopt it and settle this matter during this Congress. It is the best chance we will have at it for a long time.

I have personal reason for supporting this. When I was much younger, I spent several years in Alaska, most of it in the field. I know a good bit in the early days of the territories and land tracts that are being set aside now in various categories for protection. I even wrote a Ph. D. dissertation on the conservation and economic development of Alaska many years ago.

I remember at that time making the argument that if you set tracts of land aside in protected status, later on if you desperately need to go there and extract resources, you can do it; but if you do not set the land aside, but allow development helter-skelter to take place, it is irreversible, especially in a very fragile environment such as is much of Alaska; so by all odds, the prudent thing to do for the benefit of the State of Alaska, which was a territory when I was there, is to do exactly what we are doing, to set large tracts aside in appropriate categories and leave them in this protected status until such time as they may desperately be needed for other purposes, but I would hope they can stay forever in these protected categories; so although it is not my first choice, it is a good choice and I strongly urge my colleagues forthwith to vote for this.

Mr. UDALL. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. BONIOR).

Mr. BONIOR of Michigan. Mr. Speaker, I, too, would like to take this opportunity to commend the chairmen of the appropriate committees, the gentleman from Arizona (Mr. UDALL); the gentleman from Ohio (Mr. SEIBERLING); the gentleman from New York (Mr. MURPHY); and the gentleman from Louisiana (Mr. BREAUX) for the fine work they have done on the bill and also to mention the persistence and the effort of the coalition who worked very hard for a good number of years to put together a package which I think will live as a monument to this Nation.

Finally, I would like to pay tribute to our President, who I think stood fast and is to be commended on the work that he and the administration did on this particular bill.

I had the opportunity, Mr. Speaker, the rare opportunity and privilege to hike the Brooks Range and to canoe the Kenai and the wonders of Alaska. I just would hope this Congress and perhaps future Congresses would keep in mind the needed protection for areas such as the Copper River Delta, the Chelkad area and the North Slope.

I again wish to commend the chairman of the committee.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may revise and extend their remarks on this bill.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, I have no further requests for time. I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, before I go into the nature of the great historical period of time which we are about to enter into when we vote on this bill, I would like to commend the chairman of the full committee, the gentleman from Arizona (Mr. UDALL); the gentleman from Ohio (Mr. SEIBERLING), for their work in locking my State up. They have done it with great honor and with a great deal of forthrightness and have been straight with me all along. They told me when they were going to put it to me. I do compliment them for that. They have been honest in their decisions. I respect anybody's beliefs and they do believe they are doing what is right for the great State of Alaska.

I want to make it perfectly clear to my colleagues that I will not be voting for the passage of this legislation, because it is my feeling that this bill that they are saying is not what they want is not what I want, either. It still is an environmentally leaning bill.

I will tell you, though, it does contain many provisions that are good for the State of Alaska, and for the listening audience and those who are here listening to me today, in this bill the good things are that in the Statehood Act, lands are conveyed to the State. The existing Carter monuments are repealed. Access to inholdings and traditional access are guaranteed. There is maintenance of the timber industry in the southeast and it is not being overharvested. It is being harvested as it should be. There are provisions for mineral developments, such as borax, in Chignik Creek, Greens Creek, et cetera. There are exemptions for the wilderness studies by the BLM lands.

Most key mineral areas are open. There is a provision that there will be no more executive withdrawals.

There are oil and gas studies and there are gas and oil leasing on the refuges. All these things are in the bill.

The thing that I object to most in this bill is it never should have been before us in the first place. Under the Statehood Act we were guaranteed 104 man acres of land, of lands that were not reserved at that time. Under this bill, there are lands still in conflict that the State will not be granted. There are areas of land that have been closed to hunting, but that will be addressed the next session of Congress.

I believe that the next session is going to prove that Congress can see the wisdom of allowing lands to be open to the people. All Alaskans have ever wanted and have ever asked is that they have the rights that were guaranteed to them under the Constitution, that they have the right to utilize these lands for their enjoyment and for their economic benefit; primarily their enjoyment above all. The idea that Congress can close down lands and that they cannot be utilized has been a sore in the eyes of all Alaskans.

Mr. SYMMS. Mr. Speaker, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Idaho.

Mr. SYMMS. Mr. Speaker, I thank the gentleman for yielding.

I would just like to ask the gentleman if the statement I made on the floor about the vote in Alaska where over half of the people voted to reconsider their statehood, if the gentleman agrees that this process of land lockup and the management on the part of the administration of those federally owned lands in Alaska is the reason behind that vote.

Mr. YOUNG of Alaska. I may answer the gentleman, that is absolutely right. The frustration that is felt in Alaska is not in anyone's imagination. It is there. When people's rights are put upon by the Federal Government, then they begin to get very frustrated.

I hope that the election last November 4 brought this home to most of the people on this floor, that there is an unrest out there in the general public that the Federal Government has taken too many rights away from people. That commission was voted upon to study whether the Statehood Act had been fulfilled as far as the Federal Government goes.

Mr. SYMMS. Mr. Speaker, if the gentleman will yield further, I would also like to ask the gentleman, is it not true that there are millions of acres of land in Alaska that are being locked up that have high potential for critical minerals, as well as oil and gas?

Mr. YOUNG of Alaska. Yes; there are many acres locked up and it is my hope that next year as we come back to this Congress that those areas that have high potential will at least be explored, because when they are explored then we will know when, where, and how to retrieve the resources that this Nation is going to have to have

The gentleman knows as well as I do that if you think the OPEC crisis is bad, just wait for the mineral crisis. If this Congress does not wake up to the fact

The next meeting of this committee will be November 11, 1980 and a further meeting will be in December, 1980.

Mr. Pope briefed the committee on Mr. Wagstaff's memorandum and submitted the same in written form to the members.

Mr. Van Doren was directed to prepare a draft of a booklet for the public regarding constitutional convention issues. There was discussion regarding the booklet influencing the vote.

There was discussion regarding a federal constitutional convention being limited to one issue, which should be addressed by this committee.

Spending limitations was discussed and will be addressed at the next meeting of this committee. Mr. Van Doren will look for people working on federal constitutional conventions.

Senator Ziegler brought attention to the fact that Representative Parr killed the balanced budget resolution during the last Alaska Legislative session.

Representative Rogers asked for further questions. There being none, the meeting was adjourned at 2:45 p.m.

Landa Krossa,
Secretary

Chairman
Rep. Brian Rogers

Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Haye

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

Pouch Y, Rm. 107
Capitol Bldg.
Juneau, Alaska
99811
(907) 465-3743

Staff
Guy Van Doren
Admin. Asst.

REPORT TO THE INTERIM COMMITTEE ON THE CONSTITUTIONAL CONVENTION

I. Work Performed August 29, to September 22, 1980

1. Reports of last Interim Committee sent to members.
2. Individuals recommended by the National Municipal League as Constitutional Revision Authorities contacted relating to the possibility of meeting with staff and/or committee members to discuss:
   (a) Revision of Alaska Constitution
   (b) Formation of a Constitutional Commission
   (c) Planning for a successful convention
   (d) Comments on last years work

*Note: All persons contacted were supplied with copies of the work accomplished last year plus a copy of the Alaska State Constitution.

3. Review of new literature relating to constitutional developments in other states.

4. First draft of Constitutional Commission resolution

5. Planning for this meeting and for possible projects to be undertaken.

II. Response to proposed meeting with constitutional authorities.

1. Mr. Albert Sturm, Blacksburg, Virginia.

Mr. Sturm is the author of a book on the Michigan Constitutional Convention, numerous books on constitutional revision, of Thirty Years of State Constitution Making 1938-1968, and of the Annual Constitutional Developments Summary in the NATIONAL CIVIC REVIEW and the Book of States.

Mr. Sturm has expressed interest in meeting with me and will be available during the week of October 13-17, or possibly some later date.....SEE ENCLOSURE "A"

2. Mr. William Cassella, Jr., New York, New York

Mr. Cassella is Executive Director of the National Municipal League and participated in the Alaska Constitutional Review Conference held in Fairbanks in 1976.

Mr. John Bebout, Cape Cod, Mass.

Mr. Bebout has been associated with revision efforts since the successful move to adopt a new constitution in New Jersey in the 1940's and was a major consultant to the Alaska Convention.

Upon receiving my meeting request, Mr. Bebout contacted Mr. Cassella and suggested that he convene a meeting at the National Municipal League offices in New York, of several people in the general geographical area whom I have already contacted. The suggestion was that myself and /or several committee members could attend. Our committee would have to defray the costs of the people attending. However, the proposed attendees are all located within a 150 mile radius of New York.

Notwithstanding that suggestion, Mr. Cassella is available either the 9th or 10th of October or from October 23 to the end of the month, or November 6 and 7.

Another possibility suggested by Mr. Cassella, is a meeting held in connection with the Leagues' National Conference in Houston, November 15-18. The meeting could take place on November 14th and Mr. Cassella has stated that several people on my list of contacts will be attending the League meeting. This would eliminate a great deal of traveling. In conjunction with that meeting, I have been invited to participate in the Agenda Building program for the National Municipal Leagues' National Conference described in the memo accompanying this report.

SEE ENCLOSURES "B" AND "C".

If the committee decides the above plan is feasible, members would be able to attend the conference as well as the meeting with the constitutional people.

3. Mr. George Braden, Albany, New York

Mr. Braden has been involved in revision efforts in Connecticut, New York, Illinois and Texas, and has co-autored books on the Illinois and Texas constitutions.

Mr. Braden is available throughout most of October and early November and is one of the individuals recommended to attend the collective meeting at the Municipal League offices.

SUMMARY: Since to this date, I have received respones from four out of the five persons I have contacted, and in order to save time and expenses, I would recommend, if the committee feels it is in the best interest of the purposes of the committee to meet with these people, that a meeting be called in New York, at the League offices, approximately the 9th or 10th of November and that another meeting be scheduled on the 14th of November, in Houston. If Mr. Sturm does not plan to attend the Houston meeting, he could be seen in between time. Also, the other work to be undertaken in New York and in Washington D.C. can be accomplished on the same trip. SEE ENCLOSURE "D" FOR OTHER ORGANIZATIONS WITH WHICH TO MEET.

III. Possible Projects For the Committee to Undertake

1. Meet with recognized authorities on Constitutional Revision
   (a) Information
   (b) Send work already accomplished for their review and comments
   (c) Planning for a successful convention.
   (d) Evaluate each person for possible selection as consultant to either the Constitutional Commission or to the actual Convention, should one be called.

2. Report on Federal Constitutional Convention
   (a) Limited vs. Unlimited
   (b) Effects a National Convention would have on the States, especially Alaska.

3. Prepare informational material to be handed out at Public Hearings.

4. Prepare materials for members of the committee.

5. Prepare informational brochure on "What Is a Constitutional Convention" for distribution.

6. Prepare scripts and select persons to be involved in use of the Legislative Media Center and teleconference use.

7. Develop questions for consultants

8. Preparation of workbook for Commission.

9. Public hearings
   (a) Preparation for
   (b) Summary report following the meetings

10. Discuss possible projects with the League of Women Voters
    (a) Study on their prospectives Pro or Con
    (b) What issues do they feel should be addressed
    (c) Their participation in the future.

VIRGINIA'S LAND-GRANT UNIVERSITY

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

CENTER FOR PUBLIC ADMINISTRATION AND POLICY (703) 961-5133/5830

10 September 1980

Mr. Guy A. Van Doren
Administrative Assistant
Special Interim Committee on the
Constitutional Convention
Pouch Y, Room 107
The Capitol
Juneau, Alaska 99811

Dear Mr. Van Doren:

This is in reply to your letter of September 4. Thank you for sending me the materials relating to the work of the Committee on the Constitutional Convention. I look forward to examining these items more carefully.

I shall be glad to meet with you during October. The time that would be most convenient for me would be the week of October 13-17, preferably early in the week, although I could meet at another time if this does not fit well into your schedule. Also, I suggest that you might prefer that I meet you in Chicago, rather than your coming to Blacksburg. We can resolve these matters when you get back to me. My office telephone is Area Code 703, 961-5197.

As you may know, for the past ten years I have been preparing the section on "State Constitutions and Constitutional Revision" for The Book of the States. In updating the material on constitutional commissions for the next volume, I want to include information on the Special Interim Committee on the Constitutional Convention. I am enclosing, therefore, two forms on state constitutional commissions that I would appreciate greatly your filling out as completely as possible and returning to me.

I look forward to hearing from and meeting you in the near future.

Sincerely,

Albert L. Sturm
Professor Emeritus

ALS/sl

Enclosures

Robert M. Hanes

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Frank P. Grad, Counsel

NATIONAL MUNICIPAL LEAGUE
Sponsor of
National Conference on Government
86th Annual Conference—Houston—November 15-18, 1980

September 12, 1980

Mr. Guy A. Van Doren
Administrative Assistant
Special Interim Committee on the
Constitutional Convention
Pouch Y, Rm. 107
Capitol Building
Juneau, Alaska 99811

Dear Mr. Van Doren:

I was pleased to receive your letter of September 4 and the various enclosures. I am glad that you are able to follow-up on some of the people who were mentioned in the letter sent from the National Municipal League early in the summer.

You asked for my schedule during October and early November. The best time for me would be from the 23rd of October until the end of the month. I could also meet with you on the 9th and 10th or November 6 and 7.

I had a call from John Bebout who suggested the possibility of my convening a meeting of several of the people you plan to see here at the National Municipal League. It would be possible to have several of them gather here for a one-day session which might conserve your time. It would be necessary for your committee to defray their expense traveling to New York which might increase the cost but would have the advantage of an exchange involving several people, e.g., a session involving Bebout, Braden, Cornwell and me could probably be arranged.

Another possibility would be to have a session in connection with the League's National Conference in Houston, November 15-18. You might be able to have a group meet on Friday, November 14 in Houston before the Conference begins. I am sure that several of the people on the NML list will be at the Houston meeting.

Carl H. Pforzheimer Building, 47 East 68th Street, New York, N.Y. 10021
Telephone: (212) 535-5700

In connection with the Houston meeting I am enclosing a memorandum alerting you to an invitation which you will be receiving shortly from George Gallup and Bill Scranton, two former League presidents. You will be among those invited to participate in the agenda building program described in the memorandum. You will note that this will be held on November 15 and 16. I hope you will be able to adjust your calendar and extend your stay in the "lower 48" through November 16.

I look forward to hearing from you.

Sincerely yours,

William N. Cassella, Jr.
Executive Director

WNC/gm
Enclosure

86th NATIONAL CONFERENCE ON GOVERNMENT
The Shamrock Hilton
Houston, Texas
November 15-18, 1980

July 7, 1980

1980 CONFERENCE MEMORANDUM #2

Conference Theme: CIVIC PARTNERSHIP FOR PROGRESS IN THE 1980s

As in previous years, the 86th National Conference on Government will bring together a unique combination of citizens and officials with a common interest in improving the effectiveness of self-government. It will provide an opportunity for them to exchange experiences and ideas, and to focus particularly on the issues which must be faced in the 1980s. A special effort is being made to involve an emerging generation of civic leaders in this Conference and in the development of programs necessary to reverse fragmentation caused by single-interest politics and thus enhance the institutions and processes for accommodating a variety of interests--the CIVIC PARTNERSHIP FOR PROGRESS.

Reactions to the proposed substance and format outlined in Conference Memorandum #1 were affirmative and contained suggestions which are reflected in the tenative program included in this memorandum.

Following the pattern initiated in 1979 in Detroit, the Houston Conference will make maximum use of the November 15-16 weekend and will conclude by midday on Tuesday, November 18.

The tenative program is as follows:

Registration, Saturday, November 15, 8:30 - 11:00 AM
NML Committee meetings, November 15, 9:00 - 11:00 AM

Saturday, November 15 and Sunday, November 16

All Sessions: Building the Civic Agenda for the 1980s

Special invitations ~~have been~~ are being extended to a cross section of promising younger leaders from around the country, both officeholders and individuals with important civic roles, to join with League officers and members in developing the civic agenda for the 1980s. The program will include presentations at plenary sessions and small-group roundtable discussions.

Focus will be on defining the issues which must be faced by a federal system overloaded by intergovernmental fiscal complexities and burdensome regulations, and questioned as to its effectiveness,

efficiency, accountability and equity. All participants will receive background materials before the Conference, including analytical reports of the Advisory Commission on Intergovernmental Relations.

The objective of the small-group sessions will be to produce consensus with respect to the Civic Agenda necessary to redefine the roles of all levels of government, overcome the hazards of the overload, strengthen state and local institutions, and create productive public/private/voluntary partnerships. The consensus will be on an agenda of questions which must be faced, not specific answers. Developing and implementing answers will be the task of the decade. All those listed as giving presentations have been invited.

Saturday, November 15

11:00 AM - Opening Plenary Session
Keynote Presentations: Bruce Babbitt, Governor of Arizona
Richard Thornburgh, Governor of Pennsylvania

12:30 PM - Buffet Luncheon - small-group discussion rooms

1:00 PM - 1st session - small groups

2:45 PM - 2nd session - small groups

4:30 PM - Afternoon Plenary Session
Presentations: Fay H. Williams of Indianapolis (Coalition Building)
James R. Ellis of Seattle (Civic Commitment)

5:30 PM - 7:30 PM - Reception

Sunday, November 16

10:30 AM - Plenary Session on Civic Agenda for the 1980s
Presentations: James L. Hetland, Jr., of Minneapolis (Regional Institutions)
Gail Levin of Dayton (The Media's Role)
Neal R. Peirce--(The Civic Agenda-summations of consenses reached in small-group discussions)

12:00 Noon - Brunch

2:30 PM - National Municipal League Membership/Council meetings (open to all participating in Conference). Report of Committee on NML Goals and Priorities for the 1980s and an open discussion providing an opportunity for League officers and members to con-

sider committee recommendations on current and proposed League programs in light of the deliberations on the "civic agenda for the 1980s" just concluded, as well as individual experiences and concerns.

5:30 - 7:30 PM - Reception - Opening of All-America Cities Exhibits

The All-America Cities Jury Hearings will be held November 17, 9:00 AM - Noon and 2:00 - 5:00 PM.

Monday, November 17

The general and concurrent sessions for November 17, to involve participants from all parts of the country, have been planned with the cooperation of Texas leaders to provide an opportunity for citizens of the host area to discuss matters of local concern with those having faced similar problems elsewhere. The concurrent sessions in the morning deal with significant problem areas and those in the afternoon with instruments for dealing with them.

9:00 AM -- General Session - Public/Private/Voluntary Partnership

10:30 AM -- 4 Concurrent Sessions

A. Urban Development/Urban Conservation
B. Energy - State/Local Initiatives
C. Living with Fiscal Constraint
D. Intergovernmental Partnership or Regulatory Maze?

12:15 PM - Luncheon
Address: William M. Ellinghaus, President
American Telephone & Telegraph Company

2:00 PM -- 4 Concurrent Sessions

A. Representing Changing Communities
B. Leadership and the Civic Partnership
C. Citizens Organized - In the Neighborhood
D. Expanding the Knowledge Base - Research and Service

3:30 PM -- General Session - Strategies for the 1980s -- Sorting Out Roles: Local, Regional, State and Federal

Tuesday, November 18

9:00 AM -- 4 Special Workshops

A. Charter Clinic
B. Civic Video
C. Reapportionment/Redistricting
D. All-America Cities Network

National Municipal League officers and council members will preside at all sessions.

Chairman
Rep. Brian Rogers

Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Hayes

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

Pouch Y, Rm. 10
Capitol Bldg.
Juneau, Alaska
99811
(907) 465-3743

Staff
Guy Van Doren
Admin. Asst.

September 4, 1980

The Honorable Brian Rogers
Chairman,
Special Interim Committee on
The Constitutional Convention
P.O. Box "K" College Branch
Fairbanks, Alaska 99708

Dear Brian:

Enclosed, please find a draft copy of a resolution I drafted relating to a Constitutional Convention Commission. I have no pride of authorship as I drafted it as the beginning of an idea.

Also enclosed is a copy of the letter I sent to recognized authorities on Constitutional revision and the letter from the National Municipal League with the list of people checked off that I sent a letter to. I tried to choose persons in a adjoining geographical area to avoid excess traveling expenses. I would have loved to include Hawaii. I also chose a couple of people who are familiar with Alaska and the Alaska Constitution.

If the Committee decides that the trip is worthwhile, I could also spend time with (1) The National Municipal League (2) Political Scientists at Yale, Harvard, Columbia, Princeton and possibly Northwestern and Chicago; (3) American Political Science Assn.; (4) Instutute of Public Administration of New York; (5) Public Administration Service; (6) Legislative Reference Service-Library of Congress, and: (7) National Taxpayers Assn. These are all in the same area as the other people.

As you probably know by now, Mr. Wagstaff was out of the office until the 8th. I will call him then and let you know the results when we talk again.

I have enclosed an authorization note in order that I will be able to use Landa if it is necessary. She has indicated that she will be able to go to work full time on November 1, 1980 if we need her. She is willing to work on Saturdays or evenings if we need her before November. This is alright with me since I feel that I can handle any typing, unless there is something heavy going on until November. She did indicate that she will attend the meeting we are planning to have in Juneau.

Guess that's it for now. See you in Juneau and will be talking to you shortly.

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N.Y. 12224
Telephone: (518) 474-4318

ROBERT ABRAMS
ATTORNEY GENERAL

September 15, 1980

Mr. Guy A. Van Doren
Administrative Assistant
Special Interim Committee on the
Constitutional Convention
Pouch Y
Room 107
Capitol Building
Juneau, Alaska 99811

Dear Mr. Van Doren:

I shall be happy to meet with you any time in October except on the 9th through the 15th and any time early in November. I assume that this would be here in Albany. New York City is possible if the meeting is on a Friday or a Monday and the weekend is convenient for my son with whom I would stay.

Sincerely yours,

GEORGE D. BRADEN
Assistant Attorney General
in Charge of Opinions

SCOMM

#27:10

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

A NEW CONSTITUTIONAL CONVENTION FOR ALASKA?

THE LESSONS OF HAWAII 1978

prepared for

Interim Committee on the Constitutional Convention
of the Alaska State Legislature
Sen. George Hohman and Rep. Brian Rogers, Co-chairmen

by

Victor Fischer
221 E. 7th Ave., Anchorage, Alaska 99501

March 10, 1980

Preface

This paper is part of a series of studies sponsored by the Alaska Legislature's Interim Committee on the Constitutional Convention to examine issues pertinent to the 1982 referendum on whether or not Alaska should hold a constitutional convention.

Previous papers in the series by this author covered (1) various aspects of calling and arranging a constitutional convention, (2) considerations that need to be taken into account in deciding whether or not to call a convention, and (3) preliminary examination of issues and topics that might be raised in considering revision of Alaska's constitution. The current paper reviews Hawaii's 1978 constitutional convention and the constitutional amendments in which it resulted.

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Introduction

Hawaii has served as a model for Alaskans before, and once more we have something to learn from Hawaii's experience.

When Alaskans were fighting for statehood in the early 1950's, the idea of writing a constitution for the future state was repeatedly considered. A well designed document would prove to the U.S. Congress and the nation that Alaska was politically mature and ready to become a state. Moreover, Hawaii statehood advocates had written a constitution in 1950, and greater parity in the common quest would accrue if Alaskans also drafted a state constitution.

Alaska's constitutional convention met in 1955. Together with the National Municipal League's Model State Constitution, Hawaii's document provided a basic guide on constitutional substance and form: emphasis on fundamental policies and basic governmental structure, streamlined institutions to serve the needs of a modern state and its people, a brief and concise document. These concepts are fully reflected in Alaska's constitution, which contains a number of provisions derived directly from Hawaii's earlier work.

Now, in the 1980's, Hawaii can once more provide invaluable guidance to Alaska. In 1982, Alaskans will vote on whether or not to hold a new constitutional convention. Unlike the 1955-56 convention, which was held in the context of the unifying statehood cause, a divided Alaska and uncertain political environment would face a future constitutional assembly. This problematic situation greatly beclouds the answer as to whether a new convention would be beneficial to the state and its people.

Well, Hawaii held a convention during these frequently confused and disturbed times. Its review and rewriting of the state constitution took place in 1978. It was the post-Watergate era, the period of Proposition 13. Distrust of government, and particularly the legislature, was high. There was conflict between those who believed in a Hawaii for Hawaiians and others who wanted to retain the "aloha spirit" and greet all newcomers. Divisive issues included economic development, environmental protection, Native rights, public employees collective bargaining and right to strike, resources policy.

Hawaii's resultant convention encountered serious problems of organization and functioning. Delegates made more than one hundred changes in the constitution. Some of these changes dealt with truly basic matters, while a very large number are purely legislative in nature. Some revisions are quite significant, while others appear to an outside observer as unimportant and even frivolous. Interestingly, both convention participants and observers are in retrospect highly critical of the work and products of the constitutional convention. Many now believe Hawaii would have been better off without a convention. Others simply wish it had been better.

Rather than drawing simple conclusions out of Hawaii's extremely complex 1978 constitutional convention experience, this paper reviews what transpired and examines the reasons for some of the actions and results. Readers can then draw their own interpretations, based on their own concerns, values, and perceptions.

Learning about Hawaii's 1978 constitutional experience was but one of the personal benefits I derived from preparing this analysis. Greater yet was the pleasure of meeting and communicating with some wonderful Hawaiians, without whose help this would have been a rather dull exercise. I want to

particularly acknowledge the forthright and cooperative sharing provided by these members of the 1978 Hawaii convention: Frenchy De Soto, Paul Di Bianco, Walter Ikeda, William Paty, and John Waihee. Others most helpful were Sandy Ebesu of HGEA, Richard Kosaki and Norman Meller of the University of Hawaii, and Pat Shutt of the League of Women Voters.

Very special thanks go to Mike Meriwether, who initiated me to the who's who and the facts of public life in Hawaii and literally opened doors to the people I needed to see. And as always, very special appreciation and love go to my good friend Tom Dinell and his marvelous family, for everything.

I do trust that in the retelling and interpreting of Hawaii's constitutional revision story, I have not done any significant injustice to the differing points of view to which I was exposed. My need was to look at events in terms of what Alaskans could learn from our sister state. So I hope that my friends, old and new, will forgive any transgressions and permit me to someday again visit their warm and delightful state.

Background to 1978 Convention

Hawaii's first constitutional convention was held prior to statehood and was, as Alaska's, part of the quest for statehood. The convention, which met from April 4 to July 22, 1950, consisted of 63 delegates.

The 1950 constitution is a relatively short document (approximately 14,000 words), staying with basic fundamentals: a bicameral legislature of a 25-member senate and 51-member house of representatives, only two statewide officers--governor and lieutenant governor, an executive branch consisting of no more than 20 principal departments, a supreme court and circuit court (where judges are appointed by the governor and subject to confirmation by the senate), and local governments under the control of the state legislature. All in all, Hawaii's 1950 constitution, in the words of Prof. Norman Meller, "showed and was meant to demonstrate how thoroughly the people of the Islands were imbued with American political and cultural traditions."[1]

Hawaii held another convention prior to the one that is the primary focus of this paper. A convention was held in 1968 to deal with the U. S. supreme Court mandate that the legislature be reapportioned on a one-man one-vote basis. Aside from legislative apportionment, other amendments proposed by the convention and ratified later in 1968 strengthened certain aspects of the Bill of Rights, liberalized voter qualifications, authorized a presidential preferential primary (not yet implemented by the legislature), made changes in legislative procedures, lengthened the term of justices of the supreme and circuit courts, changed the state

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[1] Norman Meller, With an Understanding Heart: Constitution Making in Hawaii. New York: National Municipal League, State Constitutional Convention Studies No. 5, 1971, p. 84.

and county debt limits, gave local governments more control over their internal organizations, required each jurisdictions to adopt a code of ethics, provided for collective bargaining for public employees, and took care of a number of other minor issues. Only one amendment was turned down by the electorate: the proposal to lower the voting age from 20 to 18.[2]

The 1968 convention had been called through popular referendum held November 8, 1966. Unlike Alaska, a convention cannot be called by the legislature; instead, the legislature is given specific authority to submit to the electorate at any general or special election the question "Shall there be a convention to propose a revision of or amendments to the Constitution?" Further, as in Alaska, provision was made for a periodic referendum: "If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period."[3]

A question arose in 1976 as to whether the convention proposition should again be put before the voters at the November 2, 1976 general election or should be held off until the 1978 general election. The Hawaii attorney general ruled that the ten-year period had begun after the last day the question was submitted to the electorate and would,

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[2] Richard H. Kosaki, "Constitutions and Constitutional Conventions of Hawaii," The Hawaiian Journal of History, vol. XII, 1978, pp. 125-126. (Kosaki is a professor of political science at the University of Hawaii. The article was written prior to beginning of convention.)

[3] The Constitution of the State of Hawaii, Article XV, Section 2. The ten-year referendum provision varied somewhat from a similar prviso in the Alaska constitution: the proposition had to be put before the voters in Hawaii every time that the question had not been voted on during a 10-year period, while in Alaska the question is put on the ballot only if there has neither been a referendum on the issue nor a constitutional convention during such period.

therefore, not expire until November 8, six days after the 1976 election. As a result, he held that the convention question should not be put until 1978.

However, after a court challenge and strong public expressions in behalf of a referendum, the legislature decided to place the question before the voters in 1976. The result was overwhelming approval: 199,831 (74 percent) in favor, 69,264 against.

Professor Kosaki notes: "This rather large affirmative vote may have surprised some political observers as, unlike the period before the 1950 and 1968 conventions, there appeared to be no single overriding or pressing issue. Perhaps Hawaii shared with the rest of the nation a general dissatisfaction with government following Watergate. Public interest groups such as Common Cause and the League of Women Voters not surprisingly pushed for a constitutional convention as a healthy and democratic device to review basic government organization and procedures. Special interest groups saw yet another opportunity to write their platforms into the Constitution. The Honolulu dailies, particularly the Honolulu Star-Bulletin, editorialized in favor of a constitutional convention. Few political leaders, despite their private reservations as to the "need" for a convention, would publicly oppose the holding of another constitutional convention. As election time approached, most of Hawaii's political leaders said that they favored the holding of a constitutional convention although there seemed to be little agreement as to what major issues should be addressed."[4]

One convention delegate summarized the general opinion that the 1976 referendum vote on holding the convention was so heavily in favor because

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[4] Kosaki, pp. 126-127

(1) the public generally did not concern itself with specific issues, (2) there were no strong reasons not to have a convention, no one was against it, so why not do it? and (3) it just sounded like a good idea, a "motherhood issue."

The pre-convention period was characterized by extensive preparatory work and attempts to define constitutional issues. The Hawaii Legislative Reference Bureau prepared and widely distributed for the referendum election an informal brochure: "The Constitutional Convention: Yes or No," listing the kinds of subjects that a convention might consider. Subsequently, the Legislative Reference Bureau provided convention delegates with thorough research on constitutional issues in its Hawaii Constitutional Convention Studies 1978.

The League of Women Voters of Hawaii Education Fund conducted a major public education campaign prior to the 1978 convention. A simple popular and well-illustrated brochure described the basic purposes of a convention and summarized key issues that delegates might face. The League held community meetings throughout the state, with the particular aim of involving people who had not usually participated in the political process of revising the state constitution. Each of the meetings considered a variety of issues and covered any topic that participants proposed. Results of these meetings were later reported to the convention. In addition, the League prepared an in-depth issues analysis for the convention, based upon public discussions and related research. Throughout, part of the League's purpose, was to trigger the imagination of delegates and to broaden the scope of their considerations of issues that might not be raised as part of conventional review processes.

Other activities included extensive newspaper coverage and such special projects as a wide-ranging poll of Hawaii public opinion concerning the convention prepared for the First Hawaiian Bank and issued in a 136-page report.

Although "there was general agreement that there was little or no consensus as to specific major issues the convention should address,"[5] a substantial list of issues did emerge by the time the convention met.

Pre-Convention Issues

The list of questions, problems, and issues raised for possible consideration by Hawaii's 1978 Constitutional Convention is almost endless. The following "laundry list" is presented to show what the convention faced as well as to provide an indication of what might be in store if Alaskans should decide to review and revise their constitution:

Declaration of Rights: Establish a right to privacy; strengthen individual rights regarding search and seizure, wiretapping, etc.; establish right to freedom of choice and self-reliance in all matters of personal nature; include right to a job; redefine role of grand jury; stricter penalties, for crimes, mandatory sentencing, capital punishment.

Legislature: Unicameral versus bicameral, split sessions, limit tenure to two consecutive terms, fix legislative salaries in constitution, limit number of bills that can be introduced in each legislature, provide adequate advance publicity on all proposed laws before final vote, elect legislators in non-partisan elections.

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[5] Kosaki, p. 127.

Executive: Limit tenure of governor and lieutenant governor to two terms, give lieutenant governor more responsibility, elect attorney general and county prosecutors, limit governor's right to withhold appropriated funds, limit governor's control over budget.

Judiciary: Provide merit selection and election of judges, create an appeals court, change existing ten-year appointment of judges.

Elections: Establish open primary, create limit on campaign spending, limit terms of all elected officials.

Apportionment: Provide for true representation of each island and district.

Education, Health, Welfare: Change method of selecting board of education, give counties more power over schools, define powers of university board of regents; establish right to a healthful environment, provide for better and lower cost housing; establish stricter requirements for welfare recipients.

Resources, Environment, Growth: Include more specific provisions about conservation of natural resources, provide better protection of conservation land and preservation of parks, protect agricultural land, increase citizens role in decisions about land; provide for energy conservation; permit individuals to sue to protect resources; limit growth, limit migration, provide referendum on population growth, emphasize quality growth.

Finance: Establish more control of government spending and stricter debt limits; limit amount of property tax on individual homes; require balanced budget; include a financial impact statement with each bill considered by the legislature.

Local Government: Clarify state and county roles, give more power to counties, make each island a separate county, incorporate municipalities, abolish counties, give counties more taxing power.

Initiative and Referendum: Make constitutional provision for initiative, referendum, and recall.

Miscellaneous: Limit right of government workers to strike, limit number of days public and private employees may strike, open government collective bargaining sessions to public; decriminalize marijuana; establish residency requirements for state and local jobs; require a code of ethics for all government employees; establish guidelines for preservation of Hawaiian heritage.

Although there may have been no consensus about major issues to be faced by the 1978 convention, it can be seen that there was no shortage of topics for its consideration. A surprising number of the above-listed items ended up among changes adapted by Hawaii's delegates.

1978 Election; the Delegates[6]

The 35 percent voting turnout in the 1978 special election to select convention is the lowest recorded for elections in Hawaii. Although a low turnout is generall predictable for special elections, most Hawaiian observers were somewhat surprised inasmuch as in 1976 over 70 percent of the registered voters cast ballots on the proposition of holding a constitutional convention, voters approving it by a three-to-one margin. Furthermore, according to the First Hawaiian Bank poll held

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[6] This section, including tables, is largely from Kosaki, pp. 128-132.

less than four months prior to the special election, 67.8 percent of the respondents indicated that they planned to vote in the delegate election.

The convention size was fixed at 102, double the membership of the state house of representatives. In the 1978 special election, at least two convention seats were allocated to each house district; four or six were allotted to the larger districts. A total of 697 candidates filed for the 102 delegate seats. The smallest number of candidates in any district was 6. One district had a high of 30 candidates; and seven districts had more than 20 candidates for the two seats. With each district averaging over 3,000 registered voters, the highest vote getter in the 1978 election obtained 1,982 votes, or 76.7 percent of those voting in the district. The delegate elected with the fewest votes had 363, receiving 19.8 percent of the votes in the district. In view of the large number of candidates in each district, it is not surprising that the great majority (89) of the elected delegates received less than 50 percent of the votes cast in their district.

The composition of the 1978 convention is extremely interesting, especially in comparison with the 1950 and 1968 conventions. Unlike the earlier conventions, the 1978 convention did not contain many familiar faces. Only two incumbent legislators chose to run and were elected to the convention. In addition, two ex-legislators became delegates. Thus, incumbent and ex-legislators constituted only 4 percent of all delegates in 1978, as against 51 percent of the 1968 convention. Six delegates had seen service in the 1968 constitutional convention, and one delegate had served in the 1950 convention.

The delegates were, on the average, younger than their predecessors. The median age in 1968 was 42, while it was 35 in 1978. The respective age distributions of the 1968 and 1978 conventions were as follows:

	1968 Delegates		1978 Delegates	
Age Group	No.	Percent	No.	Percent
50+	18	22.0%	24	23.5%
31-50	55	67.1%	45	44.1%
20-30	7	8.5%	33	32.4%
Unknown	2	2.4%	0	
Total	82		102	

Another change in delegate composition was the significantly larger number of women delegates elected in 1978:

1950	5 of 63 delegates	(7.9%)
1968	8 of 82 delegates	(9.8%)
1978	20 of 102 delegates	(29.4%)

In his book about Hawaii's first two conventions, Norman Meller offers a classification of delegates by occupation. Kosaki updated Meller's analysis with the following results:

	1950		1968		1978	
Occupation	No.	%	No.	%	No.	%
Lawyers	19	30	25	30	20	19.6
Business	25	40	35	43	26	25.5
Educators	7	11	6	7	14	13.7
Doctors, etc.	5	8	2	2	0	
Housewives	3	5	2	2	3	2.9
Union Organizers	2	3	2	2	1	1.0
Full-Time Public Officers	1	2	2	2	1	1.0
Retired	1	2	2	2	6	5.9
Student	0		1	1	7	6.9
Civil Service Employees	0		5	6	13	12.7
Unemployed	0		0		6	5.9
Others or Unknown	0		0		5	4.9
Total	63		82		102	

What is noteworthy in the "occupation" table is the decrease in 1978 of lawyers, businessmen, and doctors, and the increase in educators, retirees, students, and civil service employees. Also interesting is the fact that six delegates just before the convention described themselves as "unemployed;" the majority of these worked as legal researchers in the recently adjourned legislature.

Election Sidelights

Interviews provided some insights behind the statistics covered in the preceding section.

A number of explanations were given of the intriguing fact that only two legislators ran for the constitutional convention. (1) There was a wide consensus that the legislature was out to assure that the convention would not succeed. Although unable under the constitution to limit subject matter considered by the convention, the legislature created some serious timing roadblocks. As a result, legislators, did not want to be associated with a convention bound to fail. (2) Specifically, the convention was held from July 5 to September 21. It would be difficult for a legislator to campaign for the early October primary and still perform convention duties. (Supposedly, the timing was so designed to discourage delegates from challenging incumbent legislators in the primary election.) (3) Legislators might have been beaten in the convention election. Some fairly strong local people not ordinarily in politics became candidate for delegate and that, together with possible public resentment against legislators not sticking to their lawmaking business, could have resulted in a legislator losing out both for the convention and in a subsequent legislative reelection bid.

Generally, the constitutional convention election was very much a grassroots election. The vast majority of candidates were making their first bid for public office. With many unknown and inexperienced candidates in the running, relatively small organizational and financial support could make a great difference.

The most active role in delegate elections was played by the Hawaii Government Employees Association (HGEA); other organizations were not particularly active. The basic criterion of HGEA support was opposition to Initiative and Referendum. This opposition grew out of a concern about anti-labor initiatives, as well as possible use of the initiative device for fiscal purposes (such as Proposition 13) or restrictions on social programs (welfare, abortion). HGEA screened all candidates for endorsement. Where the union was not satisfied with declared candidates, its representatives encouraged and helped selected people to file. HGEA gave active support to candidates in a variety of ways: money, use of mailing lists, provision of mailing and other facilities, campaign organization and stragety, etc. HGEA supported and helped elect 60-70 percent of the delegates, including some who ended up in the minority. According to one estimate, 40 of the 102 delegates were "fully controlled" by HGEA. Among those elected were 13 HGEA members.

(By the way, a prevalent way of campaigning in Hawaii is for candidates to stand on freeway overpasses during rush hour and wave placards or banners with their name to attract commuters' attention!)

Organizing Convention

Legislative provisions for the convention specified that the delegate election be held May 20 and the convention begin July 5, 1978. Maximum

stipend per delegate was set at $1,000 per month, the total not to exceed $4,000. Delegate pay began the day after the election; thus, the last day of pay would be September 20.

Starting pay the day after election was designed to limit the period during which the convention could be held. With a convention beginning date of July 5, the session was effectively limited to 75 days, including weekends and any time off for hearings or recess. In addition to legislatively set limitations, the lieutenant governor also urged completion of convention work no later than September 21 so that proposed amendments could be printed and put on the November general election ballot. Those interviewed believed that this left completely inadequate time to deal with substantive aspects of constitutional revision.

During the period of May 21 to July 5, elected delegates were just "milling around" and organizing. A number of preliminary meetings of delegates were held to select a temporary chairman, establish initial committees, make convention arrangements, agree on a location for the convention, and the like. No substantive constitutional issues were addressed during this period.

In early June, delegates held their first formal meeting and elected William Paty as interim president. He received the votes of about three-fourths of the delegates. Paty set up the rules committee, credential committee, and other administrative committees. The pre-convention period was also used to prepare the delegates for the issues they would be dealing with during the convention. Groups such as the League of Women Voters, a county organization, savings and loan association, and others ran seminars and briefings for delegates.

When the convention met in its first regular session, Paty was elected permanent convention president. He then proceeded to appoint committee members and chairmen. Delegates also elected a secretary and an assistant secretary.

Vice-presidents were elected by delegate caucuses from each of Hawaii's seven senate districts. These vice-presidents were supposed to represent their district in administrative affairs. However, since several of the seven vice-presidents were members of the "minority", their role in the convention became minimal.

Committee structure was essentially similar to that of the 1968 convention. New committees were established to deal with ethics and Hawaiian affairs, while the subject of environment was added to the title of the committee dealing with agriculture, conservation, and land. In all, there were sixteen committees, and each delegate was assigned to serve on five or six of them.

An advisory/steering group functioned during the intitial stages of the convention. It consisted of about ten people who had put together the ruling coalition and managed to get Paty elected president. The group participated in various early decisions, particularly appointment of committee members and chairmen. Once the convention was organized, Paty let committees function on their own. As a result, the initial steering group fell apart.

About half-way through the convention, it became apparent that problems were developing because no one kept tabs on the whole convention. John Waihee, a young Native Hawaiian delegate established an unofficial organization and process to coordinate convention activities and assure that basic components of their program were reflected in convention products.

Although convention work started slowly, delegates worked until one or two a.m. during the last several weeks. The crush was so great at the end that apparently it was hard to see the totality of what was happening in the convention and to relate all amendments. In view of the time crunch they experienced, one of the new constitutional amendments adopted by the delegates provides for more adequate time for future conventions to do their work.

How the Convention Came to Be Organized

There was one basic issue around which the convention organized -- Initiative and Referendum. This issue ran so deep, it was so basic, that it caused a major split among the delegates and prevented the convention from ever coming together as a single, unified body.

Initiative and Referendum became the key issue because of the times during which constitutional revision was being considered: society in turmoil, people's concerns focused on immediate problems, most groups pursuing single-interest causes and solutions. The public was frustrated, disenchanted with government, and distrustful of institutions and leaders. In this situation, Initiative and Referendum appeared to many a simple solution -- if people could only vote on the matters of concern to them, direct democracy might solve all problems. (Actually, however, polls showed that popular sentiment was not particularly concerned with Initiative and Referendum. People were worried about crime, high taxes, government expenditures, economic problems, and the like.)

Reform groups such as the League of Women Voters and Common Cause worked in behalf of these devices of direct legislation. Principally,

however, the Initiative and Referendum issue seemed to have been pursued by the media. Much of the cause behind that was frustration with the legislature, which seemed highly unresponsive. The constitution was seen as providing an easier vehicle than the legislative process for resolving social, economic and political frustrations. While some viewed Initiative and Referendum as a basic plank in a reform platform, others saw it as a potential danger to the established order, to their special interests, and to Hawaiian lifestyles. Thus, the convention's organizing thrust grew out of this opposition to Initiative and Referendum.

Rallying around opposition to Initiative and Referendum, one of the convention's two state legislators (Sen. Donald Ching) and the Hawaii Government Employees Association (led by HGEA president David Trask) structured a coalition to assure that Hawaii's constitution would not be amended to permit direct legislation. The coalition was an amalgam of union people and those supported by labor, individuals with ties to larger business interests (though there were not many of these), and a group of younger delegates, mostly Native and graduates of the University of Hawaii Law School, a number of them also legislative staffers.

Architects of the coalition chose William Paty to become convention president. A sugar plantation manager and a republican, Paty had stature and commanded respect. His public prestige helped overcome HGEA's negative media image.

Out of the convention total of 102 delegates, the coalition had 56 solid votes on Initiative and Referendum and organization-related issues. Generally, the "majority" was composed of people who could work and talk together,

essentially a grouping of some 65 votes. It consisted of a dependable core of 40 votes, with another 25 who would come and go depending on issues. In addition, about 15 "reformists" might join with the majority on specific matters.

The "minority" did not function in a consistent or organized manner. Composed of most of the convention's Caucasians, most of the Republicans, and most of the more lucid attorneys, this group consisted mostly of convention independents and individuals brought together mainly by their opposition to the coalition and its hard organizational tactics.

In many ways, the coalition was a loose amalgam of votes that had to be kept together through compromise and promises. One reason for the many changes made in the constitution and for the extensive amount of legislative matter included was the need to satisfy the individual needs and desires of individual delegates whose votes had to be kept in line on core issues such as Initiat've and Referendum.

Philosophical Differences, Characteristics of Delegates

Many observations make it clear that there was a lot of dynamics within the Hawaii convention. There were, of course, 102 individuals, and categorizing them is not particularly easy. The groupings that seemed most appropriately classify the delegates were:

(1) "Reformists" or "independents" -- those who were concerned about government structures and processes and generally favored Initiative and Referendum.

(2) "Standpatists" -- those who wanted none or only the most minimal changes; there were few of these.

(3) "Conservatives" -- those who fell between the other two categories; they often felt more strongly about constitutional preservation than the standpatists, while at other times they favored changes.

It appears that a substantial majority of delegates thought the constitution was basically good and required no major changes. From that standpoint, virtually all could have been classified as "conservatives." However, post-election coalition-building, pursuit of particular objectives, and individual philosophies lead to groupings, some rather loose, that continued through the convention.

While there was a general feeling within the convention that the legislature needed to be made more responsive and that political processes had to be more open, it was the "reformists" or "independents" who believed most strongly that the public majority should be able to exercise power over government and directly participate in political decisions. These individuals generally held that the "aloha spirit" should be kept alive, that migration should not be restricted or growth unduly controlled, and that special privileges should not be granted to Native Hawaiians or any other groups.

As the others, "conservatives" saw Initiatve and Referendum as a symbol. With labor, they believed it could become a tool that could be used by ever increasing numbers of in-migrants, mostly haoles (Caucasians) from California, to upset existing order and arrangements. This applied

not only to the fear of the initiative's use against unions, but also to concern that the initiative could work against minorities, be used to establish the death penalty, bring about cuts in social welfare, and the like. They were concerned about accountability for what goes on: To them, it was the unseeable and unseen electorate vs. responsibility fixed directly on the governor and legislature. Behind the opposition also seemed to lie the fear that while the legislature could be influenced, the initiative process could not be controlled. The public was viewed as too often signing petitions and voting without full understanding of propositions and their implications. Thus, danger was seen in the exercise of direct legislative power by an uncaring majority, particularly as such power might be exercised in the areas of labor, welfare, and fiscal legislation.

An important ingredient in the "conservatives'" philosophy was the belief that locals should retain political power and preserve Hawaii's uniqueness in the face of an infusion of newcomers to the state. Accordingly, they sought to preserve existing political and labor power centers, above all defeating proposals to authorize Initiative, Referendum, and Recall. In general, though conservative in many ways, the majority coalition showed itself extremely change oriented in such areas as Hawaiian affairs and environmental issues.

A key role in fashioning the convention's program was played by John Waihee III, a 32-year old attorney. A newspaper article described Waihee, a Native Hawaiian, as the "major architect of the convention's will... who, by default and tactical skill, assumed the role of majority leader midway in the convention." Everyone interviewed supported the premise that insofar as anyone "managed" the convention, both in substance and process, it was Waihee.

Working with Waihee was a group of young people, the "children of the 60's." Their principal goals included social justice, Hawaiian rights, and protection of Hawaii's character and uniqueness. (When one looks at these values, it is clear that the term "conservatives" can be applied to this group only in its most dynamic interpretation.)

Despite many differences there were of course unifying issues that brought delegates together regardless of coalition status. This was true in particular with the full gamut of fiscal controls. The convention's actions in this area demonstrated not only wide consensus among delegates, but also showed that HGEA's power was nowhere near as great as generally perceived. In the fiscal arena, at least, business interests and populism combined to greatly restrict government's taxing and spending ability.

The general philosophy of the convention, or at least of those who set its tone, is best reflected in the revision of the constitution's preamble:

> We, the people of [the State of] Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage [,] and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono."*
>
> We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

Principal Constitutional Changes

By the time the delegates concluded their work, they surprised the state and probably themselves by both the number and range of constitutional changes proposed. Part of the explanation lies in the organization of the

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* (New material underlined, deleted material in brackets.)

convention. The majority had not been fashioned to implement a program, but rather to oppose amendments which threatened to disturb the status quo: attempts to eliminate or modify public sector collective bargaining, converting of the legislature to a unicameral body, and the introduction of the initiative, referendum, and recall at the state level. The cost of maintaining such a coalition was the inability to prevent individual members, frequently allied with special interests, from sucessfully championing their pet ideas.[7]

In all, the 1978 convention made 116 changes in Hawaii's constitution. Although some revisions were truly constitutional in nature, the majority would ordinarily be classified as legislative matter. The latter category resulted principally from wide public frustration with governmental, and particularly legislative, processes and actions.

At the same time, the convention's products clearly expressed major current societal values: political reform, fiscal conservativism, environmental concerns, individual rights, and social justice. In addition, delegates also effected a number of structural changes. The appendix reviews changes made by the convention. The following is a summary of principal provisions, loosely grouped according to their basic aim or character.

Political reform

- Code of Ethics: calls for highest standards of ethical conduct and personal integrity of each individual in government; requires adoption of code of ethics by state, each political subdivision, and any constitutional convention; requires administration of each code by an independent

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[7] Norman Meller and Richard H. Kosaki, "Hawaii's Constitutional Convention," to be published in National Civic Review, May 1980.

ethics commission; and specifies that each code shall include provisions on gifts, confidential information, use of positions, contracts with government agencies, financial disclosure, lobbyists, lobbyist registration and restrictions etc.

- Open primary elections are provided in lieu of previous closed party primaries.
- An elected official must resign from office before running for another office.
- Partial public financing of state and local election campaigns is provided.
- Campaign spending limits are to be established.
- Campaign contributions are to be limited.
- Primary required to be at least 45 days prior to general election.
- Legislative procedures: committee meegings held for the purpose of making decisions must be opin to the public; a time limit for introduction of bills is provided for; legislature is required to recess for at least 5 days, between the 20th day and 40th day of a session, and the recess must fullow bill introduction deadline; bills must be printed and available for 48 hours (rather than 24) prior to third reading.
- Governor and lieutenant governor limited to no more than two consecutive full terms.
- Elected state board of education and university board of regents given jurisdiction over internal organization and management of their respective systems.
- All government writing meant for the public is to be plainly worded.

Fiscal reform

- General fund expenditure growth not to exceed estimated rate of growth of the economy.
- Tax refund or credit to be provided when state general fund has 5 percent surplus for two straignt years.
- If state mandates new programs for counties, state must share in costs.
- Deficit spending prohibited, unless governor says public health, safety, welfare are threatened.
- Limits established on amount of principal and interest on state debt.
- Term of general obligation bonds reduced.
- Bond authorizations lapsed if not used in three years.
- Legislature permitted to issue revenue bonds by two 2/3 vot
- Council on revenues established to prepare revenue estimates that are to be considered by governor in preparing budget and the legislature in appropriating funds.
- Tax review commission to be appointed every five years to evaluate state tax structure and recommend revenue and tax policy.

Growth policy, environmental quality, resources management

- Population growth management: state required to plan and manage population growth; counties also must manage growth, but may be more restrictive than the state.
- State is empowered to promote and maintain a healthful environment, including prevention of excessive demands on environment and resources.
- Environmental rights: each person is granted the right to a clean and healthful environment and is given the right to sue to enforce this right.

- The state and counties are required to conserve and protect Hawaii's natural beauty and resources, and to promote development and utilization of resources to further the state's self-sufficiency. A new provision is added that all public natural resources are held in trust by the state for the benefit of the people; deleted is previous requirement to promote conservation, development, and utilization of agricultural, fisheries, mineral, forest, water, land, and other natural resources.
- Land banking: the state is authorized to acquire interests in real property to control future growth, development, and land use.
- Stong language is included to conserve and protect agricultural lands, and important agricultural may not be reclassified for other purposes except under special circumstances and by extraordinary vote.
- Marine, seabed, and other resources within the boundaries of the state are to be managed and controlled by the state, which reserves to itself outside state boundaries all such rights not specifically limited by federal or international law.
- The state's obligation to protect, control, and regulate use of water resources for the benefit of its people is established, and toward that end a water resources agency is provided for.
- Nuclear fission power plants may not be constructed and radioactive materials may not be disposed of in the state without prior approval by 2/3 vote in each house of the legislature.

Individual rights and social justice

- Right to privacy is added to Bill of Rights.

- Independent counsel will be appointed to advise members of grand juries.
- Discrimination in public school on the basis of sex is prohibited.
- Safety of the people from crimes against persons and property shall be provided by the state.
- Cultural, creative and traditional arts of Hawaii's ethnic groups are to be preserved.
- Power to provide for security and economic and social wellbeing of the elderly is granted this state.
- Public assistance provisions are clarified and specific authority granted to establish eligibility standards.
- All words in the constitution that referred to one sex were replaced with language that is sex-neutral.
- (Abortion, or right-to-life, was never a convention issue.)

Hawaiian rights

Assertion of Native rights was the "real sleeper," the "big event" of the convention. Few elected delegates, and even fewer people outside the convention, had expected Hawaiian rights to become a major topic or to result in a comprehensive "Hawaiian affairs package."

Key to the package were Frenchy DeSoto, who chaired the Hawaiian Affairs Committee, and John Waihee, the convention's "majority leader." Although only 4 of the 12 committee members were Native Hawaiian, Frenchy saw to it that every proposal emerged from the committee with unanimous support. She and her staff proselyted the other delegates to guarantee approval of the entire package.

Hawaiian rights turned out to be an issue that cut across all lines and groups. Young delegates felt it was time to redress the wrongs done to ethnic Hawaiians. People who grew up in Hawaii as well as newcomers had a way to show their support of the basic Hawaii culture. Some non-Hawaiians found it to be a means of dealing with their identity crisis. "Reformists" who wanted to show their liberalism could do so by supporting minority rights. The time became one of "Hawaiian renaissance," providing an opportunity to be Hawaiiphile. And underlying the broad support for the Hawaiian affairs package was Frenchy's dynamic personality, her proselyting activities, and her strategy: "I never let them get away with not feeling guilty." So delegates gave their support despite some serious concern that some propositions were so vague as to create implementation problems and about creating a constitutionally established split along ethnic lines in the state that prides itself on its multi-ethnic base.

Key elements of the Hawaiian affairs package were:

- Subsistence, cultural, and religious rights of Native Hawaiians are recognized and are to be protected by the state.
- Study of Hawaiian culture, history, and language in the schools will be promoted by the state.
- Hawaiian, together with English, is made an official language of the state.
- A portion of the public lands granted Hawaii by the statehood admission act is to be held in trust for the benefit of Hawaiians.
- An office of Hawaiian affairs is established within the executive branch; policy will be made by a board of trustees composed of Hawaiians and elected from throughout the state by Hawaiians only.

- Major state funding is to be provided for economic, social, and other "rehabilitation" purposes for Native Hawaiians.
- Water on lands held for the benefit of Native Hawaiians is excluded from any outside state or other control.
- Acquisition of real property by adverse possession is restricted.

Structural Changes

- Major revisions were made only in the judiciary article: an intermediate appellate court is created; district courts are recognized in the constitution; merit selection of judges is provided; a judicial discipline commission is provided for; compensation for the judiciary is to be set by a salary commission, rather than having it provided in the constitution; courts must establish time limits for disposition of cases; twelve-member juries are provided in cases of serious crime; civil cases can have jury trials for amounts above $1,000, in lieu of previous $100.
- Legislative changes include provision for senators to have staggered 4-year terms; previously all were elected at the same time. Reapportionment procedures are somewhat modified, and new reapportionment standards are enacted... Revision of the legislative structure to unicameral system was not seriously considered by the Hawaii convention.

Ratification[8]

When Hawaii's 1978 convention completed its work, it had agreed upon 116 proposed changes. The convention had revised much of the

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[8] Meller and Kosaki.

constitution but apparently did not want to place its handiwork before the voters on an all-or-nothing basis and run the risk of objections to particular amendments causing rejection of the whole. Instead, the precedent set by the 1968 convention was used and all changes were grouped into 34 separate proposals, with the contents of some only tenuously related.

The convention went to great efforts to provide extensive public information on the proposed amendments. Summaries were mailed to all registered voters. An advertising supplement with the text of amendments was distributed through the newspapers in all counties. A voter information booklet provided by the convention was circulated as part of the official ballot. News stories, editorial comment, and pro-and-con analyses prepared and publicized under non-convention auspices also supplied pertinent data and opinions on which voters could make individual judgments.

The Honolulu daily papers opposed only a few amendments -- the morning newpaper three and the evening paper five, with the "right to privacy" amendment the only common target of opposition. On the eve of the election, both papers expressed concern about the possibility that all 34 proposals might be defeated.

The format of the ballot followed the three-part style adopted by the 1968 constitutional convention, providing "yes," "no," and "yes-but" options. Voters were instructed to (1) vote for or against all of the amendments by a single punch of the ballot or (2) avail themselves of the "yes-but" option. The last permitted them to vote against one or more of the proposals which they specifically disapproved; a "yes" was then automatically tallied for the remaining unmarked proposals.

Despite the wide range of subjects, many of them controversial, every one of the convention's proposals received a recorded vote large enough to be declared adopted. Less than sixty percent of the voters who went to the general election polls marked constitution ballots. Of those who did, one-fifth were in favor of the entire slate of proposals, and almost as many cast a single "no" vote. Some 60 percent voted against one or more amendments. However, the negative votes were so sparsely spread among many proposals that no single amendment was opposed on half of the ratification ballots. The proposals which received the largest negative tallies included the "Hawaiian-affairs package" (Department of Hawaiian Homes Lands amendments, Office of Hawaiian Affairs, and recognition of traditional subsistence and other rights), the right to privacy, resignation of incumbents to run for another office, the provision for campaign financing, and transfer of property tax administration to counties.

Not everyone liked the ballot form or the ratification outcome. Some argued that what had started out in 1968 as an ingenious means to overcome voter inertia had turned into a "cynical manipulation of Hawaii's citizens." Protestors lodged several court challenges but succeeded only in nullifying some minor parts of the propsed changes. In response to the major objection that the form of the ballot was biased in favor of an affirmative vote, the Hawaii supreme court refused to invalidate the results, holding that it was legally sufficient so long as the voters were fully and adequately instructed. Similarly rejected as not invalidating the election was inclusion of unrelated amendments within a single proposal. The complaint that the electorate was presented with too complex an array of amendments to permit an intelligent decision was not considered sufficient to warrant judicial interference with the electoral process.

Miscellaneous Comments

Rules.

1978 convention rules were essentially those of the 1968 convention, where wide consensus prevailed. They did not prove appropriate for a divided convention. They were particularly deficient in being able to move processes along effectively... A resolution enacted by delegates at the end of the convention made suggestions for rule changes that could improve functioning the next convention.

Lobbying.

The convention saw essentially the same lobbyists and special interest that generally work the legislature. Some lobbyists were there all of the time, while others resonded to specific issues. Principal lobbies were labor, estates, sugar planters. Many interests were represented by delegates themselves, especially business... Lobbyists had to work hard, apply heavy pressure. The convention was essentially wide open, and all 102 delegates were important, not just committee chairmen as in the legislature... Leaders of the executive and legislative branches proclaimed a hands-off policy, though it is claimed that they did not favor adoption of major substantive changes. Amendment creating an intermediate court of appeals was actively sought by the judiciary, led by the chief justice.

Outside Activities.

Most delegates gave total attention and commitment to the convention. In early stages, some individuals would spend off-hours (early mornings, evenings, weekends) on law practices or outside activities. Later in the convention, there was no time for outside pursuits... A large number of delegates were young, many were not really established and some were

unemployed. Accordingly, most had no problem concentrating full-time on the convention.

Legislative Follow-Up.

Despite a strong undercurrent of anti-legislature sentiment, most amendments were non-self-executing and required legislative implementation. Not being sympathetic to the convention in the first place, implementation has been slow and sporadic... The legislature is choosing what will go, what will not be put into effect... Legislative follow-up on the Hawaiian Affairs package was described as "Terrible! They are messing it up, not implementing the constitutional provisions." Unsympathetic legislators claim that constitutional language is not sufficiently explicit, the intent not clear. Some expect the legislature to do nothing.

Controlled Convention.

Delegates who were not part of the convention's governing coalition found it impossible to have any significant substantive or procedural impact... The coalition was formed early and some delegates who would have been sympathetic to the majority's objectives were never asked to join. They thus became part of the minority, even though they might have been willing to join the coalition, support William Paty for president, and otherwise participate in convention decisions.

Hawaiians' Conclusions and Suggestions

The following were among the concluding sentiments expressed by persons interviewed during preparation of this paper:

> A constitution does require periodic monitoring, fine-tuning. There is need to provide for social reforms that the legislature won't put into effect.

A convention is worth having -- if not controlled by political machinery. It's not worthwhile just for minor reforms to placate public opinion, just to provide window dressing.

Preferably should not have a constitutional convention unless it is really necessary, not without a definite purpose... A constitutional revision commission could provide a good alternative approach.

ConCon was positive for the state, despite some bad amendments. There were good amendments on finance and taxation. And while we cannot mandate fiscal responsibility, at least this will keep government from running away with expenditures and taxes.

Set up procedure to accomplish initial organization: temporary chairmen, non-controversial arrangement, convention finances, a place to meet, furniture, etc. In '78, there was too much confusion, much time was lost jockeying around... Get someone outside convention to act as temporary chairman and preside over initial organizational state. This would avoid the premature worrying about selection of temporary chairman who would most likely become the permanent president. Alternatively, pick someone as temporary president with clear understanding that this person would not be the permanent president, but would simply supervise initial stage while permanent president is chosen.

A convention should develop a philosophy, a vision of the future, create a unifying force. But can't accomplish or develop a real program before a convention begins. Delegates have to get to know each other in convention... If you have a convention, phase it, hold it in two parts. Use the first phase to develop the foundation, establish a philosophy, develop a preliminary program and product. Then take time out to think it over, talk with the people, just get away from it for a while. After nine months or so, come together and levelop the final product.

Biggest value of convention was providing the opportunity to inject a lot of fresh blood into the political process. That includes not just the 102 delegates who were elected, but the total of over 600 people who were candidates in the convention election.

APPENDIX -- Hawaii's 1978 Constitutional Amendments

PREAMBLE

New language added to the preamble reflects the temper of Hawaii's 1968 convention:

> We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

Other language emphasizes Hawaii's "uniqueness as an island State" and expands the ordainment clause to state that the constitution is established "with an understanding and compassionate heart toward all the peoples of the earth." (New material underlined.)

ARTICLE I. BILL OF RIGHTS

Right to Privacy

> Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

Alaska adopted a similar amendment in 1972.

Grand Jury Counsel

Provides for the appointment of independent counsel to advise members of a grand jury. Counsel must be a lawyer and not a public employee.

Trial by Jury, Civil Cases

Amount in controversy necessary for a jury trial in a civil suit is raised from $100 to $1,000.

Rights of Accused

A jury must consist of twelve members when "the crime charged is serious". Provision also requires counsel for indigent defendents whenever charged with an offense punishable by imprisonment; previously applicable to possible imprisonment of more than 60 days.

ARTICLE II. SUFFRAGE AND ELECTIONS

Registration; Voting

An open primary is established by specifying that a person need not declare party preference or non-partisanship as a condition for voting

in a primary election. The provision is reinforced by requiring that secrecy of political party affiliation or nonpartisanship is to be preserved.

Campaign Fund, Spending Limit, Contributions Limit

The legislature is required to establish a campaign fund to be used for partial public funding of campaigns for state and local public offices.

The legislature is also required to provide a limit on the campaign spending of candidates.

Limitations on campaign contributions to any political candidate or authorized political campaign organization for such candidate are to be established by the legislature.

(No money amounts are specified in any of the amendments.)

Resignation from Public Office

An elected official is required to resign the office to which elected in order to be eligible as a candidate for another public office if the term of the new office begins before the other ends.

Timing of Elections

Primary and special elections must precede general elections by no less than 45 days.

ARTICLE III. THE LEGISLATURE

Salary Commission

A commission is established to develop a salary plan for members of the legislature. Plan goes into effect unless disapproved by the legislature or by the governor. A new salary plan is developed every eight years.

(By all accounts, the 1979 experience under this plan was a fiasco.)

Sessions

Each regular session must be recessed for not less than 5 days at some period between the 20th and 40th day of the session. The purpose of the amendment is to provide both legislators and the public an opportunity to review bills introduced prior to the recess and to give an opportunity for legislators and constituents to communicate on matters before the legislature at about the mid-point of a regular session. (Hawaii has had a practice of imposing a bill introduction deadline at or about the 20th session day.)

Open Meetings; Bill Introduction Deadline

All legislative committee meetings must be open to the public. Each house is required to establish a date at which all bills to be considered in a regular session must be introduced. This date must be prior to the above mandatory recess time.

Passage of Bills

Increases from 24 hours to 48 hours, the amount of time a printed bill must be available to legislators before passage on third or final reading.

ARTICLE IV. REAPPORTIONMENT

Reapportionment provisions are taken out of the legislature article and are revised and expanded. Following changes are made:

- staggered terms are established for members of the senate, abolishing the old system whereby all senators ran concurrently for 4-year terms.
- reapportionment is required every 10 years beginning with 1981, eliminating the previous 8-year reapportionment provision.
- the reapportionment commission has 150 days, rather than the previous 120, to complete a reapportionment plan. (Alaska's reapportionment board must submit a plan within 90 days following official reporting of each decennial census.)
- criteria are established for apportionment among and within "basic island units."
- provides for placement of holdover senators.
- reapportionment commission is given responsibility for redrawing congressional district lines for election of U.S. House of Representatives members.

ARTICLE V. THE EXECUTIVE

Limit on Tenure

Both the governor and lieutenant governor are limited to no more than two consecutive full terms of office.

Grouping of Executive Agencies

Executive and administrative units are to be grouped within 20 departments according to common purposes and related functions, rather than according to "major purposes so far as practicable" as before.

(The purpose of the amendment supposedly was to provide constitutional impetus for a functional approach in achieving an effective departmental structure. This was done in response to dissatisfaction with the existing organizational arrangements.)

ARTICLE VI. THE JUDICIARY

Courts

New provisions establish an intermediate appellate court and give constitutional recognition to district courts. These are in addition to previous constitutional provisions for a supreme court and circuit courts.

Selection and Appointment of Justices and Judges

A modified merit selection process is established under a series of amendments.

A nine-member judicial selection commission is established. The governor appoints three members, of whom not more than one can be an attorney. The president of the senate and speaker of the house each appoint a member of the commission. The chief justice of the supreme court appoints two members, of whom only one may be a licensed attorney. Members of the state bar elect two members. In all, not more than four members of the commission may be licensed attorneys.

Vacancies in the office of the chief justice, supreme court, intermediate appellate court, and circuit courts are filled by the governor appointing a person from a list of not less than six nominees for the vacancy presented to the governor by the judicial selection committee. The appointment is subject to approval by the state senate. Appointees must be licensed attorneys.

Justices and judges of the supreme court, intermediate appellate court, and circuit courts serve terms of 10 years. Upon the expiration of that term, the judicial selection commission may determine to retain a justice or judge in office, renewing the term for 10 years or for another period established by law.

A salary commission is created to review and recommend salaries for justices and judges, with their salaries set by the legislature.

Discipline

Provisions for removal or retirement of justices and judges by the governor upon certification by a pertinent commission are eliminated. In lieu, the supreme court is given power to reprimand, discipline, suspend with or without salary, retire, or remove any justice or judge for misconduct or disability. The supreme court is required to establish a commission on judicial discipline with authority to investigate allegations of misconduct or disability and to make recommendations to the supreme court for appropriate action.

ARTICLE VII. TAXATION AND FINANCE

Tax Conformance

The legislature is granted authority to conform state tax laws to federal tax laws, although the state rates are set and modifications can be made by the legislature.

(The amendment was apparently deemed necessary by an attorney general's opinion which stated that the constitution prevented automatic conformance to federal tax provisions.)

Tax Review Commission

Appointment of a tax review commission is required in 1980 and every 5 years thereafter. The commission must submit to the legislature an evaluation of the state's tax structure, recommend revenue and tax policy, and then dissolve.

(The committee report states that the amendment is deemed necessary since neither the executive nor legislative branch has over a period of two decades reviewed the state's overall tax system against such standards as equity and efficiency. It is further suggested that a periodic and independent assessment would be useful to both branches and would help provide the public with a framework by which it can assess executive and legislative actions on taxation and revenue policy.)

Appropriations for Private Purposes Prohibited

Hawaii's constitution has since 1950 provided that no tax be levied, nor the public credit be used, directly or indirectly, except for a public purpose; the same requirement applies to any grants made by the state. In 1978, new language was added stating: No grant of public money or property shall be made except pursuant to standards provided by law.

(The committee report notes that the addition of the language will require the legislature to establish standards for appropriation of funds to private organizations conducting programs which the legislature has determined to be in the public interest. No such standards have existed, even though the legislature appropriates several millions each biennium to private organizations.)

Expenditure Controls

Expenditures of public money may be made only pursuant to appropriations made by law.

General fund expenditures for any fiscal year may not exceed the state's current general fund revenues and unencumbered cash balances,

appropriations lapse at the close of the fiscal period for which the appropriation is made.

Revenue Bonds

The legislature is authorized to issue special purpose revenue bonds. 2/3 vote of the legislature are required: one to authorize bonds, and another to issue the bonds. Special purposes include assistance to manufacturing, processing, industrial enterprises, utilities serving general public, health care facilities, and low and moderate income government housing programs. State credit cannot be used directly or indirectly to secure special purpose revenue bonds. Legislature may authorize counties to also issue special purpose revenue bonds.

Debt Limitation; Exclusions

The debt limit is revised to limit amount of principal and interest payments on general obligation bonds to 20 percent of the average general fund revenues over the three preceding fiscal years; after 1982, the percentage limit is reduced to 18 1/2%. The legislature is required to certify that any bond issuance does not bring total state indebtedness above such a limit. The general obligation bond limit is reduced to 25 years from 35 years. The list of exclusions from computation of total indebtedness is extended to cover special purpose revenue bonds, certain loans guaranteed by the state, tax anticipation bonds, and emergency bonds.

ARTICLE VIII. LOCAL GOVERNMENT

Real Property Taxation

Power to tax real property is transferred from the state to the counties. For eleven years, assessing methods are to be uniform throughout the state.

(Reasons for giving counties the power to tax real property included: the change is consistent with home rule; counties are responsibile for local affairs and should have authority over local real property taxation; real property tax policies are more of local than of statewide concern.)

State-Mandated Programs

The state must share in the cost of any new or expanded services mandated by the legislature to a political subdivision.

(The intent was to assure that the state did not circumvent the spending limit by transferring some of its functions to counties without compensating them for increased costs.)

except when the governor publicly declares that the public health, safety, and welfare is threatened.

(The latter provision prohibits deficit spending. It is designed to prevent circumvention of the newly established spending limit by engaging in deficit spending.)

Disposition of Excess Revenues

Provision is made for taxpayers to benefit from any surplus in the state's general fund balance. Whenever this balance in each of two successive fiscal years exceeds 5 percent of general fund revenues for each of those years, taxpayers are to be given a tax refund or tax credit. Means of the rebate are to be provided by the legislature.

Council on Revenues

A council on revenues is to be established by law to prepare revenue estimates for the state government and to report the estimates to the governor and the legislature. The governor is to consider the estimates in preparing the budget, recommending appropriations and revenues, and controlling expenditures. The legislature is to consider the estimates in appropriating funds and enacting revenue measures.

Budget

The governor is required to submit a complete plan of proposed expenditures of the executive branch, together with estimates of the aggregate expenditures of the judicial and legislative branches. The chief justice is required to submit to the legislature a complete plan of proposed expenditures of the judicial branch.

Total propsed general fund expenditures may not exceed the general fund expenditure ceiling established by the legislature, unless the governor sets forth the excess and the reasons therefor.

Expenditure Ceiling

A general fund expenditure ceiling is to be established by the legislature to limit the rate of growth of general fund appropriations to the estimated rate of growth of the state's economy. No appropriation in excess of the ceiling may be authorized during any legislative session unless authorized by 2/3 vote of the membership of each house.

Auditor

Authority of the legislative officer to conduct post-audits of programs and performances, as well as financial transactions and accounts of executive agencies and political subdivisions is clarified.

Lapsing of Appropriations

Appropriations from general funds or general obligation bond funds must be for specified periods not exceeding three years. Unencumbered

ARTICLE IX. PUBLIC HEALTH AND WELFARE

Care of Handicapped

Provides state with broad power to provide for the treatment and rehabilitation of handicapped persons, broadening and clarifying previous provisions.

Public Assistance

The legislature is given the power to establish eligibility standards for public assistance, which covers financial aid, medical assistance, and social services.

Economic Security of the Elderly

The state is given power to provide for the security of the elderly by establishing and promoting programs to assure their economic and social wellbeing.

Management of State Population Growth

State and local governments are required to plan and manage growth:

> The State and its political subdivisions as provided by general law, shall plan and manage the growth of the population to protect and preserve the public health and welfare; except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State.

(Referring to Hawaiian's concern about rapidly increasing population, the committee report concludes that planning and managing growth should be a top priority in the state's activities.)

Preservation of a Healthful Environment

> The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources.

Cultural Resources

> The State shall have the power to preserve and develop, the cultural, creative and tration arts of its various ethnic groups.

Public Safety

> The law of the splintered paddle, mamala-hoe kanawai, decreed by Kamehameha I - Let every elderly person,

woman and child, lie by the roadside in safety - shall be a unique and living symbol of the State's concern for public safety.

The State shall have the power to provide for the safety of the people from crimes against persons and property.

(According to the committee report, the amendment is intended to address the growing concern of the public about the crime rate. Existing statutes and endorsements were deemed ineffectual in coping with the growing crime rate. Public safety was singled out as an area deserving special and increased recognition.)

ARTICLE X. EDUCATION

Public Education

The prohibiiton of "segregation" in the schools was replaced with a prohibiiton against discrimination. Sex was added to prohibitions under discrimination.

Board of Education

Amendments deal with nonpartisan election and districting of Hawaii's elected board of education.

Board is given jurisdiction over the internal organization and management of the public school system, though the legislature and governor would continue to exercise general budgetary control over the system.

Hawaiian Education Program

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

(The committee stated that the study of Hawaiian culture, history, and language should be vigorously promoted and encouraged. Because Hawaii has a special status as the only state which was formerly a kingdom and which has its own Polynesian heritage and customs, the inclusion of the provision in the constitution is intended to facilitate the preservation and growth of the Hawaiian culture.)

(The convention wanted to assure the general diffusion of Hawaiian history in the community to assure that a program be developed as part of the regular public school curriculum employing persons who have knowledge of Hawaiian language, culture, and history, but who do not necessarily have the formal educational qualifications.)

Board of Regents; Powers

The board of regents is given exclusive jurisdiction over the internal organization and management of the University of Hawaii. The amendment also states its intent not to limit the power of the legislature to enact laws of statewide concern.

While constitutional intent was to make authority of the board of regents complete with respect to matters of internal organization and management, the governor would continue to review the university's budget requests before submission to the legislature. Furthermore, the university would continue to comply with laws passed by the legislature... (A post-convention analysis of constitutional amendments by the Legislative Reference Bureau raises a series of questions that remain unresolved even after this supposedly clarifying amendment was enacted.)

ARTICLE XI. CONSERVATION, CONTROL AND DEVELOPMENT OF RESOURCES

Conservation and Development of Resources

> For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
>
> All public natural resources are held in trust by the State for the benefit of the people.

The amendment deletes previous requirements for the state to promote the conservation, development and utilization of agricultural resources and fish, mineral, forests, water, land, game and other natural resources.

The committee report defines the word "conservation" as "the protection, improvement, and use of natural resources according to principles that will assure the highest economic or social benefits." ... The provision regarding "self-sufficiency" was included to recognize the growing concern and awareness of Hawaii as being overly dependent on outside sources for, among other resources, food and energy... The report concludes that the promotion of energy conservation, development of clean, renewable sources of energy, and achievement of increased self-sufficiency would be adequately covered by the provisions of the new section.)

Agricultural Lands

> The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally

suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

The new language substitutes for a section referring only to development of farm and home ownership.

Public Land Banking

The State shall have the power to acquire interests in real property to control future growth, development and land use within the State. The exercise of such power is deemed to be for a public use and purpose.

(The language is designed to overcome possible constitutional problems in case the legislature chose to establish a land bank program.)

Water Resources

A new section is added obligating the state to protect, control, and regulate water resources for the benefit of the people of Hawaii. The legislature must provide for a water resources agency to set water policies, define beneficial uses, protect ground and surface water, establish criteria for water use priorities, and establish procedures for regulating all uses of Hawaii's water resources.

(The Committee of the Whole report states that the question of water ownership is irrelevant to the states ability to exercise its police power to regulate fresh water resources. It further clarifies that the agency has power to regulate existing as well as future water usage.)

Nuclear Energy and Radioactive Material Disposal

Another new section added to the resource article provides:

No nuclear fission power plant shall be constructed or radioactive material disposed of in the State without the prior approval by a two-thirds vote in each house of the legislature.

Environmental Rights

Hawaii's convention decided to affirm the rights of citizens to a clean and healthful environment, and citizens are given the right to sue to enforce this right:

ARTICLE XII. HAWAIIAN AFFAIRS

An article previously dealing with Hawaiian home lands now covers the Hawaiian affairs package enacted by the 1978 convention. The package is designed to recognize righs of and provide benefits for native Hawaiians.

Hawaiian Homes Commission Act

The Hawaiian Homes Commission Act of 1920 was incorporated in Hawaii's constitution in 1959 as a condition of Hawaii's admission to the Union. Under the act, all available lands be used to provide for settlement by native Hawiians and to raise revenues for their benefit.

While many Hawaiians benefited over the years, much land was used for non-settlement purposes, including utilization by sugar and pineapple plantations. Monetary returns were not considered sufficient to be of major benefit to native Hawaiians.

1978 amendments to the act established specific purposes for its implementation: (1) development of home, agriculture, farm and ranch lots; (2) home, agriculture, aquaculture, farm and ranch loans; (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved; (4) the administration and operating budget of the department of Hawaiian home lands...

Further, 30 percent of state receipts from lease of sugar lands or from water licenses are to be placed in a newly established native Hawaiian rehabilitation fund, which becomes one of eight constitutionally established special funds. This money is to be used soley for the benefit of native Hawaiians, as described in item (3) of the preceding paragraph.

A special provision excludes waters controlled by the Department of Hawaiian Home Lands from any outside control, thus removing them from jurisdiction of the water resources agency established in an earlier amendment.

Office of Hawaiian Affairs

A further series of amendments establishes an Office of Hawaiian Affairs, which would hold t tle to all property conveyed to it and which would, in turn, be held in trust for native Hawaiians and the general public. A nine-member board of trustees, elected by and consisting of Hawaiians is to manage and administer proceeds from the disposition of lands, natural resources, minerals, and income from whatever source for Hawaiians.

"Hawaiian" is defined as any descendant of the races inhabiting the Hawaiian Islands previous to 1778. "Native Hawaiian" is any descendant of not less than one half part of the blood of races inhabiting the Hawaiian Islands previous to 1778.

Subsistence, Cultural, and Religious Rights

> The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

An "ahupua'a" is defined as a land division or unit of land usually extending from the uplands to the sea, varying in size from 100 to 100,000 acres. Traditionally, individual Hawaiians did not own land, and lands provided under the Hawaiin Homes Commission Act are not held in fee. Thus, the rights are considered to be personal rights; rather than being attached to the land, the rights are inherently held by Hawaiians and do not run with the land.

Only native Hawaiians who are tenants of an ahupua'a, and not all native Hawaiians, are given access rights to the mountains and the sea, as was traditionally and customarily asserted by their ancestors. Other protected rights include fishing rights, hunting, gathering, water rights, and other rights for sustenance, cultural, and religious purposes.

ARTICLE XV. STATE BOUNDARIES; CAPITAL; FLAG; LANGUAGE AND MOTTO

Boundaries

In order to eliminate ambiguity and uncertainty with respect to state boundaries as established in the Congressional Admission Act, and to affirm the state's archipelagic status in order to protect and regulate Hawaii's commerce and trade and to conserve and utilize its ocean resources, the boundary definition was revised to read:

> The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters... (New matter underlined.)

Hawaiian: An Official Language

> English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

(In adopting the new language, the convention wanted to overcome insults of the past, where the speaking of Hawaiian was forbidden in the public school system, and of the day, where Hawaiian has been listed as a foreign language in the language department of the University of Hawaii. A further stated intent was to give full recognition to the rich and cultural inheritance that Hawaiians have given to all ethnic groups.)

Motto

The state motto is established as "Ua mau ke ea o ka aina i ka pono."

ARTICLE XVI. GENERAL AND MISCELLANEOUS PROVISIONS

Disqualifications from Public Office or Employment

An amendment provides that persons convicted (rather than, as previously stated, merely accused) of an act or conspiracy to overthrow the government by force will be disqualified from holding public office or employment.

Adverse Possession

A new provision was enacted to provide a constitutional vehicle to "protect the lands of the people from theft through adverse possession proceedings." Use of adverse possession is restricted to real property of five acres or less. Such claims may be brought by a person not more than once in twenty years.

(The adverse possession process had apparently been used in the past to obtain title to lands properly belonging to native Hawaiians.)

Plain Language

A principle was established that government writing should be concise, simple, and understandable. This was designed to insure that the people have access to the government's resources and information and that non-technical language be used whenever possible:

> Insofar as practicable, all governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms.

ARTICLE VII. REVISION AND AMENDMENT

Constitutional Convention

One amendment provides that if any nine year, instead of ten year, period elapses during which the question of whether to hold a constitutional convention is not submitted to the electorate, that question is to be voted on at the first general election thereafter. The intent is still that the question be submitted to the electorate every tenth year, but the change eliminates the problem that resulted in 1976 due to strict interpretation of the ten-year provision.

(Alaska could face a similar problem in view of its similar ten year proviso.)

To deal with the problem of insufficient time having been provided by the legislature for the 1978 convention, delegates specified that future constitutional conventions begin not less than five months prior to the next regularly scheduled general election.

(The committee report discusses the wish of delegates for a specified public official to convene delegates and disburse monies or incur expenses prior to formal organization of the convention. However, delegates agreed that the matter should be resolved by the legislature.)

(The legislature is also urged by the report to consider establishment of a constitutional revision commission to provide for continuous study of Hawaii's constitution.)

TECHNICAL AND STYLE CHANGES

A separate amendment was adopted which:

- changes the constitution where the subject was found to be unconstitutional or unnecessary under the Constitution of the United States.
- changes style and language for uniformity and other reasons.
- replaces words which sound like they apply to only men or women with with words which apply to everyone (de-sexifying the constitution)
- makes small changes which are related to the main purposes of other amendments.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

LEGISLATIVE INTERIM COMMITTEE ON THE

Constitutional Convention

CO-CHAIRMEN

SENATOR GEORGE HOHMAN

&

REPRESENTATIVE BRIAN ROGERS

1979

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Original

A CONSTITUTIONAL CONVENTION FOR ALASKA

This memorandum has been prepared for Representative Brian Rogers, Fairbanks, for the Alaska State Legislature Interim Committee on a Constitutional Convention. It assumes that there will be a constitutional convention in Alaska within the next decade.

I. BACKGROUND

The present basic framework of our State constitution was ratified by two-thirds of the twenty-five thousand persons voting in April of 1956. The National Municipal League termed it as "one of the best, if not the best, state constitutions ever written." 1/ It has been amended 15 times since Statehood. The most significant amendments, in chronological order, have been established the voting age at 18 years (1969), prohibited the chief justice of the Supreme Court from serving two consecutive terms (1970), amended the exclusive right of fisheries provision to provide for Limited Entry (1972), amended the civil rights section to prohibit discrimination on the basis of sex (1972), added the privacy amendment (1972), and added the amendment establishing Alaska Permanent Fund (1976).

Despite the promotion of the constitution as one of the best written in 1956, and notwithstanding changes effected by the fourteen amendments adopted since original ratification, the state constitution as it now stands displays a variety of defects and weaknesses, which will be discussed subsequently in detail.

Many of these defects and weaknesses derive from State and Federal court decisions interpreting the validity or effect of various sections. Other weaknesses have become

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1/ Editorial, National Municipal Review, April, 1956, p. 156.

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evident due to the evolving standards of our society. 2/ Recently, the State of Hawaii, which adopted the original state constitution in the same decade as Alaska's original constitution, completed their second constitutional convention. That convention proposed individual amendments, most of which were adopted by the voters and most of which amendments reflected evolving standards of public interest that the growth and changes in Hawaii had brought forth.

II. DEFECTS AND WEAKNESSES IN THE ALASKA STATE CONSTITUTION

Undoubtedly a number of single special interests constituencies exist in Alaska today that will push for

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2/ One example of political statesmanship can be found since the convention with regard to evolving standards. In 1965, Governor William A. Egan issued a proclamation of reapportionment and redistricting the Alaska State Senate with population as a sole factor. In his statement accompanying his proclamation, Governor Egan said

> "Making this proclamation today is not an easy task for me. My personal feelings and my duties and obligations as governor under the Constitution of Alaska do not exactly coincide.
>
> Nearly ten years ago at the Constitutional Convention, I was one of those who worked hard and saw to it that apportionment of the State Senate would take into consideration factors other than just population. We considered, among other things, geography, social economic needs, the relationships of contiguous areas, and the future possibilites of growth.
>
> It was my view, as well as that of a majority of the other delegates, that it was in the public interest to have one house of the legislature apportioned by area than population to serve as a check and balance on the other. This is still my view.
>
> However, this land is ruled by law, not me. The Supreme Court of the United States is our final arbitor of justice.
>
> Our nation's highest court has ruled that each citizen's vote must count as much as another, and I must abide as closely as possible by that decision. In this instance it was with reluctance that I approach my duty. But as your governor I took an oath to uphold both the Constitution of the United States and the Constitution of the State of Alaska.

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amendments at any constitutional convention. Anti-abortion groups, single interest law and order groups seeking elected judges, groups seeking to wrench away state land, and groups seeking to oppose or disgard environmental safeguards are examples of single interest groups that will likely surface. Those issues are primarily political and do not indicate any general defect or weakness impacting the public interest.

Broader public issues will also surface. A matter of geniune concern in Alaska today is the breadth and abuse of executive power. The continuing efficacy of a bicameral legislature has generated debate. Tax and spending issues have surfaced. The role of the state as trustee of its resources for the benefit of the citizens continues to be discussed. These issues are certainly political but are not primarily molded by single interest constituencies. They do not represent defects or weaknesses in the constitution but rather the philosophical, social and economic differences within our state.

The defects and weaknesses referred to below reflect matters which were not contemplated, or were beyond the comprehension of the original constitutional framers. This is not to say that they do not have political effects or have not been involved in political controversy. They are the effect of controversies in our society and not the purpose of it. They will be addressed in the order that they appear in the state constitution.

A. ARTICLE 1, § 8, GRAND JURY

This section currently provides in relevant part:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arrising in the armed forces in time of war or public danger. Indictment may be waived by the accused.

In a grand jury proceeding a defendant does not have a right to have an attorney present nor does he have a right to cross-examine any of the witnesses produced by the state. The original concept of constitutional protection for an

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accused by a right to a grand jury indictment contemplated that the grand jury would be an effective shield against potential abuse of prosecutorial power. In practice the use of the grand jury has often been used as a sword in the furtherance of prosecutorial power. Although our state Supreme Court has enumerated a number of protections for the accused during the grand jury process (i.e. hearsay evidence shall not be presented to the grand jury absent compelling justification for its production) a movement has surfaced in Alaska indicating a general dissatifaction with the grand jury process.

The Alaska Criminal Rules of Procedure provide that if a person is not indicted within 10 days after arraignment when in custody (or 20 days if not in custody) then the accused has a right to what is known as a preliminary examination. Alaska Criminal Rule 5(e)(2). At a preliminary examination the defendant is entitled to be represented by counsel, the normal rules of evidence apply, the defendant has a right to cross-examine the witnesses against him and, if from the evidence, it appears that there is no probable cause to believe that an offense has been committed or to believe that the defendant committed an offense than the judge will dismiss the complaint and discharge the defendant. Many persons and institutions, including the Alaska Judicial Council, believe the preliminary examination to be a superior form of protection than the grand jury.

Some suggestions have been made that all persons arrested for a felony should be automatically be given the right to a preliminary examination. The problem arises that in order to do so either the defendant must waive the right to a grand jury or the state must suffer the burden of presenting evidence at a preliminary examination and subsequently present evidence at a grand jury. 1/ It may be

1/ This problem is not a acute as it may seem on first glance. In most areas of Alaska an accused does have a preliminary examination, because the grand jury only sits occasionally, and subsequently is indicted. The major problem occurs in the large urban centers, primarily Anchorage, where a grand jury sits all the time.

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constitutionally impermissible to force a person to choose between the right to a preliminary examination or a right to the grand jury. Accordingly, the above referenced section, if amended appropriately, would provide a more efficient means for criminal prosecution in the state and at the same time provide more protection for those persons accused of crimes from any potential abuse of prosecutorial power.

B. ARTICLE 1, § 2, RIGHT OF PRIVACY

This section currently provides:

> The right of the people to privacy is recognized and shall not be infringed. The Legislature shall implement this section.

To date the Alaska Legislature has done nothing to implement this section. As a result citizens have been forced to seek relief through litigation in the judicial branch of government in order to protect their rights under this amendment.

In 1978, in Erickson v. State, the State Supreme Court diluted the right to privacy. Previously, it was considered that a person had an absolute right to be let alone, absent a compelling state interest to invade that privacy. The court diluded that right by establishing a sliding scale test based upon interests sought to be protected. This test is nearly identical to rights already guaranteed to us under the Due Process clauses of the Alaska and Federal Constitutions. When Hawaii added the privacy amendment to its constitution it also included the language that that right may not be infringed upon absent a compelling state interest. The addition of such language in Alaska's constitution would provide more protection for the average citizen in his private affairs.

C. ARTICLE 2, § 5 DISQUALIFICATIONS

In 1970 voters approved an amendment to the constitution changing the name of secretary of state to lt. governor. That amendment inadvertenty admitted amending this section, consequently secretary of state is still referred to in the third sentence.

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D. ARTICLE 3, § 25 DEPARTMENTS HEADS

This section presently provides:

> The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the lt. governor. The heads of all principal departments shall be citizens of the United States.

ARTICLE 3, § 26 BOARDS AND COMMISSIONS

This section provides in relevant part:

> When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members in the legislature at joint session, and may be removed as provided by law.

Two controversies have arisen with regard to these sections. In Bradner v. Hammond (1976) the Supreme Court concluded that the confirmation power of the legislature didn't extend below the department head level to deputy heads and the directors of the various divisions within the administration. That ruling effectively shelters many persons holding substantial sway over Alaska's society from legislative scrutiny.

The second controversy which has arisen respective to these sections stems from the failure of Governor Hammond to resubmit holdover appointees from his first administration for reconfirmation. No court test of that decision was initiated, and if the practice is allowed to stand, in connection with the ruling in Bradner v. Hammond, a number of nonelected public officials with substantial influence over the lives of Alaskans will be able to evade legislative scrutiny for as long as eight years.

E. ARTICLE 6, LEGISLATIVE APPORTIONMENT

This article is in need of substantial, if not total, revision. On numerous occasions the defects and weaknesses in the reapportionment article have been subject to communication between the Supreme Court and the Legislature.

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In the 1976 State of the Judiciary Address, Chief Justice Boochever stated:

> One matter that I wish to call again to your attention deals with reapportionment. As you know, our constitution provisions were written before the United States Supreme Court made its historical decisions requiring both houses to be apportioned on the basis of the population. We have no appropriate constitutional procedure for reapportionment of the Senate or for such troublesome questions as whether an existing Senator's four year term should be truncated when reapportionment occurs. On three occasions, the Alaska Supreme Court has had to wrestle with reapportionment problems, and each opinion has urged the legislature to initiate steps to amend the constitution to provide a suitable means of reapportionment of the Senate. The year 1980 will be upon us in all too short a time, and I urge you to see that proper studies are immediately undertaken so that an appropriate constitutional amendment may be proposed. Such an amendment must be placed on the ballot of a statewide election. Unless this legislature is in a position to propose one, it will have to await the 1980 elections. At the very least, I would recommend that you refer this matter to the Legislative Affairs Agency for preparation of an appropriate constitutional amendment. See also, letter from Chief Justice Boocheever to Senator Rader and Representative Malone, Senate Journal April 6, 1977.

F. ARTICLE 9, § 7 DEDICATED FUNDS

This section currently states:

> The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in § 15 of this article or when required by the Federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

In a recent case in Southeast Alaska, a superior court trial judge ruled that any service area in the unorganized borough or other political subdivision of the state is prohibited by this section from levying assessments or taxes and expending monies unless the assessments or taxes are deposited in the state general fund and appropriated back to the entity by the legislature. This ruling, if allowed to stand by the State Supreme Court, strikes a heavy blow against local autonomy.

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G. ARTICLE 10, LOCAL GOVERNMENT

The constitutional framers adopted an article of government that was unique and full of promise. It conceive a system whereby the state would establish political subdivisions in the unorganized areas to provide for special local services and needs. The framers had a vision that growth in the population and tax bases in the unorganized areas of the state, as stimulated by the political subdivision, would rapidly lead to organized boroughs and municipalities, primarily designed around economic and natural resource commerce streams.

This vision was not actualized. Local governments have organized slowly and the boundaries have been rigid. As a result substantial revision may be necessary if the decentralization of power and maximum home rule in Alaska is to be realized.

One specific problem should be addressed. Art. 10, § 2, Local Government Powers currently provides:

> All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only.

Art 10, § 6 provides that,

> The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

The courts have had problems construing the effects of these two sections. Recently a superior court in Juneau ruled that, notwithstanding the provision of Art. 10, § 6, that the language of Art 10, § 2 (the state may delegate taxing powers to organized boroughs and cities only) prohibits the legislature from authorizing service areas or other political subdivisions from levying taxes or assessments in the unorganized borough. If that ruling is allowed to stand by the Supreme Court, and clarification amendments are not

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offered, the language of art. 10, § 6 directing that maximum local participation and responsibility will be provided for is meaningless.

H. ARTICLE 11 INITIATIVE, REFERENDUM AND RECALL

Section 2, 3 and 4 of this article deal with provisions for filing, certifying and preparing petitions for election. Sec. 2 provides that if the lt. governor finds the initial application to be in proper form he should so certify, but no time limit is placed upon the certification process. In some instances the lt. governor has taken months to certify the petition, thereby cutting into valuable time for the initiative sponsors to seek signatures. A suggested time limit is 30 days.

III. THE CALL FOR A CONSTITUTIONAL CONVENTION

The call for a constitutional convention may be effected by three different means. The legislature may call a constitutional convention at any time. Art. 13, § 2. If during any ten year period a constitutional convention has not been held, the lt. governor shall place on the ballot for the next general election question: "Shall there be a constitutional convention?" If the majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten year period. Art. 13, § 3. 1/

The third method for calling a constitutional convention is through the initiative itself. Just prior to

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1/ In 1970 the voters voted in the affirmative to call a constitutional convention. However, the outcome of that election was challenged in court and ultimately voided by the Supreme Court. Boucher v. Bomhoff. The question was again put to the voters in 1972 and this time was narrowly defeated. As a result most persons studying the question have concluded that the question need not be put on the ballot again until 1982.

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the vote on Art. 13 at the convention delegate Kilcher rose with a question.

> Kilcher: In sec. 2, it says that the legislature may provide for a constitutional convention. Does that legislature in this case also mean the law, including initiative? We have a general policy that was adopted a few days ago that the legislature would include initiative and also, I think Mr. Roberts yesterday in a discussion seemed to have been of the opinion that an initiative can call an amendment, when we discussed the capital question, so I want to have this understood. Constitutional Convention Proceedings, page 3439.

In response to delegate Kilcher's question, two delegates from the appropriate committee answered:

> President Egan: Mr. McLaughlin, could you answer?
>
> McLaughlin: Mr. Chairman, I am convinced that the word "legislature" in sec. 2 means that the people can, by initiative, pass an act calling a constitutional convention and making provisions in it. Id, page 3439.

* * *

> President Egan: Mr. Hankel.
>
> Hankel: I was going to attempt to answer Mr. Kilcher's question. During the committee meeting, it was discussed at considerable length, and it was the intent of the committee that through the initiative they could initiate a call for the convention, but the people could not initiate an amendment to the constitution itself. Id, page 3440.

President Egan then placed Art. 13 before the convention for a vote wherein it passed unanimously.

Unless otherwise provided by law Art. 13, § 3 requires that the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including but not limited to, number of members, districts, election and certification of delegates, and submission and ratification in the revisions and ordinances. In practice this means that the Legislature, or the people by initiative, may establish the place of the convention, the time at which it will convene, the length of the convention, the date of election of delegates, the qualification of delegates, the apportionment of the delegate election districts, that election of delegates shall be made without

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reference to any political party affiliations, and the manner of presenting the amendments to the voters. 2/

Any constitutional convention shall have a plenary power to amend or revise the constitution, subject only to ratification by the people. Art. 13, § 4. The short meaning of this is that no call for a constitutional convention may limit the powers of the convention.

IV. APPORTIONMENT OF THE DELEGATE DISTRICTS FOR A CONSTITUTIONAL CONVENTION IN ALASKA.

While the provisions referred to above may not meet the agreement of all persons, they are certainly rather straight forward. The major uncertainty for the 80's with regard to a any constitutional convention in Alaska surrounds the apportionment schedule for the delegates. The point should be stressed clearly that the executive does not have the power to apportion the delegates to a constitutional convention in Alaska. This power is reserved to the legislature or to the people by initiative. Since Alaska has not encountered legislative apportionment of any kind on the statewide level, a question deserving much thought and debate should be: What are the appropriate processes and standards for the apportionment of the delegate districts to a constitutional convention by law? A simple answer to some might be to apportion the delegate districts on the same schedule as the legislature at the time of the convention. Two problems are presented by this approach. (1) the constitutional convention is a unicameral body. Very few unicameral bodies have an even number of members to reduce the obvious problems of deadlocks on important votes and organization. (2) Any legislative body or a constitutional convention must

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2/ A call conforming to the 1955 call would certainly violate the equal protection clauses of both the state and federal constitution with regard to delegate apportionment. This matter will be discussed in more detail subsequently.

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be apportioned according to the principal of one person - one vote in order to fulfill the requirements of the equal protection clauses of the State and Federal Constitutions. Reynolds v. Sims, 377 U.S. 533 (1964). Deviations within tolerable boundaries from the one person - one vote principal are acceptable if the apportionment schedule is constitutionally adequate at its inception and if there is a definite plan for periodic reapportionment. In some intances, then, the state legislature could be demonstrably malapportioned but still constitutionally acceptable because of a permissible plan for periodic reapportionment. The convention, however, would have to be constitutionally apportioned at its inception. In short, in order to insure a constitutionally permissible apportionment schedule, provisions of law must guarantee that the convention is permissibly apportioned at its inception and cannot be based entirely upon anothe. apportionment schedule that may have been permissibly apportioned in the past.

The primary experience to draw from in apportionment schedules by law rather than by executive proclamation developes from legislative apportionment. Alaska is in a significant minority by apportionment of the state legislature pursuant to executive proclamation. The vast majority of the states provide for legislative apportionment subject to veto by the executive. The legislative apportionment of a constitutional convention in Alaska would likewise be subject to executive veto. Major issues for thought and debate follow.

A. BUILDING BLOCKS

Early in this century local government boundaries were utilized as the smallest population unit acceptable in building districts for legislative apportionment. Many state constitutions required this. However, due to the evolution of the one person - one vote rule, states contemplating reapportionment have had to walk a tight rope between dividing local government and political subdivisions and

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constitutionally adequate equality in districts.

Art. 6, § 6 of Alaska's Constitution directs that "[E]ach new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio economic area." Unfortunately this provision appears directed solely to the legislative apportionment and not to the apportionment of any constitutional convention. Inherent in the concept of geographical legislative districts is a recognition that areas of the state differ economically, socially and culturally and that a truly representative government exists only when those areas of the state which share significant common interests are able to elect legislators representing those interests. Federal constitutional standards are blind to any desire to effectuate representation of those areas of the state having common interests and instead only rely upon the goal of achieving numerical equality. As a result the building blocks of contiguous and compact territories containing as nearly as practicable a relative integrated socio-economic area may be used in order to effectuate constitutionally permissible apportionment of the delegate districts to the constitutional convention but their use is not required and numerical equality is the only substantive standard. Only public pressure on the legislature will result in a legislative reapportionment scheme scheduled for the constitutional convention that recognizes building blocks of these relatively integrated socio-economic areas.

B. DEVIATIONS.

Once the legislature has resolved to its own satisfaction the type of building blocks, if any, it would use, the next problem to solve would be permissible deviations from the average district. Regarding population deviations, the Supreme Court has adhered to a rule that "under 10%" deviations are of prima facie constitutional validity only with regard to state enacted apportionments. Deviations of

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that magnitude can be justified only if they are "based on legitimate considerations instant to the affectuation of a rational state policy." State courts have traditionally allowed for more deviation. After the 1970 census eight state senate plans had a deviation range of over 15% which withstood constitutional scrutiny as well as ten house plans. Again, it appears that only public pressure will guarantee deviations from the average election district with less than 5%.

C. MULTI-MEMBER DISTRICT

When challenges have been made to the employment of multi-members districts (especially in combination with single member districts) the argument has been advanced that their use produces larger deviations and could have been achieved had single member districts been used exclusively. To a degree, this generalization is substantiated by the range of deviations that resulted from utilization of different types of district schemes. While over 70% of those states which use single member districts exclusively in their first senate plans achieve the range of deviation of 5% and under, only 15% of those states using the combination of single member and multi-member districts were able to accomplish the same degree of equality. Implicit in many of the judgments made by individual courts has been the following: Where states were unable to achieve low enough deviation and where they made use of a combination of single member and multi-member districts, single member districts would have to be utilized in spite of any previous long standing tradition concerning the use of multi-member districts Alaska does not have any longstanding tradition regarding the use of multi-member delegate districts for a constitutional convention.

Federal courts will defer to multi-member districts if they are reviewing a plan instituted by the state that identifies and reconciles traditional state policies regarding

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historical, ethnic, economic and geographical significance. The federal courts, of course, possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the peoples name. The Supreme Court has adopted the posture that multi-member districting can contribute to voter confusion, make legislative representatives more remote from their constituents and tend to submerge electoral minorities and over represent electoral majorities. The most important point to remember with regard to a federal court is that it is held to a stricter standard than a state in devising a legislative apportionment plan, and unless there are persuasive justifications, a federal court ordered reapportionment plan must employ use of single member districts as well as achieving the goal of population equality with little more than a de minimus variation.

D. SPECIAL POPULATION GROUPINGS

The Seventh Circuit Court of Appeals, in Dunn v. Oklahoma, (1972), faced a challenge to a reapportionment schedule on the grounds that the schedule discriminated against a minority race because these residents were apportioned among several districts rather than having the district lines drawn to create a predominate black district. In its opinion, the court said:

> A color conscious approach to districting, if designed to aid the blacks, is constitutionally permissible; if designed to harm the blacks, it is impermissible, but a color conscious approach is never mandated.

The court went on to say,

> The the phrase "equal protection of the laws" means just what it says, not "more equal" or "less equal" but simply equal. The color blindness approach used in the instant case is preferable to the other alternatives.

In Alaska is would appear to be easier to demonstrate a districting designed to harm the native population of the state than was apparent in the Dunn case. Any apportionment schedule for delegate districts that did not account for shared representation of those areas of the state having a

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common interest would certainly be challenged, but is unclear of the effect of such challenge in light of the absence of a provision requiring that the districts contain as nearly as practicable in a relatively integrated socio-economic area similar to that required by Art. 6 § 6 with regard to legislative apportionment. Again, it appears that public pressure and sentiment would carry as much weight as any legal or constitutional precedent.

E. CHANGE IN SIZE OF THE CONSTITUTION BODY

Provisions of law may clearly change the size of the constitutional body from the original number of 55. In 1971, HB 117, requested by the governor before the Seventh Alaska Legislature, provided for the constitutional convention with 65 delegates. That bill provided that 60 delegates "shall be proportioned among the election districts of both houses of the legislature as those districts shall be apportioned purusant to the 1970 United States Census," and further provided for 5 delegates to be elected at large. HB 117, 7th Alaska Legislature, Sec. 3. Such an approach will also obviously release the legislature from the agony of drawing the delegate election districts, as well as meeting the goal of having an uneven number in the constitutional body.

IV. CONCLUSION

As stated at the inception, this memorandum assumes that there will be a constitutional convention in Alaska within the next decade. The purpose has been to familiarize the reader with considerations regarding weaknesses in our present constitutional framework and the significant issues that must be considered and addressed prior to any convention. If these issues and questions cannot be addressed in stable and coherent manner, then it is unlikely that the highly emotional and political issues will fare any better. The preparation for a constitutional convention in Alaska will provide valuable insight for the type of convention that will follow.

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Trip Log
Guy A. Van Doren
Administrative Assistant
Constitutional Convention Committee

October 29, 1980: Travel status to Seattle and to New York - Plane delayed four hours, arrived in New York 2:00 a.m. October 30, 1980.

October 30, 1980: Met with Mr. Bill Cassella, Executive Director, National Municipal League. Made arrangements to meet with Dr. John Wheeler, Roanoke, Va., and Mr. Al Sturm, Blacksbury, Va. Spent afternoon discussing project with National Municipal League staff.

October 31, 1980: Met with Mr. John Feerick, American Bar Association relating to federal constitution revision under Article V, U.S. Constitution. Mr. Feerick testified before the U.S. Senate Subcommittee on the Constitution which is a subcommittee of the Senate Judiciary Committee, regarding allowing a limited national constitutional convention vs. an unlimited convention.

October 31, 1980 -
November 1, 1980 -
November 2, 1980: Began drafting report on holding state constitutional conventing using the facilities and reference library of the National Municipal League.

November 3, 1980: Morning: Met again with John Feerick. Afternoon: Met with Mr. Frank Gard, author of constitutional studies and Director of Legislative Drafting Research Fund, Columbia University Law School. Discussed Alaska constitution, was briefed on Mr. Gard's work to date, requested his attendance at the Friday meeting after he reviewed the work the committee accomplished last interim period.

November 4, 1980: Met again with Municipal League staff on project and securred additional reading material, continued report work.

November 5, 1980: Began dictating report in the morning. Afternoon: Met with Mr. Cassella and discussed reports and findings of other states, specifically the conventions in Hawaii, New Jersey, New York and Missouri. Late afternoon: Continued report.

November 6, 1980: Morning: Worked on report. Afternoon: Met with Mr. John Bebout, Wellfleet, Massachusetts, on Alaska issues and Alaska constitution. Mr. Bebout is an author and lecturer on constitutional conventions and was a consultant to the original Alaska constitutional convention.

November 7, 1980: Meeting with all persons scheduled for the New York meeting - Mr. Bill Cassella, Mr. John Bebout, Mr. George Braden, and Mr. Frank Gard. All day meeting. Transcription available.

November 8, 1980: Saturday, Travel status to Washington, D. C.

November 9, 1980: Sunday, continued work on report and brought notes up to date.

November 10, 1980: (1) Met with Mr. Robert D. Evans, American Bar Association, regarding calling a limited National Convention under Article V of the U.S. Constitution.

(2) Met with Mr. David Keating, National Taxpayers Union on the above subject as well as discussing the Balanced Budget Amendment.

November 11, 1980: Veteran's Day: Travel status to Roanoke, Va., and Blacksberg, Va. Met with Mr. Albert Sturm, Blacksberg. Mr. Sturm is an author and recognized cataloger of constitutional developments for the National Civic Review and the Book of States.

November 12, 1980: Met with Mr. John Wheeler, Roanoke, Va. Mr. Wheeler is an author and lecturer on constitutional conventions and revision. Travel status back to Washington, D. C.

November 13, 1980: Met with Senate Subcommittee on the constitution, a subcommittee of the Senate Judiciary Committee, staff regarding hearings of the subcommittee on limited vs. unlimited constitutional convention on a national level. Obtained transcript of committee hearings.

November 14, 1980: Travel status to Houston.

November 15, 1980: Saturday: Met with Mr. Sam Gove, Director of Institute of Government and Public Affairs, University of Illinois and author on studies on Illinois constitutional convention. Attended and participated in National League's "Agenda for the '80's" conference meetings.

November 16, 1980: Sunday: Met with Mr. Sam Gove and Mr. George Campbell. Mr. Campbell was associated with both the Arkansas constitutional conventions both as staff and as a delegate. Attended more of the conference meetings.

November 17, 1980: (1) Met with Mr. Bob Atwood, Anchorage Times regarding the work the committee and I are undertaking. Mr. Atwood seemed very interested and supportive of the work of the committee.

(2) Met with Mr. and Mrs. Jim Ray. Both were administrative workers for the Texas conventions. Mr. Ray was the Administrator-In-Charge of the convention and Mrs. Ray was his assistant.

Met with Ms. Janice May. Ms. May is an author and lecturer on constitutional conventions and a professor at the University of Texas in Austin. She was also a consultant to the Texas convention.

November 18, 1980: Travel status from Houston to Juneau.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Meeting with Sam Gove and
George Campbell
November 16, 1980
Houston, Texas

Tape I, Side 1:

004 Van Doren: Introduction of tape materials.

009 Sam Gove: I think if you did something like the Braden-Cohn it became known, the Illinois annotated constitution, it would be worthwhile, even though you didn't have a constitutional convention, it would be a good reference, for lawyers and summarize all the cases that have come down and affected a particular section in the constitution. And some commentary on why that particular section was there and you may want to have a comparative analysis. That was extremely helpful for our delegates and became the Bible. It took an awful lot of work.

Van Doren: In New York I met with George Braden, and we talked quite a bit about it. One of the things I wanted to ask you is, is that book available from a source in Illinois?

024 Gove: Yes, from our institute. I will make as many as you wish available.

025 Van Doren: OK, I think we would probably at least like to have one for the library. We are building up a library on constitution materials. The committee has seven members. Any-

way, when I spoke with George, he suggested the same thing, whether or not we have a constitutional convention, that definitely an annotated work of our constitution and/or a citizen's guide would be helpful and as he said, since our constitution is quite a bit shorter than Illinois', it wouldn't be quite as monumental a task as the Illinois one.

036 Van Doren: In talking with the people I met in New York, with George Braden, John Bebout, Frank Grad, and Bill Cassella, and also with Al Sturm in Blacksburg, Virginia, and Jake Wheeler in Hollins, Virginia. Everybody has stressed the preparatory work, in order to get this off the ground, and I think the legislature has realized and recognized how helpful it would be if we could get started on this. At the outset of the preparatory work, are there any other things that you think that would be useful both for the pre convention vote, and then should the vote be in the affirmative, for preparation toward the convention, from your experience?

050 Gove: I would say that if the vote is affirmative, you've got to start thinking about mechanics of the convention on how and where are you going to have it, do you need an enabling act, how you are going to elect delegates. I don't think that would take so long, so probably you could do that after the vote. We had some preparatory work done on issues we anticipated would come up in the convention. The commission, this was the governor's

research group, which I was the director of, and we came out with a volume called "Con Con" issued to the delegates, and it was paperback, 500 pages, and it was just everthing we thought would come up of any substance, and tried to have someone write a paper and think about it and raise the issues, not to present positions, but the issues. That volume was helpful. There are a lot of issues we didn't anticipate, and I think you can't. Illinois was a strong Dillon's rule state, we didn't anticipate the support for the home rule issue. We hadn't done anything on the home rule. Most of the major issues we did anticipate, and we did have papers prepared for the delegates and they were able to get familiar with the issues. The papers came out during the campaign for the election of delegates well in advance, so I think something like that might be helpful and again would be good library material for the convention.

083 Van Doren: Were these papers prep. d by people from all over the U.S. or just within the state?

091 Gove: Instate. I think one of them was on the purpose of a constitution and was done by a law professor in Michigan, and I think the other papers were all by Illinois people, and were a mixture of law professors and political scientists.

091 Van Doren: Do you think that the papers helped the delegates or do you feel that they relied more on their own ideas, or

that they drew from the book and the ideas that were prepared, or do you think that it was kind of a combination of both?

094 Gove: I would say a combination of both. There was nothing in the article on the bill of rights about ERA, and that became an important issue, and people campaigned on it, and subsequently we now have an ERA provision in our constitution, so it's things like that which were natural. Delegates brought up specific things.

103 Van Doren: That "Con Con" book, is that the orange and blue one, very thick one that has Con Con on it? (Yes). OK, I have seen that and would like a copy of that too.

105 Gove: It is out of print. We might be able to get at least one loaned to you. It was published by the University of Illinois Press.

108 Van Doren: Yes, I saw the book and actually went through it, somewhat, and I was curious to see how you felt, I know one state that we were discussing had almost prepared a constitution before the delegates were even chosen, and people kind of rebelled against that. It was the Texas one.

113 Gove: Some states did, but we carefully did not do that, and in the annotated constitution there was some discussion of issues, but it doesn't come out and say "The delegates shall", this after all, was their prerogative. It was very carefully worded.

119 Van Doren: Did Illinois have a preparatory commission? (Yes) And how was that chosen? Was it chosen by the legislature or the governor, or a combination of both?

124 Gove: It had legislative and public members. There were three commissions, and on the last commission I was a public member. I think I was elected by the legislature. Why, I am unclear, historically in Illinois, there were mixed commissions with gubernatorial and public members, but the legislature was beginning to feel its oats in insisting that a legislative commission would be composed of all legislative appointees, even though they weren't members of the legislature, and I think at that time they had gone on this commission through legislatively appointed public members. It wasn't really a legislative body. The last commission, the commission that argued over, the first commission made the recommendation to vote on a constitutional convention, the second commission started the preparatory work and then the vote came along, and they had to pass the enabling act, and the big issue, there were a lot of issues, but the biggest issue was on whether the delegates were to be chosen on partisan or nonpartisan basis. This commission

recommended nonpartisan and it ultimately prevailed. Then the third commission actually made the arrangements for the convention and arranged an orientation session. I think all this type of detail is in our book that Tom Kitsos and I did for the National Municipal League.

152 Van Doren: On the, OK, so the third commission did all the preparatory work. They are the ones who commissioned these papers and also the preparatory work for the actual mechanics of the convention?

156 Gove: The second commission commissioned the Braden-Cohn volume. They decided not to get into any issues and consequently the governor filled the void by creating the constitutional research group, with private funding, and I also got in on that as director, so I was wearing one hat as, I was staff member of the second commission, and a member of the third commission, and also at the same time turning out these papers, theoretically for the governor.

165 Van Doren: Did the commission stay in existence after the beginning of the convention or did they work right up to the convening of the convention and then were they finished?

171 Gove: I think it, in essence, ended when the convention,

began, we held an orientation and such, and then the convention itself, a couple of days before the convention we had an orientation, so I think the commission just went out of existence. I am very vague on this, the statute said the commission would go out of existence, I think it did.

182 Van Doren: One of the reasons I had asked that question is last year the legislature for the State of Alaska passed an enabling bill to call a constitutional convention, mainly because they wanted the advance work done, so that it would be on the books with no appropriations or anything, but just setting up the mechanics of it, and one of the things that was put in the bill was that a preparatory commission would be established, the appointments and all of that, and then I believe it would continue until approximately 15 days if I remember correctly after the start of the convention so that it would still be around to assist with anything, that comes up, but basically it dissolved at that time. The bill passed both houses of the legislature and was subsequently vetoed by the governor for several reasons. There is really no need to go into that now, but one of the things that they will probably do this next legislative session, is again try to get enabling legislation through so that it is there and there will be a mechanism for calling a convention. Our constitution states now that as much as practical, the convention will be held in the same way that it was in 1955. Well, it's not practical at all,

and there's a lot of changes that need to be made.

204 Van Doren: George Campbell just came in, and I've asked him some of the basic questions that I asked Sam Gove.

209 Campbell: Arkansas has a constitution which is similar to many southern states in that it is a basic reconstruction period document. Written in 1874, and amended now more than 60 times. The first modern impetus for constitutional revision came about in 1966 when Rockefeller was elected as the first Republican governor since the reconstruction time. One of the things he wanted to do was have a modern constitution for Arkansas. The legislature was dominated by the Democratic forces and did not intend to cooperate with him and did not cooperate with him. They did not support him as gove nor. The compromise that was reached in his effort to have that legislature, which seems to be the only way, since our constitution is silent as to how to have a convention, everyone seemed to feel that the legislature had by law to say there will be a convention and provide for the election of delegates. Since that historically was the way it has been done in Arkansas and there seemed to be at least some judicial as well as historical precedent that that was the way the people had to speak, that is through the legislature submitting the question on election of delegates. In the 1967 session of the legislature, where Rockefeller attempted to get a call

of the convention, he failed, but a compromise was reached and there was created the Arkansas constitutional revision study commission, composed of thirty people appointed by various elected officers and the governor had authority to appoint the majority of the commission.

234 Van Doren: Did the legislature appoint it?

235 Campbell: The legislature, the president pro-tem in the senate, the speaker of the house, each appointed five persons. Five were appointed by the chief justice, five by the president of the Arkansas Bar Association, and whatever that leaves, among the appointed groups. I think the governor had ten, and should add up to a total of thirty. I served as the executive secretary, a non-voting, salaried member. I'm a lawyer in private practice in Little Rock, my specialty through the years has been in municipal finance which brings me into contact with a good part of the constitutional provisions that relate to local government, limitations of debts and the organization of municipal governments. And, to some extent, the state legislative process, too. The work product of the study commission was in part an effort to justify the holding of the convention. A number of people who were appointed were individuals, not necessarily associated with the governor, but individuals who had been interested for a period of more than 10 years in having a good consitution. What we were dealing

with was not something just in a vacuum, but the political situation was that a number of people, democratic, republican, non-office holders, non-political types, had recognized for a long time that we needed to modernize our constitution. So, ultimately, a majority of our study commissio voted to recommend to the legislature that a convention be called, because the total substantive volume of changes that needed to be made was such that it really couldn't be handled with the existing amendment process. Our legislature is permitted to submit only three amendments in each general election, each two years. Any other amendments have to come to the initiative process. We have an initiative and referendum provision roughly patterned on Oregon's in the early 1900's. It's not particularly difficult, but expensive, bothersome, it's hard to organize and all that stuff, except for very narrow special interest types of proposals, where the money or the people can be found for very narrow economically related amendments. The product of the study commission was a draft document. We were careful to style that draft document as simply a study document, and in many of the articles and sections we presented alternative solutions to what our commissioners conceived as problems. The study commission was presided over by the former dean of our law school at Arkansas, a respected scholar and a rather apolitical figure. He is not closely associated with any candidates or party affiliations, although he is commonly a Democrat, but it was not a partisan study commission, even

though it started out, its origin was that way, it didn't emerge as a partisan group. It had pretty good press coverage and we had among the people who at least were interested at all, we had a pretty good feeling about the work of the study commisison. The biggest argument we had was whether to submit the question of holding a convention to a special election or a general election, presumably because the people who were in favor of it would more likely turn out at a special election than those who were opposed to it would stay home or not care anything about it. The contrary feeling is that you turn out more people at a general election and many of those are uninformed about issues such as that, and therefore tend to vote against things they don't understand or never heard of. The legislature did decide to put the question of holding the convention in 1968 on the general election ballot, and surprisingly, most of the legislators who didn't think anybody cared about a constitutional convention, the issue passed. So we had called then in 1968, our convention. Curiously, in order to save money, we had people running for delegate positions in 1968, on the same ballot that the question of the holding of the convention was being submitted, and many of us who ran, and I didn't run for delegate position, did not know whether there was going to be a convention or not. The campaign was rather quiet, there was not a lot of money spent by delegates, and for the most part, they were, in broad categories what I would call good government type people, that is, they were not the people who had great political ambitions. Otherwise, there

was only one legislator out of a body of 100.

310 Van Doren: That was my next question. Was it a partisan election or bipartisan, and I was going to ask whether any legislators were on there, too.

313 Campbell: It was a nonpartisan election. There was no nomination process. It was required that you got a majority of votes in order to win the position, so in some cases, there was a run-off election two weeks after the general election, which almost nobody turned out for. The unusual measure, to my knowledge in modern times, was this was the first time there had ever been a run-off following a general election. Arkansas is predominately a two party, I mean a one party state, the Democratic party, the minority party candidates almost never run, and if anyone else ran it was certainly not more than one other party. The legislators were not excluded. We thought a long time in drafting the legislation for the convention and submitted it to the legislature, to put in an office holder exclusion. It is probably a good idea, but it was not considered politically smart to sort of flaunt that in the face of the legislators, whom we were asking to put the question on the ballot and to appropriate money, ultimately, for the operation of the convention. So we did not, since there had been no historical experience in recent times, there was no reason that legislators should or should not serve. We have a constitutional provision which

makes it a separation of powers argument which makes it pretty hard for a legislator to hold a public position in any other kind of goverment, except for having a school position, school superintendent, or a school board members. So, while we seriously debated, we did not exclude legislators. As I say, only one ran, he had served as a member of the study commission, I worked with him closely. He and I were totally opposed in almost every major position that we held, but he was the kind of person who was genuinely interested in what he was doing and provided a sort of focus for conservative impact, a focus for the conservative interest in the convention, and led them in a fairly reasoned way, so his presence was not political in the sense that you would think. Many times, state legislators focus on very narrow issues or the things that by and large makes it undesirable for them to serve because they are used to legislating and not dealing on the broader aspects of constitutional draftmanship. Now, our convention was called. It was funded adequately by the legislature. Not generously, but adequately. We met over the course, on and off, over the course of about a year, proposed a document and submitted it in the 1970 general election. It was not a radical reformation, but it was a fairly progressive reformation, and it was defeated by a vote of somewhere between 55 and 60 percent in the negative. It is probably not as much interest to the people in Alaska about the particular issues that we had, although I would be glad to go

into the particular things that we had that were problems. Most of them had to do with limitation or the removal of limitations on the property tax. There were a few very crazy things that we need to be careful about in drafting a constitution, for example in one preparatory phrase, the one word "God" was ommitted just because we were moving from sort of Victorian English into the 20th Century English, and it didn't seem to be terribly important to most of us, but there were some fringe groups out there somewhere, fundamentalist ministers and other people, who said we had written a Godless constitution. Now, this wasn't a major point, but that was the kind of thing you pick up when you start changing old language which never meant anything for 100 years. It was never judicially interpreted, didn't mean a thing. You pick up people who want to argue about those things. A few other odds and ends like the constitutional provision which legalizes horse racing in one particular county in the state, these things all have historical basis and local political situations change from time to time, but you probably don't have in the relatively short life of your constitution, as many changes that have crept into it, in terms of local vested economic or political issues of that sort. If you don't have, that's very good, because then you can deal with what a constitution really ought to be about anyway, and that's the fundamentals of the operation of the system government and fine tuning of those,

after several years experience where something has not worked or it is not working as well. Unfortunately, older states, and particularly one which is slow to move on constitutional reorganization have to deal with a lot of minor unimportant things in terms of fundamentals of government, which are local issues with small groups of people. Now, the effort in 1970 failed, but from that convention came a number of things which could be dealt with legislatively or almost as well legislatively as they could have been in the constitution. I think some of the fundamental mistakes we made in some areas was where we were trying to legislate in our document when we weren't there to legislate, and we probably invited a few enemies, for example, we've had a fixed price structure on liquor prices in our state for a long time. Our constitution wanted to outlaw the so called fair trade prices for liquor. That was not a constitutional matter, but it was something that the legislature, because of the perceived domination by wholesale and retail liquor interests had never bothered to change. We thought we would get some support from the constitution and some of the people at large, if we took out the fair trade liquor prices. Well, what it ultimately turned out to be was that most of the people didn't understand the issue and didn't give a damn, but the wholesale and retail liquor people put up a lot of money to fight the new constitution because of the economic disadvantage. At any rate, in the process of the next three sessions of the legislature, a number of concepts which we proposed, reorganization of the executive

branch, and indeed in 1976 the legislature proposed itself, as a constitutional amendment, almost verbatum, the legislative article which was in the 1970 constitution. So we provided a focus and created a little stir of interest in a number of areas.

Now, all during this period of the last two years after the failure of the '70 convention, there was a lot of head shaking around, and people saying, "You know we really ought to have passed that constitution." Now in 1976, a young man named David Pryre was elected as the Democratic governor. No. David Pryre was elected in 1974. David Pryre, as a young legislator, had been one of those very outspoken in the early 1960's before the Rockefeller administration, had been outspoken in favor a constitutional convention. He had served in Congress here and there, and later came back as governor, elected in 1974. In 1975, his first term, he proposed that the legislature call and establish, not submit to the people, but simply just call a constitutional convention. Which it did. And it was one of his principal pieces of legislation, and the convention was to be limited in scope, that is there were certain areas of the 1874 constitution, with which it was not permitted to deal, and the delegates were to be appointed, rather than elected. His idea was to do it, do it quick, get that group in, and there was to be some balance

in the appointment, he wasn't going to appoint them all, although he was going to appoint a majority. But to get the group in, give it the 1970 document, let it tinker around with it, and deal with those things which had been perceived to be its weaknesses, and turn out a new document very quickly so that it could be voted on at the next general election. Our supreme court held that the legislature did not have the power to call a limited convention, that is to limit the scope of discussion, without having submitted that question to the people. This was essentially a case of first impression as far as Arkansas law is concerned. The general theme of the decision was that the inherent right of the people being represented in this convention to change their form of government should not be limited by the legislature by saying that the people in the convention cannot deal with certain areas, and if the people want to vote for a convention with that limited structure on it, that's fine, but you have got to submit the question to the people. Well, by the time that it had gone through the court and been decided, it was an issue then that the governor no longer wanted to push and he and other things that were of more interest to him, and he did not particularly push it. However, in the next session of the legislature, a bill was put through to be voted on in 1978, on the question of holding a convention. So, there was another convention held, there was another body of 100

delegates elected from throughout the state, in the manner that our house of representatives is, not exaclty single member districts, but it was the one man one vote concept applied all over the state. Now, this convention reasonably completed its work, it being much in the same manner and being with almost the same rules and almost the same committee structure as the 1970 convention. Its product was submitted at the last general election and failed by about the same margin as it did in 1970. I served on the preparatory commission, which the governor appointed for this new convention. There were five persons, and four of those five were people who had come out of the 1970 convention. And essentially, what we did was housekeeping sorts of things. Set up proposed rules, we took care of mailing of initial information to delegates, we took care of acquiring of the fundamental library that they would need, we drew up some projected budgets based on what we perceived to be needed, set up an employee structure, we did not employ any staff persons, although we sort of indicated the qualifications that those people ought to have. What we did was carry them to the organizational day and met with them on the day they were organized, saw them through a two day organizational session, where they elected their own officers, and began to develop their own rules. The preparatory commission disappeared. No , at that point, however, we had employed somebody who had at least functions to carry over for a couple of weeks, the basic functions.

Again, I'm not sure that how much is applicable to your situation, but I think there was a definite contrast between the structure of the delegate body between the 1970 and 1980 conventions. In 1970, as I indicated, those of us who ran for delegate, did not know whether there would be a convention or not. I haven't described it exactly, but in '79-'80 period, there was definitely determined that there would be a convention, because of the way that the two votes were held, and it was known by the persons who ran for the delegate positions that they would indeed to go the convention. Also, during this 10 year period, I think there was a focus of a good many special interest groups. The special interest groups had in time, become aware of the fact that there was certain things in the state constitution, and in some cases, they impacted on them. There were other things that had been going on in the past 10 years of course, that were represented by special interest. The problems in the cities had not gone away, they multiplied, and this convention, for example, came out with an article that was amost verbatum to the one that I helped draft on local government, which moved the key words around here and there and so forth, but they didn't come out with any better situation than we had done. So, economic conditions had changed, focus of inflation, the concern over taxation, some of our problems in structured county government had been changed as a result of constitutional amendment. Problems from 1874 and the old amendments

were still there, and the convention didn't do, in my judgment, it didn't do quite as good a job from the technical drafting point of view, because there were far more compromises required to be reached.

Tape Two:

004 Campbell: I have a slightly prejudiced point of view with respect to special interest groups, and I should share them with other people who would say that the convention did a wonderful job, but among the things that I think, just count this for whatever you want, but I think the purity of heart or whatever you might want to call it of the delegate body in comparison with the 1970 and 1980. There were more people who were less focused on specific economic issues in 1970 and were more interested in doing what they thought was participating in a historical event, for the first time in 100 years, that they agreed to rework the document. In 1980, the idea of a convention was not absolutely new. In 1970, the lobby, the traditional lobby groups, did not know how to work with the delegates, because fundamentally, we weren't lobbyist material. We didn't have any political ambitions. Now, that is not to say that there were not some people who emerged from the convention to later hold political office. For example, there were a couple of people, and I

didn't even know they were interested, who ran for political office, and a man who became the state's attorney general, and later served in Congress and ran unsuccessfully two years ago for the senate. But for the most part, they were professional people, probably too many lawyers, which is always and has been the case, you know, lawyers have an extremely different view points, there is no uniformity on view points, among lawyers, and they traditionally represent different economic interest, and have different ideas about things. They just simply like to disagree, so if you have to limit anybody, besides limiting legislators, you might limit lawyers. (Laughter). From the federal constitutional standpoint, we simply didn't have as many axes to grind in 1970. In 1980, as I have indicated in the tax decision by the Arkansas Supreme Court, other concerns of that sort, minority groups were better organized, and better focused, and indeed we had a better minority representation, and by that, primarily I mean the Blacks, in the 1980 convention, than we did in 1970. One of the delegates in the Black caucus, served in both conventions. The political forces and the political ladder-climbers saw the convention as a way to get involved in government and people who wanted to run for other offices, which created some problems with the legislature, because they saw people running for delegate positions, and they then thought they would see, two years later, those people running against them for their particular seats. Somebody will have

to do a scientific study and sort out the special interst groups. I don't have names or numbers with respect to that, except it is clear that there were people who were more susceptible both through the efforts of lobbyists who were more representative of narrower segments of communities in terms of economic interest, and employee groups. As a consequence, their discussions tend to be more focused on those line than our discussion in the 1970's, which I brought. Perhaps not approaching the constitutional convention of 1787, or whatever, but at least feeling more fundamantally with the philosophy of structure. I am not saying necessarily that that is wrong, but I think it is something that you should be aware of that in a situation where you know there is going to be a convention and where there are particular interests which have been identified as being affected by the constitution or likely to be affected by the constitution, it is not unreasonable to expect that there will be effort to load up the delegate body with pressure with one point of view or another on any question. The labor experience in Illinois, it is probably better than in some states, which has better organization, let's say stronger organization. Labor never has been a force which could elect very many delegates in Arkansas. Labor had better representation in 1970 than they had in 1980. Indeed, between 1970 and 1980, labor had attempted to repeal the right to work provision in the Arkansas constitution, and it has failed by a vote of three or four to one. So the 1980 delegates didn't give

labor the time of day. The people had spoken recently on that issue, and therefore, they didn't see any reason to waste their time. The banks were much more evident and created strong lobby effort on trying to deal with the 10 percent limitation, and indeed that was one of the forces that caused great difficulty with the document and the submission of the document because it was identified by many groups as being a pro-banker's constitution. The raised interest rate, which would require the poor man to pay more. With respect to the technical organization of the 1980 convention, as I say, they built on and used for the most part what we used in 1970. They didn't attract quite as strong a staff because the idea of a convention wasn't as new and it wasn't as different. It was somewhat more politicized and some of the people that I thought were really first rate staffers that we had in 1970, you know it was ten years later and they had other career interests. There was some better support on the legal side, because some of the things that were coming before the convention had been in the court, property structure things, the attorney general had been trying to wrestle with that. The governor's office had been trying to wrestle with it, and some other groups had. We had done not extraordinarily good staff work in terms of papers, we didn't publish anything like the nine foot shelves of material that New York did or anything like that. We didn't spend a million dollars doing that. Most of

the background work had been preserved from our 1970 work and some of it was available. We were, because the university now has a law school in Little Rock, able to call on the faculty people from the law school, it was really a large help. It was something that we didn't have in 1970. Really I guess that is the end of the monologue in terms of trying to discover the ground of what has happened in 12 to 14 years. We have talked about more specific things.

101 Van Doren: Some of the states have done it and some haven't, and in both of your cases, did the preparatory commission work on temporary rules for the convention prior to the convention meeting?

105 Campbell: Yes, we did in both cases. In both Arkansas cases, the study commission did develop. I have forgotten one job I had, in 1967, after we made our report to the legislature to the special session of the legislature which convened in 1968, the one which called for the submission of the question. Assuming that there was to be a favorable vote between the submission of our work product in March 1968, and the placing of the issue on the general election ballot to be voted on in November 1968, we had a little surplus left over in our appropriation for the study commission and the governor created a preparatory commission composed of

myself and two other people. The two people who had been the chairman and the vice chairman of the study commission. I had forgotten that we had had that little interim preparatory commission for six or seven months in 1968. What we did, largely, I carried over my principal research person. We carried over the principal staff person that we had on a modest salary because we really wanted him to be available to head the research staff if there was a convention in 1968, and his primary task was to assemble a proposed set of rules for the convention, both temporary and permanent rules. I am not sure where we borrowed those rules. We kind of patched together a set of rules from New York, some from Michigan, I can't remember where Illinois was at that point in time. Maryland was a very good model for us in many respects, and indeed now that I think about it, we may have borrowed more from Maryland than almost anyplace else, in terms of structure. Some of our drafting techniques we borrowed from Alaska and Hawaii because those had been the two most recently drafted new constitutions, and when we were looking for fundamental structures of things and how to really simplify things that didn't have a whole lot of history built into them. We looked at some of those, but now that I remember, Maryland was running just about a year ahead of us, in terms of the time table. Maryland did not have that much of a difference in history than Arkansas had in terms

of the age of the document and while it was considerably more urban, it also had the rural influences, and things like what to do with justices of the peace, you now actually no longer need anybody to provide the judicial structure of the township. The township has ceased to be in our case, and never was a significant form of government. So, we found a number of parallels in Maryland, but yes, we did have a small, in fact a one man staff preparatory commission drawing rules for us. Now, when we came to the '80 convention, the other preparatory commission, we had all the 1970 staff there, and it was a question of looking at it again and saying, well that didn't work quite right. I guess our biggest concern on the new preparatory commission was not wanting to appear to be telling the 1980 group that well, here is the way we did it in 1970 and that was perfect. That's the way we ought to do it now. We wanted at all costs to avoid saying well, fellows, here is the way we did it and this is the way you ought to do it. We probably were less effective in a couple of cases because we were always saying, well you do whatever you want to do, and by the way, here's what we did in 1970. It worked out well in transition. They changed a few things in the rules, but on the whole, they didn't change very much. We were not dictatorial, we were not saying there was only one way to do it, and I think we had a good transition in that respect, and the fact that most of us had done the '70 convention, there was no particu-

iar impediment to them. I testified a number of times before the finance and taxation committee and the judicial committee, and tried to help some of their people in drafting. I know other people who were in the '70 convention also made comments and appeared before some of the committees particularly early in the work of the '80 convention, in order to describe the problem as it was perceived in 1970, in order to explain the drafting that we had done in 1970, and to say in retrospect, I wouldn't do it that way now. Or you don't have the same problem we had. It was an effort to try and work with them, and as a result of it, I haven't done any scientific comparison, but I would say 85 to 90 percent of the 1980 document was, all of it, was structurally the same as the 1970 document. That is, the way the articles were laid out, the way the transitional provisions were put together. Now the 90 percent of it was almost perfect, a few words that seemed to have been changed only because somebody thought well, we ought not to have exactly the same words, we ought to have a few words of our own in the drafting process, somebody said, well, I don't know why they said it that way, but let's do it this way. Now, that doesn't prove anything, except that the second convention had the benefit of part of the hard work that the public never sees, and that is somebody has got to put something down on paper and work with it, and as long as you can have a transitional group or a preparatory group, that does not appear to be, and indeed is not sort of hidden agenda from the legislature or the governor or some other

group. As long as you have a group which is perceived to be an aid to simply get material together and giving people at least a way or a perhaps an alternative way to look at solutions, delegates will receive that material well, and indeed, when they get there the first few days, if someone hasn't done that work, they are going to be mad as hell, and say why did you get all of us down here, I'm away from home, I'm not being paid enough to be here, and you hand me a book that says it is a constitution of 1874 and you don't tell me anything. One other comparison I would make between the '70 and the '80 group, and again, it relates to lawyers, and the kind of people who ran. The '80 group was probably a less informed, or that is a less well-educated group on the whole, with respect to both political issues and certainly with respect to constitutional issues. This sounds unfair, I don't mean for it to sound that way, but in '70, we had I would say, a superior group representative of the lawyers, that is people who were mature and established in a profession and people who were not special interest oriented, as such, in terms of lawyers as a group. In terms of the lay persons who were there, they were clearly more of the community leader type. They were bankers, retailers, or whatever they might happen to be. This is true of men and women. In the 1980 convention, I would say that we probably had a somewhat younger group of people, less well established in the traditional terms of leadership in business or profession.

I don't mean to say they were any less intelligent, but they were not perceived to be of quite the same status of community leadership in their various fields. And, as far as the lawyers group was concerned, it did not have as many people who were from the so-called established firms, or were from elements of leadership in the bar association structure, and so forth. Now, I don't know if that was purely just coincidental, or whether it was not a crusade, and you didn't get some busy bank executive to agree to run in 1980 because it would seem to be more of a political job and less of an event that it was in 1970. I didn't run, simply because I was, number one, I thought I had done all I could do, and I didn't feel that going out there and going through it again was worth the effort, personally, from everything that I had a solution to, the problem was already written down, in either one of two documents. Secondly, my professional work, the maturity and level of the responsibility that I had in my firm and the opportunity to make money was greater in 1980 than it was in 1970. I simply wasn't able to make that move. I do not regret it now. I enjoyed the days that I went out there to testify and sit around and tell everybody how they ought to do things, but I didn't enjoy, didn't miss, those endless hours of somebody droning on every day about something that they didn't know anything about or that they disagreed with.

249 Van Doren: Sam, what about Illinois, about rules preparatory rules?

250 Gove: The commission did prepare rules. The commission also acted as a repository for job requests for the staff of the convention, and particularly the job of accepting applications, and so forth, some members of the convention were furious that we were pre-empting their activities, and we shouldn't have even done that. There was some unhappiness on the rules that we were telling the convention how to operate. There is the sensitivity that the convention is a free agent, and they should not be, frankly, told how to do this or that, and with all the preparatory business, you must be very careful to make suggestions, but put it in such a way that you try to b helpful, not telling them how to run their business.

266 Campbell: If I may say there, I think if at all possible, of course it depends on the timing of the election and the meeting of the convention, and other things like that, but if you are going to put out a lot of paper work, even though people probably won't read it very carefully before the day before they go down, or when they get there that night, it helps, I believe, to dispell this suspicion if you get that stuff out to them as far in advance beforehand as

you can, with the most self effacing cover letter you can think of, that you are not trying to tell them how to do anything, but here is what has been done before, and you can study it and change it, and one of the first orders of business on the convention session will be to create a rules committee or to do something about rules. Our temporary rules were two sheets of paper, or something like that. It is pretty obvious that nobody was stacking anything in terms of the temporary rules. They were very insignificant and in our structure the Secretary of State, who had no other provision and no other function except to certify the results of the election, was the convening officer. The governor was not the convening officer, it was not politicized in that respect. The Secretary of State called everybody to order and made sure that the delegates had been properly certified as having been elected and sworn in and immediately after that, they proceeded to the election of their officers. Approximately in that sequence.

292 Gove: Just for the record, I should say our convention also used the Maryland convention pretty much as a model for rules. One of the important decisions we made in the rules was that the seating of delegates shall be alphabetical and that really made a difference in how the convention operated. If we had allowed people to be by districts, that would have meant that the Chicago people sat right next to each other. Things which don't seem terribly important can make a difference.

301 Van Doren: Sam, where was the Illinois convention held?

302 Gove: It convened in the House of Representatives, but then the convention moved to the old state house, where Mr. Lincoln was always in presence and voted in the house divided. Here again, the theme set a tone. Things like this can make a difference.

309 Van Doren: George, how about . . .?

309 Campbell: Both conventions met almost exclusively in the House Chamber of the present capitol. On a couple of cerimonial ocassions, we did meet in our old state house. We have an 1836 structure which is fairly well preserved, although it doesn't have enough desks and seats, and was never designed for a legislature of the size of our current legislature. From the stand point of the economy, facilities, telephone, all of the housekeeping things that you need, we felt there was only one place that we could meet. It would have been terribly expensive to rent on a long term basis, a hall somewhere. We could meet in the house chambers, when the legislature was out of session, we have a sixty day limitation on our legislative sessions, with some exceptions that it generally runs a little bit longer, but 90 days is about the longest they ever meet. So, the chamber was available in late spring and summer, when our convention was really working.

326 Van Doren: In either case, were there public hearings held any other place in the state rather than at the meeting place? Either one of you, Sam?

329 Gove: Yes, our committees or subcommittees held hearings throughout the state. I don't know how important they were in getting information into the mill, but they were good P.R., and it helped some of the delegates get around and see some parts of the state. Illinois is a very sharply divided state, a lot of Chicago people have no feel for the rest of the state, so this was quite helpful to get them around the state, and to just to hear different people talk with different accents, Southern Illinois is quite different from Chicago.

342 Campbell: I would say our differences between the various sections of the state are perhaps not as pronouced in Illinois, between the people who live in Little Rock or other parts of the state, but most of us came from smaller communities in the state. There is in the small communities, a very definite sort of paranoia about that the people in Little Rock are dominating the scene, real or unreal, mostly unreal. So both, and we started this in the study commission and it carried over in the '70 convention and I believe, although I am not as familiar with the '80's one. I believe the convention did it as much as they could. In the study commission, we were trying to create, quite honestly, a

public awareness. Hearings held out in the other places in the state, were as much propaganda as they were interest in hearing from people. I don't mean to say we didn't want to hear from people. We used primarily state college facilities. Almost all of the colleges were happy, and being that one of the members of the study commission, was a college president, they were happy to have us on campus. It gave some publicity, it gave something to the students to see and hear. We had a state college president and we had the largest private college president as a member of the study commission. We moved around in different parts of the state getting input from county officials, and municipal officials. One of the most memorable hearings we had was down in the southern part of the state, where we invited people to come and talk about game and fish problems. We have a constitutionally established game and fish commission which is almost an independent department of government. A lot of folks were out talking about fox hunting and other things like that, which may or may not be significant in your state. It strikes me that that sort of thing is important, or extremely important in your state, but again, in a state such as yours, and indeed ours, where transportation is not all that convenient, it was important to get the delegates and the commissioners out with the people and to encourage the people to come. We had to do a lot of pushing. That is we had to get on the telephone and get people to come and make presentations.

We made the agenda ourselves to some extent, at all of these county and state sessions. We didn't have trouble getting people, but we tried to present some sort of balance. If there was somebody who was very definite and would speak very stongly on something, we tried to think of who had the opposite point of view. We tried to give an opportunity to have a balanced presentation if at all possible. And, with the convention then, in '70, instead of taking the whole commission as we did, with 30 people you can move out and you won't have quite all 30 people there, but you can get accomodations in your budget as such, particularly if you work with colleges, you can stretch your budget now, and don't have to pay for facilities, and a little travel and some meals and that sort of thing, but in the convention structure, we took the committees to different parts of the state, finance and taxation committee would hold four or five hearings in different corners of the state, and that sort of thing. That was helpful in terms of getting publicity in the local newspapers, and we tried to pick towns that had a TV station if possible, but certainly a good daily newspaper, so that there would be pictures and coverage of the testimony to make the people aware that there was something going on and that their community had had a part in what was going on, which made it look less like the word was coming down from the capitol or the legislature.

414 Van Doren: What about, in both cases, post convention work, as far as getting publicity out and informing the public just what you had done and that type of thing?

418 Gove: We published a message to the people which, as I remember, every voter got a copy of the newspaper which had the new constitution and explanations. There was a campaign committee which was not publicly financed, that pushed the new constitution, and the delegates as individuals campaigned for the convention, in most cases. There were a few who were in opposition. We had our main constitution and four side issues. And the side issues got a lot of attention and there was a campaign committee for merit selection of judges and magistrates, and there was a campaign committee for single member districts vs. our two thirds voting system. We have if you are interested, have you see our series, published by the University of Illinois Press? One of them just came out, regarding campaigning for the new constitution tactics.

444 Van Doren: Is that a new one? I may not have seen that one.

445 Gove: By Joanna Watson, published by the University of Illinois Press. There is another new one, a summary of the whole thing by Elmer Gertson and Joseph Shody, that is just out in hardback, but our activity for the convention process is well documented.

452 Campbell: I would say the basic weakness in the whole process in Arkansas both in the '70 and '80, was in the post convention effort. We went through the things that could be accepted and funded by public funds and in each case, the convention produced and addressed to the people was the text of the constitution followed by explanatory paragraphs, but unfortunately, of course, you don't have much room in something like that to sell something, in many cases you are restricted by simply saying this substantially incorporates the provisions of article so and so, section so and so of the 1874 constitution, which most people didn't know what that said either, in terms of the general public. In other cases, you are reduced to a fairly short summary of what the change is, so that it is, at best, a semi-scholarly explanation in the case of it being understood but not recognized as fully, that people don't, for the most part, have a recognition of constitutional issues to begin with, except for the very limited economic issues and, of course, they are concerned about that. So there was no question of anyone who was interested in getting a copy. Ours was distributed this way: Each newspaper in each county was provided a newsprint tabloid and the publication requirements. The statutory requirements was that this was to be provided to each legal newspaper, that is a regularly published newspaper in the state, free of charge, and then they received a payment of something less than the regular legal rate of publication for inserting this stuff, one time, in their newspaper and dis-

tributing it throughout the state, so that everybody who got a newspaper, which was not necessarily every household, and certainly not every voter, but everybody who got a newspaper throughout the state, got a copy of the document, plus the Secretary of the State maintained a file of these and mailed them out to the courthouses and to a number of people on their public officials mailing list, so there was a fairly wide distribution and good deal of publicity. Additional copies could be obtained from the Secretary of the State, and that sort of thing. In 1970, there was no public funding available for any promotion campaign. In 1980 there was some budget allowed for P.R. committee, and there was a P.R. committee composed of delegates, but its purp was essentially to try to coordinate delegate's speeches and try to coordinate delegate's and try to respond to requests to luncheon clubs and professional groups of one kind or another, trade associations and other things like that, to respond to requests, and in some cases to try to generate requests for talks. There was no money spent on advertising in the sense of TV commercials or newspaper ads. There was a private group formed to solicit money and bought TV time, and some newspaper time. That effort was a little bit better in '80 than it was in '70, but it was not dramatic in the sense of Michigan or maybe in the sense of Illinois, and so forth. There was no really big campaign, and unfortunately, a well drafted constitution is pretty hard to explain. The hardest part in a well drafted constitution is finding somebody

who is willing to give enough money to support the campaign. Some narrow special interest groups may be willing to do it to some extent, but that is one of the hardest things there is, and somebody must have done it right. We have not done it right in Arkansas the past two times.

534 Van Dorer: Well, I think probably we are going to have to stop the meeting. The only other thing, there are other things I would like to touch on and I don't know if we will have a chance to get together or not, but one other thing I would really like to explore. if there is any possible chance to get together. I am going to meet with the people from Texas probably tonight or tomorrow, and go through this same kind of thing. I don't know if you are available, I could have a meeting with the whole committee. Just maybe some ideas on some of the pitfalls to avoid. I know you have explained some of them, and Sam has explained some of them too. We are trying to learn from other people's mistakes, and it is one thing that I think is pretty important about this, although the things that you have given me this morning have really been helpful. I have learned lots just from this morning. But I really think we should probably go. The meeting is supposed to start at 10:30. You might be thinking about that, and if there is a time. One other possibility that Bill Cassella had talked about was maybe getting together tomorrow morning, just at breakfast

rather than like this, and maybe just sit around and talk, and that will give you time to gather your thoughts a little bit, too. If it is possible, let me know. I appreciate the time you two have taken now, and I know this is a busy time, but this was one way to see people that I wasn't able to see in New York other places.

565 Gove: I wish we had a patented formula for success. One of the things we did and I think this may sound egotistical, but we studied our procedures and literature, and we did some good preparatory work.

576 Van Doren: You certainly did. As you said, Illinois is certainly well documented. I think it is probably the . . .

578 Campbell: If the money is available anywhere, that sort of good background material is very helpful, because what happened so often is that you rush in to get a staff, and you wind up picking up people who are anxious to work, but they have no real depth in the area. You can't get those people who got to that area overnight, and they can't get the material together fast enough and you come out with poorly informed answers, I don't mean to say young people don't know anything, that is not what I am trying to say, but to get somebody who knows the issues only from the limited sort of text book source or just a very fragmentated sort of thing. They don't

often get their resources developed and really inform a committee on what the substantive issues are.

599 Van Doren· Well, I think we will finish this off, since we are going to that other meeting.

END OF GOVE/CAMPBELL MEETING.

New York Meeting

November 7, 1980

Present: Guy A. Van Doren,
Administrative Assistant
Constitutional Convention Committee

Frank Gard

New York

Bill Cassella, Executive Director
National Municipal League

George Braden, Attorney General
New York Attorney General's Office

John Bebout (Involved with constitutional revision for a number of years, and who was a consultant to the original constitutional convention in the State of Alaska).
Massechusetts

Van Doren: I feel quite honored to be here before you today. I have read almost all the material that you have written and feel like I know your ideas and know your views on constitutional revision and constitutional subjects and the things that have happened with constitutional conventions in other states. One of the main reasons that I am making this trip is in order for myself and the committee to solicit ideas and basically pick your brains so that if we do have a constitutional convention in the State of Alaska, if the voters approve of it in 1982, we will have a little bit of a head start and we will be able to move the convention along and hopefully have it as successful as the one in 1955. I was asked a question prior to this trip about why we needed to go outside for the information of this type, and my answer was, and I feel it is quite justified, especially after spending quite a bit of time with John last

night, is that it's good to get the point of view of somebody from outside the state. We know what is going on in our state, we live with it all the time, but you people have not only had experience of working with constitutional conventions and what makes a good and successful one, and what makes one that doesn't work. I think getting the perspective of somebody from outside the area will do a lot to help us. I think probably we will just have a sort of an informal format at this meeting. I would like you to express your views and your feelings and each of you kick your ideas around, ask me any questions you want, and we'll see what happens. I will answer questions as best I can, but I'm really not here to have you listen to me talk, I am here to listen to you talk. As you are probably well aware from the correspondence that I had with you, it was at the suggestion of John Bebout and Bill that we are together as a group. I am going to meet some of you people individually, but it was suggested that we get together and kind of kick around some of the subjects that I sent you in that little paper of questions. We are looking for information and help in case that we do have a constitutional convention after 1982 if the people vote on it. We don't know how it is going to go. There are some special interest groups that feel they have not been adequately taken care of by the legislature and feel that the only way they can get some of the changes that they want is through a constitutional convention. There is some pressure mounting in the state by some of these groups to have a convention called and I'm sure they are going to be very active in

the next couple of years. We don't know at this time how the people are going to react. This committee was set up to prepare for a convention in case we are going to have one. Basically, what I am doing, as I was telling John Bebout last night, is kind of retracing a little bit the steps that Tom Stewart took prior to the 1955 convention, going around and meeting the people in the country to get their ideas and views of our constitution and the changes that you people might think are necessary or could improve the constitution, ideas on how to conduct the convertion, how to prepare for it and that type of thing. Of course there is a wealth of material that is available now in printed form that wasn't available in 1955, which doesn't necessitate traveling as extensively and meeting with as many people as Judge Stewart did, but the committee felt that it was desirable to meet with you people who are recognized and have been active in revision all of these years.

John Bebout: As I told Guy, one of the main reasons why there is so much material on constitutional conventions is because of the Alaska convention. Th whole body of material that the league has put out on constitutional studies as well as the compilation of state constitutional materials was funded by the Columbia Research Fund and the Carnegie Foundation and is the result of the frustration we felt in planning for the Alaska constitutional convention. There was a lack of ready materials which we could easily get at and so we came back

and put together some materials, received a foundation grant and developed the materials which you have been studying. That's how it happened.

It is only fitting that Alaska should now benefit from this material because its convention was responsible for the birth of this idea and the need for this kind of material.

Van Doren: Relating to the materials that I sent to you several months ago, one of the reasons that I sent them out was in order that you familiarize yourself with what has taken place. I included the constitution so you could look at that, and also I believe that Bill Cassella had sent you out that little question sheet, which although informal, was prepared for the committee, of the things that we were going to do. Bill said "Well do you have an idea of what your're looking for", and so I just went ahead and sent those to you so that you would have an idea of some of the things that we are looking into, and I guess with that, we could run down the questions, or I would welcome any comments. It is totally informal, so we can just have at it.

John Bebout: Since we do have limited time, it seems to me that we ought to focus in on what you might describe as a big question first, rather than getting into details on whether we think that the provision on grand juries could be

improved or excised or something of that sort. I guess one question would be, do you need a constitutional convention, and in any case, whether you think you need one or you don't, what kind of preparation ought to be made so as to get a more informed vote as possible in 1982 on the call of the convention. That may be some question of substance, naturally.

Van Doren: Well, I think I'll just let you, if you would like, go ahead and maybe tell me what you think on that subject. I am here to listen to you as far as what you think might be beneficial to Alaska.

John Bebout: Since we didn't talk to the tape recorder at the restaurant last evening, maybe I might just recap briefly what I said on these issues. Number 1, as I just said to George Braden, paraphrasing those remarks, I don't think Alaska needs a constitutional convention at this time, and if I were in Alaska and were voting or were active, I would be trying to educate the public on the proposition that you don't need a convention at this point, but that any improvements that people generally ought to make in the constitution can readily be made, in my judgment, by the amendment process, whereas a convention could well open one of the best state constitutions up to considerable degradation in substance and of character.

George Braden: Let me give an example of the Connecticut constitution. The Connecticut constitution, except for the one man one vote problem, pre one man one vote, there is really nothing wrong with the Connecticut constitution. I mean, I don't quite agree on what I consider minor details, such as an election of the attorney general.

John Bebout: The election of judges by the legislature.

George Braden: No, it's not the election, it's confirmation. The governor appointed, but they had a strange technique because of the gerrymandered house. The house was always Republican and the senate was always Democratic. So they decided that the governor could choose which house, in terms of judicial appointments. This is not in the constitution, I don't think it was in the constitution. I think that it's just the statute must have said that he shall appoint subject to confirmation and it was set up that way so the governor could always get his own appointees confirmed by the same party that he belonged to but otherwise, it was an extremely good constitution. But in 1965, they had a constitutional convention to take care of the redistricting problem because they did have a terribly gerrymandered house of representatives and the senate was subject to 10 year redistricting but nothing ever happened because the two parties always controlled separate houses, whenever it came

up for a vote. So they had a convention and this was the primary reason. The convention, the provision for setting up of the convention was agreed by both parties, strange thing. Parties work together in strange ways, they rigged it so that there would be an even number of delegates, one half of them Republican and one half Democrat. Literally, it was just set up that way. The first thing they did was to adopt the rule of the people that anything done by the convention in the way of changing the constitution had to be approved by a two thirds vote, which was a device to make sure that everything was done and the parties agreed on. One of my very good friends who was a delegate told me that this was the most valuable thing, because it kept all of the special interest nonsense out. There was no way that any special interest groups would prevail. All special interest groups tend to want to use the constitution for what is statutory. There could be an exception or two, according on how you define special interest groups, but that is the general problem. This is one way that you could rig the convention to be sure to protect yourself against that problem, and this is a problem that arises only when you start with a constitution that is pretty good. If you have a lousy constitution that is already filled with all the special interest stuff, there is nothing you can do about it, try to get it out, and you can't use the two thirds vote that way, so.

John Bebout: We had a somewhat similar problem in New Jersey. We had a short constitution. There was nothing, no matter, that was dealt with which was inappropriate for a constitution, so the trouble was that the structure of the government was very badly devised. And as we developed the case for a constitutional convention, we kept harping on the proposition that by the very virtue that the constitution was short that it was very good. We didn't talk in terms of special interest in those days but we do now, but this is partly what we meant. We didn't rig the convention quite the way they did in Connecticut, but there was a bipartisan agreement between the two parties, the leaders of the two parties which achieved a rough division among the delegates. There was a couple of county organizations on both sides that didn't play ball, but certainly it evened out, and incidentally in doing this we were following an 1844 precedent. This kept either party from running away with it, as the republican party had in the legislatively called convention of 1943 or 1944. We produced almost the same constitution that came out of the convention in 1947, but party organization tilted, and people turned it down, where, as apparently, they accepted the 1947 constitution by an overwhelming vote.

Van Doren: In the New Jersey convention, were the delegates selected on partisan or bipartisan?

John Bebout: They were nominated by the party organization.

Frank Gard: Whether you go ahead with anything of this kind, my comments start off with saying that I don't know enough about the Alaska situation tc ask the real sharp questions one should ask, but I'll try. It seems to me that anything that moves in the direction of a new constitution ought to consider very carefully what the local situation is and from my own general opinion of the constitution, I would say that although the State of Alaska has some verbals in it here and there, on the whole the Alaska constitution is one of the better constitutions that we see in the United States, and it seems tc me that unless there are some specific problems with the constitution that need tc be resolved, the constitutional convention is in many respects a very expensive, time consuming and to some extent causes a disturbing event. In other words, it does disrupt the normal political processes. It suffers for a short period of time the nice question of who's doing what. There are certain things that ought not to be handled by the legislature, but there is a question of whether they are properly before the constitutional convention, and there is a kind of interface with many of the people in the constitutional convention and the legislature to change, basically, specific points which are raised in a constitution committee. I would, my general choice is that I don't see that any kind of a setting of this sort would help. Why bother with a convention if you

don't need to. Now, the question arises of course, if there are problems with the present constitution which in some way stops you from doing what you think you ought to do or you have to do, or there are things you cannot do because of constitutional obstacles, well then, you've got to remove those obstacles, but whether one ought to undertake the rather substantial effort, costly, time consuming, energy depleting, of a constitutional convention unless there is a very real need for it, I just plain don't know. I would think that unless there is such a need, you feel, on the political side, you might simply say that you are getting into this at a time when there are substantial changes in the duration of your politics I suppose, and one thing I would be very leary about is to get some of these directions in some way frozen into the constitution. That kind of stuff can best be taken care of by legislation and the temptation to in some way freeze certain political directions of the constitution may become almost irrestible, and so from that point of view, too, unless there is some really compelling reason to go into a constitutional convention, I see no reason on the face of the Alaska constitution to do so. My first question if I were asked to serve as a consultant to the convention, or the commission, or what have you, that's neither here nor there, my first question is what are you trying to accomplish? Where are the present problems in your system that you need to resolve by constitutional convention? The next question would be, supposing there are some problems, obvious, significant, specific, and

isolated, so that it would be possible to manage them by way of a constitutional amendment rather than by getting into the rather massive and difficult and substantial effort of a convention. Your constitution has rather liberal amendments, unlike some others, where you have kinipsion fits before you can change anything, and that being the case, while obviously you have to, you are under the obligation under the constitution to present the question to the people from time to time, unless there is some compelling need to go ahead, I don't know, it's simply just a question of not knowing the territory. I'd almost like you to tell me first what is ailing you at the present time.

Van Doren: Just to answer quickly, really nothing. Well, I won't say that. There are, we had talked about this a little bit earlier, there are special interest groups that feel that they have not had the type of satisfaction that they believe they deserve in trying to get constitutional amendments through the legislature. The other gentlemen here have received papers from me. We have some issues that have been presented thirteen - fifteen times over the period since statehood. Of course, as you mentioned, some of the times are changing, and some of the special interest would like to see changes in the constitution, and notwithstanding all of that, we do have to present the question before the people in 1982. But I think the major push toward holding a constitutional convention will come from various interest groups that would like to see changes that they

are concerned with, that they have not been able to convince the legislature that these things should be part of the fundamental law of the land. I think they are the ones that will be looking toward having a constitutional convention.

Frank Grad: You are given the classical reason not to have one. Because that is precisely what you want to keep out of the documents, some particular special interest concerns and strongholds, and if you can't get them through the legislature, that to me is a very good reason not to have another constitutional convention.

George Braden: It seems to me in the process of thinking about and educating yourselves on the question of whether you want a convention or not, you want to go back and look at some of the older states. Texas is a pretty good example as any, New York is another good one, that have been changed either by convention or by the amendment process or both. I have had to recognize most special interests in one way or another, and the more you recognize them, the more they have to be recognized, and re-recognized. Everybody likes to be, and generally is, mentioned in the constitution, but not everybody is recognized equally. And once you get a constitution like the Texas constitution, it becomes inordinately hard to unstuff it. It becomes impossible to do by amendment, and I was down in Texas recently, it was almost impossible

to do it, at least it takes an awful long time by convention.

Frank Grad: One aspect of this which you see and I find particularly difficult, let's assume that you get a vote and the vote of the people is go through a convention, and then what happens is that all of these special interests are going to get into the constitution. The first thing that happens in forming a convention is that the people in the convention are going to demand that there are special committees on any number of these issues, and that is a very difficult part to resist. Why not have a committee on a particular kind of interest area? The next thing you know is, who is your committee? That particular segment of learning or governmental concerns, inevitably gets into the constitution. I can predict within a number of pages how long the constitution is going to be, depending on the number of committees in the convention. You get those special interest groups tied into a particular committee, you can bet your bottom dollar that that's going in the constitutional document, one way or the other, because each convention committee must get its particular thing into the constitution.

George Braden: That was one reason why PAS sternly advised Alaska when it set up its convention, to keep the number of committees down, if you didn't, each committee felt it was a major subject appropriate for a constitution. We did the

same thing in the Texas convention, and the Illinois convention, so if you are thinking of the structure of the convention, the committee structure is item number 1 on the agenda. This was agreed in Michigan, so this has been learned, you see, and pretty widely accepted as true. Alaska helped set the pace for a modern convention.

Frank Grad: This thing is so difficult to resist because when you start some special interest group, you hope to satisfy them at least half way by giving them their own committee, but that's a major commitment. That is, it seems to be so petty, not to let them have their own committee on whatever it wants. Well alright, you know now that you have already made the decision to put their special thing in the constitution.

George Braden The 1938 constitutional convention in New York was of course held during remedial days, public housing was a great issue, and public housing had to be recognized in the New York constitution, and so they had to develop a committee and they introduced the housing article which was as long as any good constitution ought to be all by itself. It's a nuisance and was not necessary. They were under the illusion, I guess, that somehow public housing had to be authorized under the constitution, while actually the housing article in the New York constitution

isn't a housing article at all, it's just an article which is very complicated.

Frank Grad: The constitution is probably, in our existence, the original P.R. document, in other words, what you are saying to the people is to consider which of these values are important. You start off with the bill of rights, and then you cause anything else which you think is important on the constitution, that's how you get it. It is a P.R. document, you get anything which you think important in the constitution, the substantial statements on, you know, the obligation of the state to provide for the public health. You don't need it, but it's nice, providing for health and safety of the people.

John Bebout: Well, the consultants at the Alaska convention protested against that. We said, you don't need that, it's implied that the state will take care of the welfare of the people, but these are in the order of "good things." The delegates thought they ought to recognize it. Fortunately, they didn't tie it down with specifics.

George Braden: Let's go back to the first proposition we started out, whether we should have a constitutional convention. I would say we all agree that you should not have one in Alaska. One thing worthwhile figuring out is what are the ways of convincing people. I don't know why the Alaskans

put this voting for a convention clause in at a ten year period instead of 20 years. Twenty years is a magic number which goes all the way back to something that may or may not be a proper quote. Thomas Jefferson said that "You will have a revolution in your government every 20 years," or something like that. But the real reason for putting it in I have always assumed was, that people realize that if you depend upon the legislature to call a constitutional convention, the legislature is likely not to do it and you have to have an escape hatch to be sure that the people have some say, can at least get action because the legislature won't do it, and so 20 years is this magic number. The point is that if you remember it from that point of view, you have got one tendancy, if you look at it the other way, it's like climbing a mountain, you climb it because it's there, and here's this vote coming up and, so obviously, if we are to vote on it, it must mean we ought to have a constitutional convention. This is ridiculous! I think you go back, so that you say, the fact that it's coming up on the ballot, don't pay any attention to that fact. That just gives you an opportunity to think. Now think. Do you really need a constitutional convention?

Bill Cassella: I think this is a very important point, and my feeling is that one of the things that you people should look at and I think you already have, is look very closely at Hawaii, because here Hawaii had a constitution with quality, I don't think it's as good as the Alaska constitution is,

as adopted, but it certainly is one of the better constitutions, and they have had two constitutional conventions, as you know, since the original one. I have been there at the time of both of them, and really, they didn't do much, I mean they were a total waste of money. They gave me two trips to Hawaii, and gave John one, but as far as the second one was concerned, the one that was two years ago, it seems to me that it was just exactly what you don't want to have happen in Alaska, now in terms of what you don't want to have, what was threatened in Hawaii, happen in Alaska, and I'm not certain but what it might be impossible to diffuse the thing in Alaska the way it was diffused in Hawaii. It was diffused in Hawaii purely and simply because the establishment got control of the convention, there was no question but that is what happened, and the establishment of the leadership was a very traditional leadership in the state, and it got control of the convention and did what amounted to a cleanup job, I mean, you know, a few little things here and there. I don't think what they did did any harm, but there was this outrageous waste of money, and it obviously didn't really do the thing which I had hoped it would originally do, and the League of Women Voters had this big deal which they did with the Endowment for the Humanities, where they had this project that went on for months in which they did all kinds of surveys on what the people thought should happen and all that sort of thing, and the truth is that I think that the people who really wanted a

convention and felt that was the way to do it, when all was said and done, felt that they had wasted their time. When I went out there, and I gave a talk which in effect said to keep out the crap, you know, that's what it was, it was a talk which, in effect, said do as little as possible. Clean up a few details, and that's it. The point was that they wanted to get into the constitution all, in this instance, all the "good" things, they wanted quote, unquote, and it was the environmental protection kind of thing in the neighbor islands, and a whole lot of other things that which was just evidence of a general mistrust of the legislature. This brings me back to exactly the kind of thing that George was saying. I don't know what the substance is, it would seem to me that one of the most important single things is that, if there is a general consensus among leaders that they don't think a constitutional convention would be useful, there are certain things that need to be put to the vote of the people, I think that getting the amendments through the legislature in this next session that's coming up, the session before the '82 referendum, tactically would be the most important thing to do and it may blunt the possibility of having a convention if you could. Now, I don't know if the time table will work, you could get that on the ballot in '81, couldn't you? Could you get the proposition on the ballot or some amendments on the ballot?

Van Doren: We had approximately four propositions on the ballot

this time, and I haven't heard the results at this time, and some of them did address some of the concerns of the people in the state. How they fared, I don't know right now.

Bill Cassella: I think this is the single most important thing. And then on the other thing, and it would seem to me there are certain issues which we all say are legislative, and shouldn't get into the constitution, the legislature has the power to handle those, well, it seems to me that if there is a substantial agreement that it should be handled, it certainly would be important to handle these, if possible, before you go to the people with a referendum on the convention, so you can say, "Well, the legislature is responsible." In Hawaii, the problem was that a lot of the people, with a certain amount of justification, were saying that the legislature had not handled things well, and then of course, there was a very very major dissatisfaction, in certain aspects of the judiciary, which was the fault of the governor, because of the people he appointed to the courts.

Frank Grad: Let me say, let me add one little point, my own, while I'm always strongly in favor of support and protection of the environment, I have nonetheless resisted constitutional amendments to write the environment into the constitution every step of the way, and it seems to me that we are much better off with decent legislation, not an amendment to the constitution.

George Braden: As a matter of fact, I thought that the "forever wild" division in the New York state constitution was an acceptable exception to the rule of keeping it out, on the grounds legislatures by definition are short term people and they will do something today, because they don't much care what it is going to be 20 years from now, and a "forever wild" provision, I decided, made some sense.

Frank Grad: The legislatures in some states are constantly under pressure by the variety of industries including the paper industry, to allow the trees to be chopped down, so in a sense the legislature generally doesn't mind this "forever wild" division.

George Braden: The truth of this is not important, it is still the idea. The other thing is, again, this is related to whether you want to have a constitutional convention or not, with the constitutions I've watched and that I've worked with, I have worked up a theory that if you want constitutional revision, one of two things has to be around. One is that the government is in great trouble because of the restrictions in the constitution, and the other one is you have some terrific scandal involving the state government. This was what got a constitutional convention in Texas, but by the time they voted on it, the scandal was passed and they had forgotten about it.

John Bebout: I have a theory for example, that when we voted in '77 for a constitutional convention in New York, the only possibility would have been if whatever his name was, had succeeded in uncovering the corruption of the judiciary of the State of New York. He never succeeded. He got blocked. That would have been the only thing I think would have gotten a favorable vote. Now if you don't have either problem in Alaska, then why the hell does anybody want a constitutional convention? You could cook up a good scandal between now and then!

Bill Cassella: My feeling is that the tactics, and I don't know, I was looking over this stuff that Victor Fischer put together, and so on, and looking at the issues, and it seems to me that there are so few fundamental things that are issues that need to be addressed, that I think would be the real, that the danger is that if you got or chose a convention and got one elected, the people would then determine they had to do something to demonstrate that there was any reason for it being there, and that gives a tremendous opening to all the crazy stuff which gets in for whatever reason, because then they are just doing something, and I think that the polorization potential is just incredible. Now, in Hawaii, there is just no question but that the convention polorized the feelings in the state because of the fact that there were so many of these

limited special interest groups, and of course the geographical problem was very significant there because of the geography of the state. Another thing that seems to me is important to consider is the fact that the whole process itself, in other words, in order to go through any kind of preliminary work, it seems to me that one of the things that's got to be very, very carefully handled, is this kind of going out to the people to decide what the people want because I think that when they did that in Hawaii. . . . that by going out and trying to get the people to identify problems, my feeling is, and I discussed this with the people in the League of Women Voters Education Committee in Hawaii, and I said that I felt there was some real risks in going out and asking people, as part of the preliminary to a constitutional convention, when the people knew in this case, that a convention was actually going to be held, what should be done. In other words, what are some of their concerns, because I think that when you look through that product, so much of it and I shouldn't say all of it, but so much of it was stuff that really was not constitutional material or were not constitutional issues, and one of the things I did was to try to get the convention to issue a report on issues which were considered as things that were really not appropriate for the convention but which should be considered by the legislature.

John Bebout: This is very important, and I think, we discussed this last night, I would like to ask Bill if he knows much about what really happened in Florida with the last constitutional revision commission. They went out and did the same thing they did in Hawaii, and they asked all ensundry what they would like to have in the constitution, and of course, they would like to have everything but the kitchen sink in it, but it seemed to me that number 1, the commission over-loaded this job by freewheeling input by the public and number 2, it was super conscienticus in trying to respond to too many of these wishes. Happily, the people of Florida turned down that proposal.

Van Doren: One of the questions I was going to ask you, Bill, in relation to your comment, is what about the case, as our committee had contemplated doing, of holding hearings to find out the issues before they even vote on the question of whether to have a convention or not. One of the reasons being that we possibly, in identifying the issues that the people will come up with, could draft amendments that go through the legislature to take care of their problem before they even vote on the constitution issue.

Bill Cassella: Well, I think that is an entirely different situation, and I am in complete agreement with the process whereby you do something to get people to identify concerns

and use that as part of the process prior to the referendum on the call. I don't think there is any problem there, because I think that is an opportunity to do just exactly what you are saying, in other words, to get some of these things, and I think it is not just a matter of enacting amendments, but as a matter of fact, you have an opportunity to enact statutes to demonstrate the fact that you don't need a convention.

Frank Grad: I would, however, interject just a very small thing. And that is if you do, play it very low key. Quite simply because if you are going to do a real kind of side show of getting public feelings and getting people into the stating of their concerns, in a way, this may almost compell you then to make a case for a constitutional convention. In other words, if you are in a sense, still being an atmosphere in which the next logical step is to proceed, it seems to me you can have a subcommittee, take testimony without too much fanfare and keeping it low key, then I would think that's fine. You inform yourself as to what needs to be done, and do it legislatively rather than saving it for the convention. On the other hand, for a convention, if you are going to have public hearings all over Alaska, a great deal of fanfare and newspaper coverage, and what have you, you are then creating an aura in which the next logical step could be to proceed with the convention. I think it is not what you do, it is the way you do it.

Bill Cassella: I think that you have to be careful and not make it have any sort of an almost hypothesis that "We're trying to find out what a convention should do," in other words, that, I think, is where you see in many places where this kind of problem exists, like in Illinois for example, the whole purpose of those preparatory groups ahead of time was to demonstrate the need for a convention. You see, we are dealing with exactly the opposite kind of problem. We are, I am not suggesting that we are not using this for a perfectly legitimate purpose to find out what are some things that should be done, but we certainly are not using this as the process to go to the convention route for doing them. And, in view of the fact that a great many people, apparently including all of us, feel that a convention would not be appropriate, we have got to be awful careful that we don't get ourselves trapped into using some of the techniques which would be appropriate for getting exactly opposite results of what we want. On the other hand, in view of the fact that there are those out there that think that you can't trust the legislature, you can't trust anybody, and that's the reason we want a convention, to give the people that right to do it, you have got to be awful careful that we don't seem to be subverting that process too. I mean this is a delicate P. R. thing, you've got. You can be too cozy about it, as well as giving it the fanfare.

George Braden: You can also, being very careful how you do it, if you play around with the line that I use when I am talking about limitations in a constitution, I've said the reason for a constitution is to limit the government. You have to be careful. You have two types of limitations, what I call general limitations which are primarily the bill of rights, which is designed to protect the minority against the majority. Then you have what I call special limitations which are all these things the special interest groups want and all these things like debt limits, and tax limitations and other things. I say these are constitutional provisions to protect the majority from itself because they are incompetent when it comes to electing the legislature. Now it is a little difficult, but this is the idea. All of these special interest groups or anybody else who wants to put this crap in the constitution is literally saying for some reason or other we don't seem to be able to elect people to the legislature to do what we want. Therefore, we have to get it into the constitution.

John Bebout: I think we have a beautiful historical equation of that. In the wave of constitutional amendments that were adopted to limit the legislative power after the civil war, we discovered that after 100 years or less, the legislatures aren't always wise and that state and local governments weren't wise, necessarily, in handling finance and so the post civil war amendments adopted into parts of the New Jersey document and many

other st tes, put severe limitations on the power of the legislature in the fiscal area and some other areas. Well, it has taken us now nearly 100 years and we haven't finished it. We are overcoming the unfortunate effect of those things on state government.

Bill Cassella: Now we are doing the same thing all over again by the tax cuts. The expenditure cuts.

John Bebout: Now while we are talking about history and we are in the process of making some new history presumably, signalized by the election of our next president, which calls for a less active national government, and greater reliance on state, local and individual initiative, leadership, energy and so on. And if states continue the process started by Proposition 13, for example, they will be hobbling themselves and depriving the people of the opportunity to demonstrate whether or not it is really possible to operate this country on a substantial degree of decentralization of responsibility and authority.

Van Doren: Well, I think we have kicked around our feelings about whether or not Alaska should have a constitutional convention, and I think the concensus definitely in here is that we should be very careful about having one or promoting one. I think the next question we probably ought to move to is, we

can say that it would not be a good idea to have one, and maybe some of the people that are involved with this committee back in Alaska can say the same thing, still, the people may vote for one, and I think probably the next thing that we ought to look into is if indeed the people vote for one, the preparation for it, the various ways that you gentlemen have had experience with in setting up a convention and then perhaps get into if we are going to look into it, what specific things in the constitution exist right now that you feel need revision, and I know I've sent three of you some of the things that we looked to before this meeting. I'm sorry that you weren't included in that, Frank. I think probably we could move on to that.

George Braden: I wonder if, you see you are thinking of preparation for a convention to be called, I think at the same time you need to be considering preparation for the vote on the convention. Now, let's refresh our memory. If the people vote for a convention, is the election the following year?

Van Doren: Not necessarily. That's not spelled out. The way it's spelled out in the constitution at this time, is that the convention would be held as near as practical to the 1955 convention, unless changed by law. Now, the legislature in 1971 and also last year, introduced an enabling bill for holding a constitutional convention. The bill passed the legislature, both

houses of the legislature, and was vetoed by the governor for various reasons. He questioned the constitutionality of the legislature appointing the constitutional commission, stating number 1, separation of powers, number 2, disqualification of legislators because of holding dual office. There were several other reasons why he vetoed it, but the enabling legislation was vetoed, and we did not take up any of the vetoes during our special session, so what needs to be done is the establishment of another piece of legislation, this coming legislative session, which the chairman has decided he is going to do. Whether he sets up a procedure for the legislature to authorize the establishment of a commission and to fund it, and then allow the governor to make appointments, or whether he has it a totally legislative commission, I don't know which way he is going to go at this time, but one of the things that we are looking into is developing that type of legislation. The procedure which they had envisioned in this bill was that if the people did vote to have a constitutional convention, that an election would be held on the third Tuesday of May following the referendum vote. The election of delegates would be held on that third Tuesday of May, and then the convention would convene on the second Monday in September. I believe there was a 90 day limit, but I'm not quite positive about that. That was the procedure they were going to use, and of course, it is impractical now to hold a convention similar to the way the one was held in 1955.

There has to be changes as far as the vote, the number of delegates, the representation, the time period, a few other things. So, in effect, it would be totally new legislation, enabling legislation, to hold a constitutional convention if the people do vote for it.

John Bebout: Certainly the people ought to know as much as possible about their present constitution before they vote on the question, before the convention is held, if it is held. My number 1 suggestion would be that you see if you can't possibly do a citizen's guide to the Alaska constitution similar to the citizen's guide of the Texas constitution, preferably with George doing it. If he can't, he could possibly coach somebody or help somebody put it together. I think that would be a very enlightening document and have permanent value. Every state ought to have one, whether there is any question of a constitutional convention or not. It's a little like the League of Women Voters' "Know Your State Constitution", but frankly, this is part of their jobs, and the other is a highly professional one. Present it very clearly so everyone can read it and can understand it. It's too bad it isn't out now. I supposed that following the constitutional reunion session in Fairbanks, the material, the record of that would have been gleaned to produce a permanent document which would in effect have told the people of Alaska what those who have had the most

important experience in working with the constitution think about it, what problems they have found, what problems there are. Now, I don't know what the state record is but I think it would be worthwhile to review it and get some of it in the public domain. Now, for example, we talked about Judge Stewart's work, which was an excellent piece of work, he had a manuscript as I recall, which wasn't completed, and he had said he would be glad to complete it. Tom told me that nobody's asked him to complete it, and therefore, it hasn't been done. That should be completed, and made available. That record should of course be valuable to anybody who is working on a citizen's guide to the constitution.

Bill Cassella: I think that a very well put together guide to the Alaska constitution might be valuable to every point of view. Valuable, simply because of the fact that it is the kind of thing that is needed. But also, if it is done right, it can certainly put the thing in perspective, and my feeling is that if there was enough description, it seems to me it would convince the people that they are in pretty good shape.

John Bebout: In addition to a citizen's guide, it occurs to me there should be an annotation of the Alaska constitution. First, it would not be difficult to write. You don't have historical problems of tracing the constitution and things of that sort, you have a much shorter period of time in which to put in the explanation. The annotation of what happened to the constitutional provisions. But the comparative analysis will

be a device to show how good the Alaska constitution is. And on the comment part, if you follow the rules, and everybody does, that the author can say what he wants to, he will get over this idea very quickly that this is a very good constitution, and you can justify in advance of the vote on the constitution, that the citizen's guide is worthwhile. But the othe thing, the annotation, is worthwhile, too. The Illinois one is now obsolete and nobody particularly wants it. I asked for five more copies of it, I am running out, and I instantly got 25 from Joe. He's trying to get rid of them. But the Texas one is not obsolete, because they didn't chang the constitution. So, you could say the preparatory commission ought to commission the annotated and comparative analysis. Everyone agrees that this is the best thing you can have for a constitutional convention, and point out that there wouldn't be time to do it, if you waited until after the vote. Between the vote and the convention. So therefore, you go ahead and do it on the very simple ground that if voters vote it down, (the constitutional convention), it is still an awfully good book to have, and if they do vote in favor of it, then of course it is essential and you haven't wasted any money.

Bill Cassella: It seems to me that you don't say it just exactly the way you said it. You said that you are preparing it for the convention. My feeling is that you are preparing it for the State of Alaska. We need to know what our consti-

tution is and how it compares with other states, in order to better understand it. And if we should decide that we have to have a constitutional convention, then it would be useful to the convention, but if we don't have a constitutional convention, it is a document and it is a publication of continuing utility in any case.

John Bebout: And furthermore, of course, unless the convention drastically changes the old constitution, it would be very easy to update it after the convention, in this case at least, because the certain shape of the document won't change very much.

Frank Grad: Of course if nothing else changes, they cut up the constitution, put it in a hat, churn it up and change the numbers. What of course happens is you haven't improved anything, you haven't necessarily changed anything, but you make it more difficult to find anything and you make it more difficult for people like George and myself to index it and do anything with it. But that is the inevitable consequence.

Bill Cassella: I think that would be a project that would be enormously valuable from every point of view, and would probably have the result of just demonstrating to people the fact that you are in damned good shape.

John Bebout: Now I can say what George can't say, and that is

that you ought to make every effort to get him to either do one or both of these projects, if they are done. He ought to be made editor and chief and select and coach the person to do it. In the case of the Texas annotation, it was much too big a job for one man or even two, so what we did was to recruit a cadre of co-authors, most of whom were very good, but they worked very closely under his direction and he edited the whole thing.

Frank Grad: In the convention, Illinois, I was in Illinois on a couple of occasions and George's work was absolutely brilliant. If I hadn't had him, I would have had to work myself, and that's terrible. There are very few people around who really have a familiarity of the kind of detail regarding the constitution. You can save yourself a lot of trouble by getting someone who really knows the stuff, there's an awful lot of people who write on constitutions, and what have you, and you have a room full of people right here, including you, obviously, but it is a different matter when you've got people who have some kind of familiarity with broad things and broad analysis, for now this is broad policy issues and people have done some actual work in the drafting of constitutions and close analysis of constitutional provisions. And of course, that is where the real difference lies. This is an area where, let's face it, the broad policy, the broad outlines, rather simple to say, but that is pretty much how we talked in the

earlier conversation. The real difficulty in this field when you are going to go into any kind of developmental effort, is to work with the very persnickety and sometimes hard details, and there are very few people around who really do that. As a matter of fact, there are very few people around who have any experience in constitution drafting. The reasons why our constitutions are in such bad shape is quite simply because they are drafted by legislative draftsmen. The technique of legislative drafting, I do a bit of both, the technique of legislative drafting and the technique of constitution drafting has really got to be dissimilar. In legislation, very often, the effort is to be highly specific and highly detailed, particularly in fields where this is called for, this is always called for and in many instances, it is just as bad as constitution drafting. But the level of the generality and the level of broad statement that you aim for on the constitutional side simply is different from the legislative drafting side, so if you just throw in a bunch of legislative drafting and constitution drafting, the likelihood is you are going to get yourself a very detailed and involved constitution. The real sense of distinction between the two documents, and this, I think, is something to be very careful of if indeed you do go into the constitution drafting effort. Your legislative draftsmen really need some rather hard-nosed retraining and reorganization because it is a different kettle of fish.

George Braden: Well of course the law schools simply don't train people for constitution drafting.

Frank Grad: No, they don't because they barely train them for any kind of drafting. Columbia is one of the few schools who train people for legislative drafting to some extent. That is a very real problem. There isn't all that much of a market for legislative drafting, you would be training a lot of people for very little work.

George Braden: I hope that you agree that, I have made the statement a number of times, and I have said this a true statement, whether you agree with or not. There are only six experts on constitutions in the United States. I define that as people who have advised and worked with more than one constitution. When it comes to drafting there are only two of us in the United States, Frand Grad is one, and I'm the other. The sad story is that I accidently got the job I now have, otherwise I would have been available, but as you say, the demand is so high. There was one time when John could have gotten me three jobs. But then when the Texas one ended, there weren't any around. The idea is that you bring in somebody from outside to do your drafting indicates you haven't got anybody that can do it, and nobody likes to admit that, and my problem is that I am pretty well committed to my job until

December 31, 1982. The Attorney General and my boss, the Assistant General, are in agreement that I can help other states and they allow me some leeway, for example, not having me take this as personal leave or annual leave. I am officially here, as long as the state doesn't have to pay my expenses.

Van Doren: OK, we are down to, we have gotten into some of the things that possibly should be done before the vote is taken, we're talking about the annotation of the Alaska constitution and also a citizen's guide. Let's keep on maybe before the vote and then go into after the vote, should the vote be in the affirmative. Of course, if it's in the negative, I think probably a lot of the work that has been done, will be done and is being done right now is going to be beneficial in the future, because we are going to have this unless it is changed by amendment, without a constitutional convention, we are going to have this vote every ten years. There is also a case if something comes up as you discussed, the scandal, or real trouble in the government that the legislature in our state can call a constitutional convention. So, any of these things that you have suggested so far are going to be beneficial and we are definitely working along those lines, but let's go in the case of the voters approving a constitutional convention, from your experience, where do we go from here?

Frank Grad: Election of delegates. That presumably would be provided in the enabling act of the coming year.

Bill Cassella: My feeling is that it is absolutely imperative that you avoid the situation that we got into in Maryland on the election of delegates, where you had a mulitiple, you had so many delegates running for each spot that it ended up that most of the members of the convention were elected by a minority, and in Illinois they had a runoff election, so you didn't get a certain percentage, in other words, you got a, I can't remember what it was, in other words, you got a substantial percentage of the vote.

George Braden: In Illinois you had a primary for delegates and the two highest ran in the runoff and you chose one of the two.

Bill Cassella: I thought in some cases there wasn't any runoff. There wasn't any . .

George Braden: I had heard that if one guy got the majority the first time . . .

Bill Cassella: If a guy got the majority the first time, then you didn't have the runoff.

George Braden: It's the typical Southern primary.

Bill Cassella: Which actually got a better composition of the convention. Maryland had a lot of extraordinarily fine people, but they just didn't represent the state.

Van Doren: Just to give you an idea of what has been discussed so far in the selection of delegates, the enabling legislation that was passed and vetoed last year called for the same representation as the legislature, in other words, 60 representatives, elected from the House Districts, and Senate Districts, and then five members elected at large throughout the state. This was considered a good balance still using the legislative apportionment, and it was the general feeling that the five members at large would probably reflect more of the leadership type of people, these people who ran from the whole state at large. But at least in that draft of the enabling legislation, it called for 65 members as I explained.

Bill Cassella: The problem was that if there were each of those 65 districts, I mean for the 60 districts that are going to run from the senate districts and house?

Van Doren: Senate and house districts.

Bill Cassella: Well, in each of those districts, was there any provision to keep you from having multiple candidates, and

end up having them like in Maryland, representing just a few people? This is the caveat that I raised, and I think it is a very important one.

John Bebout: I certainly agree. Again, in New Jersey, both in 1824 and 1947, we side-stepped the issue by the bipartisan agreement, which resulted in no contest or no significant contest. We were able to do that in New Jersey both times. In New York in the election, the members at large have generally speaking, been some of the best members of the convention, distinquished citizens, this is especially true in 1915. I remember what happened in 1967. What happened in 1967, it was proposed that the two parties get together and nominate some of their top people. Governor Rockefeller was so sure that the Republicans were going to sweep the convention that he refused to play ball, whereupon the Democrats took the delegates at large. Now, some such deal, I think, if possible, should be made for the five or whatever number of delegates at large that you have.

George Braden: I understand the thing in New York has always been operated on a party basis and the experience in New York, plus the experience in Illinois in the 1922 convention, which was one of these where the Republicans ran roughshod on a

party basis, there was no difficulty in Illinois in getting the nonpartisan, non-party thing, and the consensus of wisdom now is don't ever put together a constitutional convention on a party basis, but don't set it up as you do in Maryland, where you don't, at least as you did in Illinois, get a number of culls on both sides, but the nonpartisan one gets an intermediate group of good government, knowledgeable people who broker between the two parties, is what happened in Illinois, and it worked out beautifully.

Bill Cassella: In Montana, they excluded the legislature.

Van Doren: By the constitution, our legislators are allowed to run.

George Braden: They were allowed to run in Illinois, after a great hassle as I remember, but sometimes they wouldn't get elected because they had to run on a nonpartisan ballot. Keeping the party label off is important.

John Bebout: I think in Alaska you could follow that pattern, but I do think it is very important to have a runoff.

Van Doren: In other words, what you are suggesting is if a person doesn't have a clear majority, he should be subject to a runoff?

John Bebout: Yes, because if you do it on a nonpartisan basis, you get on the ballot by petition, and so you are going to have a good number.

Frank Grad: Is there any real risk of having that or much desire for participation in the convention with multiple candidates?

Van Doren: I don't know. First of all, we are a very nonparty oriented state as such, we have an open primary, there are more democrats registered than republicans, but there are three times as many who register as independent as anything else. People in Alaska tend to vote for the person rather than the party, and party lines are not followed at all to the degree they are in the Lower 48 and especially in the East. I would feel that yes, there probably is, mainly because number 1, the prestige, number 2, there are people who would not normally run for the legislature because of their own business commitments, their own personal lives, they don't want to spend the amount of time serving in the legislature, but would be willing to serve for a 60 to 90 day period in a constitutional convention. I believe there are very qualified people who would never consider running for the legislature who might consider running for the constitutional convention, and one of the reasons for that probably is because the initial convention was so successful.

Bill Cassella: I feel that is one of the big things in Alaska, because there is an enormous prestige associated with the first constitutional convention and I think they are near enough in time that people would say that maybe we can use it as important step to accomplish all kinds of good things.

Van Doren: Certainly, you also have to evaluate the fact that perhaps the young person who has just started out in politics may not feel he has a chance to be elected to the legislature, but if he could be elected as a delegate, that is a stepping stone, on the way up.

Bill Cassella: It is also a terribly tempting part for the special interest groups, and in my way of thinking, the real danger is with special interest and single interest types, and the problem of this, you see, if you have a bunch of candidates, like Maryland and so many of them, you really stand an awful good chance of getting one of those really heavy emotional issue people coming out at the top of the ticket or close to it. Now, the point of it is, if they were one, if you use the situation of Illinois, even if one of them comes out at the top of the ticket, you will probably have a pretty good chance of knocking him off in the runoff.

Van Doren: Do you have a suggestion as to how you could limit the number of people who are going to run, I don't know how you can do that.

Frank Grad: You can limit the runoff.

Van Doren: I think there would be quite a bit of interest. Now, I believe the number was something like 200 and some odd candidates in the primary for basically 50 seats in the legislature, this time. I would assume there would be something like that also. Of course there are outlying areas and our remote areas, there wouldn't be as many candidates for it. In the urban areas again, bringing your idea of special interest, there will be quite a few.

John Bebout: Incidentally, what does your nominating petition require? I have always thought it would be very desirable to have at the top of the list, a small group, say 10 or 12, of sponsors, people who more or less assume public responsibility for the circulation of this petition, indicating the nature of support that this person has before you get out and push a Tom, Dick or Harry. I have always resented having a petition shoved at me, asking me to sign a petition, whether for a candidate or a cause. I want to know who's doing it, and lots of people just don't know.

Frank Grad: I don't know, I suppose you can do this, is it usual?

John Bebout: In Massechusetts, it requires an initiative.

You have to have a group of sponsors.

Frank Grad: As a matter of fact, now for instance, the conflict here is constitutionally protected, I don't know. There probably would be a complication in the legislation that creates the law for the calling of a convention.

John Bebout: I don't know, I did in New Jersey, before we allowed party organization to put candidates up for the convention, proposed and wrote a bill for a nonpartisan election, and which I did supply to the sponsors. I have always been bothered by a nonpartisan election, unless you can establish some responsibility.

Frank Grad: I don't disagree at all, I just think it might be a difficult thing to adopt. In this particular instance, I wouldn't be at all opposed to creating an obstacle or two to this adoption of this whole business if you want a smoothly operating nominating process, this may give rise to some difficulty.

Van Doren: Is what you are suggesting, John. First, let me explain what we do in our petition for an initiative. You begin with one hundred signatures, and then from the 100 or so signatures, once those are certified by the Lt. Governor, then the petition is circulated throughout the state to gather enough signatures

to place the thing on the ballot. Are you talking about each candidate having enough sponsors and then going ahead and running after he gets a certain amount of signatures.

John Bebout: Yes, I wouldn't require 100, they get to be too anonymous.

Van Doren: We have and I don't really know about the other areas but in Juneau, for example if you are running for city council, or the school board, you are required to have 25 signatures I believe, before you can file. And then once you have 25 signatures, you turn that in and then you can file for city council or the school board.

George Braden: But you don't get anymore after that. Well, I think a candidate for a convention ought to get a fair number of signatures, but I wouldn't say it should be extensive, frankly, I put a good deal of reliance on the character of the sponsors.

Van Doren: In other words, you are suggesting that an X amount of people sign this and then it's turned into the Lt. Governor and then the person would be eligible for running for delegate.

George Braden: No, you file this with 10 signatures, and then on the basis of the 10 people who are promoting this guy's running, then you start getting the number of signatures required to get on the ballot.

Frank Grad: Actually, the nominating petition would say "This nominee John Smith as a convention delegate, has the support or is sponsored by the following: . . ."

George Braden: I recollect in standing for parliament, you had to get a very small number of signers to your petition and also had to pay, I don't know if they do that anymore, a fee that seems to me the more rational system than the system that is quite common, where you get a whole slew of anonymous signers. If you stand out in the rain long enough, you get any number of signers.

Van Doren: OK, so let's follow this through. Alright, we have 10 signatures on this thing. Now, once he has the 10 signatures, what happens then?

George Braden: You would then authorize the circulation of the petition, whether it was before or after filing with the Secretary of State. Get an official petition form, maybe he should go to the Secretary of State, with these 10 sponsors on his list.

Frank Grad: Then he gets the thousand, or two thousand or 10 thousand.

George Braden: At the top of the petition, "We are going with the above in nominating him."

Van Doren: Then he goes on to get his other signatures and then after he receives the required amount of signatures, he is eligible to run for delegate. OK, I guess my only question I have is why the 10 signatures in the first place?

George Braden: These are the people as I as candidate, am pleased to have or be identified with. These people indicate also they are pleased to be identified with me as a candidate. I am one of the general public, and candidate "Y" comes along, and says will you sign my peitition. Well, I don't really know the candidate, but he says at the top of the petition are 10 names of people who are promoting or sponsoring him. Well, I probably know three of them. They are the kind of people I want to be associated with.

Van Doren: This is basically what happens with our initiative. In other words, when the first 100 people sign the initiative, then when they go around to the public and get the general thing, some guy can look up there and say, "Hey I don't agree with half of these people, I'm not going to sign this." Very good point.

George Braden: What you have described as an initiative in Alaska is the way. As long as you have that, it would be easy to do this.

Van Doren: Certainly, because the precedent has been set. OK, we have the delegates now, at least we have them nominated, what what are we going to do with them?

John Bebout: In addition to the citizen's guide, and the annotation, which will be available, I assume, after the election, we hope, there should be other material. Just what other materials depends on the state. Texas produced a collection of impact studies, the impact of the constitution on this, that or the other thing. It would be a much simpler job in Alaska and I think you pretty near got it made already, in terms of the stuff which is on the record for the constitutional convention reunion and the things that you have started with Vic Fischer. You can overload the delegates.

Frank Grad: The portability is important.

John Bebout: Again the statehood committee, in preparation for the 1955 convention really set a very good precedent, by getting PAS to do this series of studies, each one was quite compact. It was a lot easier, because you didn't have a constitution to start with, so that they could deal with fundamental

principles, prior experiences, and these things were so short that I think each of the committees began its work in the convention, by sitting down and reading the whole darn report together. They started with this common background. I think sticking to that sort, you might as well be, in this case, geared to the articles of the constitution that you have. There wouldn't be much more than a statement in narrative form of the contents of the annotations.

George Braden: One of the things, if I remember the time table, which is likely to be the case, any work must be done between the date of the selection and the convening of the convention. There are two things in that interim which both Texas and Illinois did. Well, in Illinois, one was a big seminar put together to educate the press which was pretty successful, and the other was a seminar for the delegates, and we had that in North Dakota, too.

John Bebout: They did that in Hawaii too, and also in New Mexico.

Frank Grad: One other thing which truthfully could be done, to save an awful lot of wear and tear at the beginning, is to have a proposed set of rules and a proposed organizational chart. You can start early if you have one from the first convention to use as a prototype, and you could use that with

whatever amendments, suggestions for revision, whatever you may have. If you get together in the convention, and you have to start that process, it is a mess for quite a few days. I think starting with some rules in the beginning is important.

George Braden: When you get a group together to work out a set of rules, and you tell them strictly, don't you dare look at the rules of the legislature of the State of Alaska. Or any other state. You look at convention rules of conventions that didn't look up legislative rules.

Frank Grad: Some of the procedural motions the legislatures permit or that some of the more complex bodies permit, one guiding principle ought to keep it as simple as can be, and to rely very heavily on moving the question.

George Braden: A technical aspect of this, it comes in at the time you are doing the rules. We succeeded in Texas. The State of Illinois, based on my experience in New York, I started in Illinois and almost succeeded, but in Texas, I totally succeeded in getting the rules set up in such a way, that not a single word went in the convention document, the constitution, that was not finally approved by the style drafting committee. We got the rules set up that way so there were no floor amendments. One of the things you want to get into the rules early on is to be sure that there is no possibility

of a floor amendment, which then gets frozen and the style drafting people can't undo the damage. We were able in Texas, absolutely nothing ever got in the final form until it went through the committee. The other thing that I succeeded in Texas was that the style and drafting committee never did any drafting, absolutely none, and I had a wonderful chairman who went along with me. I would sit next to him and I would suddenly say "Stop it. We are not going to draft. You tell us what's wrong with what we have done and let us go and rewrite it."

Frank Grad: Don't let the committee draft, no drafting through committee is essentially the point. Drafting is a lonesome, time-consuming thing.

John Bebout: You may not want this on record, but curiously enough, the first Alaska constitution was pretty much drafted in committee, but it was the result of a very unusual kind of chemistry among the people involved. To a large extent, this was drafted by mutual consent by Tim, Mildred Herman, George Sundborg and probably Ed Davis, who was the only lawyer in that group. Now there were other members on the committee, but they weren't too active.

Frank Grad: One device, by the way, which you used to be very strong on, which I found very persuasive, is the arrangement

which brought informally, the arrangement of regular meetings of committee chairmen in the course of the convention and that is a very important business, because you are being engaged in the preparation of a single document, and as long as you can keep the group working on any one document small, you get a certain amount of consensus, particularly if you have a strong chairman to begin with, to get that committee into shape so that things don't get out of hand, things don't get into the document or get into the document at a stage of the proceedings where they are really frozen, where you really can't deal with them anymore. The business of live consultation between the chairmen in the course of the convention. Otherwise, what is likely to happen at the tail end, is that all of the committee reports, each committee has worked on its own project and is convinced that it must go in exactly as they have it, and there is very little room for adjustment of getting in the thesis for mutual accommodation. If you have a committee of chairmen and the committee has a constant head, and the convention chairman is the best person to do this, they can know what is going on during the course of the convention. Or else you can have the committee on style draft and serve this function, in effect be constantly informed of what everbody is up to. The whole business of committees sneaking off on their own, each committee working by itself and then everybody throwing their bit into the hopper at the very end, that is to be avoided at all costs.

John Bebout: This in effect is what was done in Fairbanks. The committee chairman performed this role, I think, later on. Also, something else which should be considered very carefully, particularly in a small body is not to overload the people with too many committee assignments and I think I'm right, that each delegate from Alaska had two assignments, so that the overlapping assignments also provided a certain amount of liason between the committees that had the most common concerns like finance and oversight. This is simply kind of a rule that the chairman ought to have in mind as he makes committee assignments.

John Bebout: You people are really very fortunate in the fact that your founding fathers were very wise and they set some excellent precedents and you hardly need to look ouside of Alaska to find a model for the organization and management of the convention. The other illustrations that have been given here are basically just more back up that you really don't need to change much.

George Braden: We had a problem in Illinois, some of the committees insisted on doing all their drafting in secret, but in Texas some of the committees, particularly those dealing with local government, their staff man would come down and see me with this and what they were proposing to do. "Why don't you go through these and begin to fix it up before we have frozen it, and that will be easier for drafting." I

promoted that. As soon as I got into the drafting process, the better off we were, and that worked quite well. That means, contrary to the old notion, that the committee on style drafting should start out right at the beginning to be an active committee. (Emphasis added). I have had people say we don't really need a committee on style drafting 'till near the end. The clean up will come at the end. That's just not true.

Frank Grad: Style and drafting is one of the notions which I think we have to fight constantly. That is, that style drafting is somehow a housekeeping committee, essentially a kind of a technical committee, that it's like a budget committee that makes sure that all of the delegates get paid on time. It is, style drafting, is in a sense, on par with the substantive committees, more important than each of the standing committees, and ought to be given a real distinctive role of considerable significance and importance and it ought to be by its nature a substantive rather than a procedural housekeeping committee. In so many conventions, style and drafting is relegated down to the bottom of the list. It is kind of a housekeeping chore kind of committee, and it is not that at all! It is very essential to the preparation of the document which is the purpose of the entire enterprise.

George Braden: I have a couple of examples, where the final style drafting committee ought to make the decision early on,

where do we put the veto section? In the legislative article or the executive article. Just an example. But they are the only people in the two committees, and each one would like to do it. Also, one of the first things the executive committee did was to prepare a drafting manual which we were to use, and that went to all the committees, and they all knew what our rules of drafting were from the beginning.

Frank Grad: Together with a caveat that a drafting manual doesn't teach you how to draft.

George Braden: We did put certain rules in there. They just might as well follow them, because otherwise, we were going to rewrite it.

Van Doren: Do you have copies of that drafting manual available, George?

George Braden: I would have at least one. And I may have two. Ask the Chief of Staff of the convention. And if they still have it around, the ACIR should have them. There was another thing that was put together at the end for the benefit of the permanent record which was all the style drafting committee reports, explaining all the changes which they made in the draft that came to them and this was to provide the legislature with records, to help them interpret the constutition. We had certain

standard rules that we always followed and every time that we would draw up a footnote saying that this is according to the standard rules. Somebody put together all those, all these rules of management that covered more than one article.

John Bebout: On the whole matter of the manner of the convention . . . I don't know any Chief of Staff who was more effective than Jim Ray was, wiser and more foresighted than he was. One other gadget or gimmick that was suggested at the end was the final substantive order of the document, committee chairmen reviewed the document from beginning to end, the substance, rather than style, just to make sure if there were any mistakes that had been made inadvertently or after we finished, and we did find a few things which were changed. This was a very rush job, but if this was planned for in advance, I think it would be helpful. You talked about a limitation on the duration of the convention and I have mixed feelings about that. You don't want to be gone forever like the Rhode Island convention, on the other hand, you don't want to squeeze it so tight that you can't do the job. Now the New Mexico convention operated under a 60 day limit which I thought would be impossible. Actually, they did well because of two things. Number 1, they recognized the very severe time constraints at the outset and were really all set, quickly, to adopt a good set of rules which had been prepared and got organized. This was discussed at the meeting prior to the official opening date of the convention.

They also had a draft of the constitution prepared by the commission, just as the Texas convention, which was good and on the whole, they pretty well followed it. In your case, I don't think you need or want a draft of a new constitution prepared by any commission or anybody, because that was only due to total revision. But you do not want to limit the time severely, I think 60 days is a pretty severe limit, I would be happier with a 90 day limit, particularly if you took a break in the middle of a week or two, and gave time to review the documents and perhaps take it back and get reactions to it. Actually of course, the Alaska convention attempted to do this by taking a Christmas break, and the delegates did go back and hold public meetings and hearings in their communities and told what was going on and asked for reactions on sepcific matters. They didn't really open the whole thing up, of course. I think you need to consider the question of time and the question of convention planning together, and I'm sure you'll have something that will work. I think in your case, 60 days wouldn't be necessarily too short if you were properly prepared. But I also think that you may have a rather short time between the election of the delegates and the convening of the convention. It ought to be reconsidered. Once you know what your span will be.

Van Doren: Well, they had said that the election would be held, I believe, the third week in May and the convening of the

convention in September.

George Braden: The problem is because of the year involved, you don't want the convention and the legislature meeting at the same time.

Van Doren: What we are talking about is that the election would be held in 1982 in November, which of course if they do approve of it, a lot of this preparatory work could be done before the election of delegates, so you basically have from November 1982 until September of the following year to get a lot of the preparatory work done.

John Bebout: Well, you need all that time, you need time in order to coordinate in 1982.

Van Doren: That is what we are doing now.

John Bebout: Most of the things we have proposed, would be worth having whether the people vote for the convention or not.

George Braden: The legislature meets every other year?

Van Doren: No, the legislature meets every year. But see, normally, and we are talking about 1982 being an election year, so the first year of the legislature usually runs approximately

four months, January through an uncertain time in May. I am just going by recent history. So the legislature possibly is going to be adjourning in May. Alright, that allows the election coming in late May, that allows only a couple of weeks for anyone who is a legislator and wants to run as a delegate to go ahead and file for election. Starting in September, if we adhere to a 60 day period, you are talking about the month of September, October and possibly November, shortly into November, for 60 days. If it was 90 days, it would go further. The legislature convenes in the second week of January of each year, so that, depending on where the convention is going to be held, who is a delegate, and all that, the idea is not to overlap with the legislative session. Now, in the second year, they normally run 5 1/2 or 6 months, it just depends, but traditionally in the last few years, our second session of many legislatures has been at least 30 days longer than the first session.

John Bebout: I would have an early election because the people who know they are going to be elected are going to feel the responsibility to prepare themselves more heavily than those who are just running for delegate. They have got to arrange their affairs so that they can really devote practically full time to the convention for the two or three months. I would strongly urge a wide time between the election of the delegates and convening of the convention and the easiest way to do that is

to have the election as early as possible and then sometime not too long after that, I would have a meeting with the delegates, get acquainted and there is no reason why you couldn't have your procedures pretty well firmed up, decisions on the officers and the committees by the time that the convention meets, and you have a formal ratification to the effect that one has already been decided. In other words, I would have one meeting that would be a kind of get together meeting and create a committee on organization or something of the sort, and then another meeting later on. Not counting your 60 days, because that would be taking too much time from the regular activities and summer is not a good time to divert Alaskans from their activities.

George Braden: Where do you think you will hold your convention?

Van Doren: I don't know. In 1971, another researcher and myself did a site survey, notwithstanding the supreme court decision of 1971. and the three places considered were Fairbanks, Anchorage and Juneau. At that time, the consensus of the two of us was that the convention should be held in Fairbanks again. Number 1, historical, number 2, the tremendous cooperation that the University was willing to give us at that time, the convenience of the housing there, the necessary cafeteria facilities, the fact of holding it on campus. The problem - between 1955 and

1971 and now, 1983 or so, is that the University has grown tremendously and with the housing and all, I think the University might be very hard pressed to furnish the facilities to hold a full constitutional convention during the period that the students are going to the University, but I'm only guessing.

John Bebout: Of course in 1955 and '56, the delegates didn't live on campus. They all lived in town in hotels and apartment houses or with friends. They were brought out on busses or in private cars, but I don't think the housing of delegates would be a problem.

Van Doren: Possibly not, I mean we were talking about the facilities and their use all at the same time. I'm not making a case for any place, but these are the three major choices: The University, Anchorage, and Juneau. One of the things that the University has indicated a possible interest in and also the chairman of this committee has been to use Constitution Hall again, and remodel it for use of the convention which would upgrade the facilities and making committee rooms available, establishing a constitutional library there. It has changed a little bit since you were there. This is a possibility and I think a lot of the people that were either involved with the constitution have been very impressed by the way it functioned on the University campus and would like to have it back there again.

Juneau, let's face it, is more set up for it in the fact that the legislature has their own printing press, we have the meeting rooms, committee rooms, the building is totally wired for telecommunications, which I think are going to play a very large part of the convention this time, it's also set up for teleconferencing throughout the state. We have facilities for a lot of things. What I recommend in my report, of course it is up to the chairman whether they are going to do it or not, is that a similar site study be undertaken again to see which of the three major communities, I think we are pretty much limited to that, although Sitka is a possibility because of the fact that they have a convention hall, and they have two brand new hotels there that could house the delegates and the staff. We are dealing with much better travel situations than we were back in 1955.

John Bebout: Sounds like you are thinking about the right things, going back home again would be indicated in view of the tradition and the records and the university study, of course the Rutgers University setting proved to be a very healthy one for George's convention in New Jersey, and I think you can take into consideration all of that.

Van Doren: Since you have to leave sooner than anyone else, and I have questions on issues and such but the others have

the paper, and you haven't, is there anything other than what we've been talking about, issues and that type of thing, is there anything in the procedure or anything in conducting a convention that you feel would be helpful to be added to this discussion, other than issues, unless you have some issues that you are aware of, and I think the other question would be, has there been things in the recent past that may or may not be desirable to add in or may or may not be desirable to put in a constitution that isn't already in there?

Frank Gr ad: Well, I have always gone John Bebout one better, he advocates a two page constitution and I have always said that I could do it in a page and one half, so when it comes to adding things, and I think that no one in this particular crowd that you have around you here, will be in favor of adding anything much, simply because you do people a favor and the government a favor by subtracting things from the constitution rather than by adding. There are certain facilitating aspects in constitutions, which must be adhered to, I am not as familiar as I used to be with the Alaska stance on home rule, for instance, which, as far as I can tell, finds very little expression in the constitution. Probably if you must have a constitutional convention, I think you can probably do home rule quite nicely in Alaska without doing much to the constitution or content on this particular subject, but only if

you leave it alone. But if you got to give them something, then it seems to me that you could have something incorporated in the constitution, whatever it is you do in fact, and you have included a presumption what the local government can do, unless there is a preventive that is in the constitution itself, but in Alaska it seems to be on the principle experience, of doing the least harm as possible if you could have that incorporated in the constitution. As for the rest of it, I think your constitution is generally speaking, free of confusing detail and I would think it is perfectly fine, I don't see any reason for change there, I would not think, in substance, anything much needs to be added to your fiscal and budgetary provisions in the constitution. They seem to be reasonable. I think in a sense, any kind of a constitutional convention effort would be toward a goal of keeping things from going off the track, rather than putting in additional things. I don't see any need for any additions to your constitution. One thought is and this is peculiar to Alaskans, but your fish and wildlife provisions relating to wilderness and the like.

Frank Gard: I absolutely must state that the constitutional protection under the 1870 hard rock mining law, that is apparently in your constitution. While we're trying to get rid of it on the federal side, you've got it solidly ensconsed in, but there I guess you are dealing with some

very, very special interest and probably difficult to dislodge the thing, so those are the areas where I think your constitution really provides somehow the special corners and it seems to me that to get rid of those, it would be fine, but obviously that's a local problem. Just as in Louisiana you have to have the levies in the constitution, there are certain things, in New York, as in Massechusetts, it is common, it is easy to criticize, but it's required. I'm perfectly aware of the fact that you live in a real and political world and you got that in there for a reason. At the very most don't make it any worse than it is, but quite obviously this is one area where possibly the constitution is probably more specific and more detailed and more protective of a special interest than you have to be. Other than that, on the procedural side, I think we have a pretty good fix on things, in terms of the limited number of committee -- I would say one aspect which ought to be considered in setting up your rules. I would make the convention chairman and possibly some selected few committee chairmen be a very strong agenda committee. One of the problems that I see is keeping control of proceedings and I for one, like to see a strong chairman if you've got the right one. One aspect of the chairmanship which to me is very significant in running the show is to have him have a very tight control of the agenda.

George Braden: You have to tailor to the situation. In Illinois, the important thing was to have three vice-presidents, one representing the Daley machine out of Chicago, one representing the down state republicans and one representing the good government group. Three vice-presidents, plus the president, control the agenda and you have to work it out in terms of whatever the situation is once you have the convention. You have a background that way, in fact, that is why I suggested doing that.

Van Doren: Again, Frank, I'm not leaving you gentlemen out, but he's leaving soon, so I am trying to get as much out of him as I can here. Any suggestions or specific pitfalls that we ought to look out for or any other suggestions that you have before I lose you?

Frank Grad: Suggestions, obviously all of us have rather good government instincts and if you are going to have another constitutional convention, it gives you another chance to try the old things again or at least to try to put them across. For instance, why you have a two house legislature where in any number of states and particularly with two house legislatures, defeats the normal standards, but then of course my imagination is limited and any number of people feel you need it because you need the jobs around and it's the way things are done, and after all, from the beginning of American history, which

always boxed itself up with at least two houses but, obviously, another convention gives you another change to try to do something else. Obviously the League too, has kind of given up on that one, the Model State Constitution, the most recent revision, has gone both ways on this subject. You do have one aspect that it is in your constitution which possibly could stand some strengthening is inter-governmental relations, provisions possibly of greater support for inter-government cooperation. One other aspect I note you have in your constitution, you have reapportionment provisions which are a wee bit unusual, you have a gubernatorial reapportionment essentially with the assistance of an advisory group. My question is how well is it working. Is this an area where there is some disagreement?

Van Doren: Well, of course we have only had one. We have another one coming up. The one that we had of course was beset with court cases, which the Governor and the board won. So it remained as it is now, and we're, just since statehood, experiencing our second reapportionment commission at this time, and I don't know how it's going to go. I wouldn't be surprised no matter how it goes, whether it's good or bad, if someone files suit, and it's going to have to go to court. As I say, with the first one there was a lot of dickering, because there was a lot of districts changed, there, again, was an unsuccessful court

case, and what the reapportionment board did stood up, so we are now experiencing our second one. The Governor does this. Obviously, the reapportionment comes out on his signature. Does the governor's office really get into it, or is it really the board that does it all? To what extent does the governor get into the act, or is it really the board's decision? First of all, the governor appoints the board. Now right there, right off the bat, you know that he is involved in it. The present governor that we have has appointed the current board, and it seems like the board is very geographically representational. It is a mixture of Democrats and Republicans and independents. I don't know! It will be very interesting to see their initial product come out. I can't tell you how it will turn out. I also can't tell you how much influence the Governor is going to have.

Frank Grad: What in terms of the general public, is the statewide reaction to the reapportionment. My question of course simply asks, is this particular mode, it's an Alaskan gadget. Is it working well enough? I take it from what you say that it is.

Van Doren: Right, we will have another opportunity to look into it and of course I don't know. You know we have a very geographical diversified state and of course Southeastern and the bush are going to say they don't have enough repre-

sentation, and some of the people that are redistricted in the urban areas are going to fuss about that, and alsc by the same token, there are some contraints they have to follow with the one person one vote. The other thing that we definitely have is very strong executive control in the state, and of course there is a lot of jealousy between legislative department and the executive department.

Frank Grad: Well you are wise in not having a legislative reapportionment, obviously, but you know, the question is, is there any other further possibility of insulating still more from the partisanship in the political process?

John Bebout: The only way I could see actually, would be the monkeying with the composition of the commission and get the legislature into that act to work along with the governor. Get somebody from each house to appoint board members, and so on. I think the convention was quite proud of this innovation and I would hope that until or unless Alaska has a real bad experience with it, they wouldn't tamper with it.

Van Doren: I do know that there is some feeling against and it goes beyond just apportionment, but it's a fact that there is such a strong executive in our state.

Frank Grad: Basically my comment is it is a pretty good

constitution and really the major object of the game to me seems to be preventing this from becoming worse or becoming bollixed up in any way. I would say that obviously there is always room for some improvement and I would urge that if you have to go into the convention, there are some possibilities of dealing with home rule in more expressed ways, encompassing what you have in fact, but in the law, I would think that to some extent, that the resources part of the constitution is special interest.

George Braden: I got the impression that the article didn't really have any serious handicapping effect on the state's options on what it does or might do.

Frank Grad: The one provision which really in effect ties Alaska to hard rock mining. That is the one that is really kind of tough. Mineral leases and permits. Actually, mineral rights, Section 11, "Discovery and appropriation shall be the basis for establishing a right to those mineral reserves to the state," etc., the other one which I think may possibly be or give rise to some question is to the navigable waters provision which in effect makes the appropriation system more of a constitutional requirement and those, I think are more limiting. This is the type of things which are tighter than they need to be. But again, I'm perfectly aware there

are any number of things, which in New York you don't touch in the constitution and any number of things you don't touch in Louisiana, and things that you don't touch in Alaska.

John Bebout: Frank, before you go, though, on home rule, they thought they were providing Judge Jorden into the constitution and going one better. Section 11 of Article 10, "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter." I don't see how you can get much more conscientious than that. Of course, there is a lot of litigation, and there has been litigation over precisely the point that I disagree with Vic Fischer on. Vic Fischer said that this meant that the legislature had specifically to prohibit or deny a power before in other words, the legislature couldn't legislate in the premises in such a manner as to preempt the whole area without saying so. That is the only problem that I know of.

Frank Grad: I would think that you know. The last question with home rule, and I sort of remember that league session of a few years ago, where in one room there were all the home rule people discussing home rule, and the others were in the other room were people discussing the need for broader units of government and for broader powers and to deal with regional problems. Both groups seemed totally unaware

of each other's existence and the fact that they were really talking about entirely inconsistant matters. Then of course, the majority had a variety of points of view, and with particular emphasis on their own subject. It may get slightly sticky in some particular circumstances, but here, the provision I think could stand some squaring away.

John Bebout: The only thing I can see would be to clarify that particular issue Now as to the inconsistency between home rule and regional government, Alaska had thought that they were solving that problem. They were very clear that they did not intend to give a government unit any right to perpetual existence, and by creating the state boundary commission, they were giving the state power through this commission to change the municipal map of Alaska. Natural resources article. That really gave the convention a great deal of intellectual difficulty. It was the hardest article to draft. They never were quite sure of what it meant, which I think perhaps is one of the merits, and reading Vic Fischer's commentary, it seems to confirm the view and I think that you picked out the two provisions in it that might ideally be reconsidered. I think the only question is whether you could reopen those questions without opening the article to a lot of more detailed descriptions in favor of the variety of special interest. That would be the question in my mind. Of course, you don't need a natural resources article in reality, but the convention people were

very anxious to demonstrate that Alaska was prepared to deal responsibly with the natural resources matter, and they wanted to do that and at the same time to protect themselves against some of the undesirable practices from all over the states and practices that they had been subjected to by the Department of the Interior and Congress. That's all I have to say on that. It was worth a further course of study, but none was prepared.

George Braden: Let me ask in terms of the home rule thing. This occurred to me, that Alaska is different from the Lower 48 except, I guess Maine. As I pointed out in the Illinois book, there are two types of local government generally in the United States. The township form of government which comes from the English town, where whereever you live in New York State or any New England state, you live in a town, which has a town government, and over that there is a county government, where you've got three levels of government. You get to the southern states, and you are either in a municipal corporation or city or the only government you have, is the county government.

John Bebout: No, this is true in Virginia, but in most southern states, cities are also within towns, for example, Houston is part of Harris County.

George Braden: Yes, but if you are not living within a city,

the only government you have is a county government. But the whole home rule thing deals with one or the other of these problems. You have the screwy thing you've got in New York State, where counties have all the home rule powers that cities have. And then you have the trouble with the southern states of trying to get the concept of home rule in their county where the county still seems to be the agent of the state. This appears to a considerable extent in the northern states. What do you do with a home rule concept in a state where a large area of it is toally unorganized? You don't have county governments.

Van Doren: No, we don't. We have boroughs, which are similar to counties, but usually only in the major urban areas.

George Braden: Your borough is different from the boroughs we have down here.

John Bebout: Just translate borough into county. If you put a whole list of names of local units of government on the blackboard with German, Japanese, Eskimo, Indian, other languages, now, and they finally hit on boroughs.

Van Doren: So we have that now, and in some cases in Alaska, we have integrated a city and a borough in a unified district. This happened in Anchorage, Juneau, and I believe it has

happened in Ketchikan, and several other places where it is now called the city and borough, and there is one governmental entity that covers both of them. Anchorage was the last one to do that.

John Bebout: We got into this ass-backwards. I told them in 1958 that as far as I could see, they didn't need any borough. All they needed was cities and then to make use of the powers to extend boundaries so that you could extend the city boundary out as far as might be desirable to provide the government where people live. In most of Alaska, they don't need a borough, not local government because there aren't many people there. Use the flexibility and freedom and the provisions of the unorganized boroughs in the constitution gives, to enable the legislature to deal differentially with the kind of local options and the problems of developing and nurturing incipient home rule self governments in the different parts of Alaska, by getting around the prohibition against special legislation for an area. This would have been simple, straighforward and a cheap way of getting around to something that they are approximating now. Now, this invitation for me to come to Anchorage next week is due to the fact that they have done nothing. I wonder what next in the unorganized borough. In other words, instead of creating several regional unorganized boroughs, they have got all Alaska outside of the organized boroughs the organized cities and borough, unorganized,

and obviously I would just traditionally next time recommend the same. Our ability to promote and nurture growth of self governing institutions to the best they can. I think the Alaska constitution provides plenty of leeway to doing this. I don't see any constitutional problems yet, maybe they can identify some for me in doing anything that is reasonable, as I said. I was interested in the fact that Vic Fischer was a little disappointed in the way that Alaska has dealt with the home rule provision. Says he does not see there are any problems with the way we wrote the home rule article.

Van Doren: Did you have some specifics on the home rule article?

George Braden: No, I didn't understand it, but now I do. I was just suddenly wondering how you handled the home rule problem of an unorganized borough. I don't know, is there a general special law for prohibition for the courts to interpret this correctly? Now when you look at the section on local and general legislation in Illinois, and then in the Texas one, which is even better. It depends on how you define "general." When you define general in a way that permits exactly what we are saying, in other words, it's the only way you can do it, and it's not, the trouble with local legislation is that it, it's a device to destroy home rule because you run to the legislature when you can't get what you want from the local government. And this is very special legislation.

John Bebout: Of course in Texas, as you well know, it's a device by which the local government would have all the home rule they damned well need to evade the responsibility for doing what they had ought to do, so they go to the legislature and ask for a special law. It happened in New York State, but the corporation counsel can say or the county attorney can say we probably can do this, under our home rule power, but let's get a special act and then we know we don't have any problem. There is no prohibition against special acts in the State of New York if the local government requests it. But the problem I think, is control by correct analysis of the general and special rural problems. I don't think there is any problem. I do want to say one more thing about local government in New York. It is one of the most complicated and irrational systems of local government ever devised by the minds of man, if you blame it on the mind of man. There have been, in the last five years, three absolutely superb cases in the court of appeals in great favor of home rule. On April 28, they handed down a two page thing in which they set back home rule 20 years. In the first place, the decision is probably wrong, unanimous but wrong, but there is a statement like this: "Home rule doesn't exist except in the case of property affairs of government." This is not true. Also, if the sate, if a matter is a matter of state concern, that's the end of it. You no longer have any home rule. And they say in here, the cities (New York City), the city has not established by, this is not a matter

of state concern. In other words, the burden of proof is on the city, instead of the burden of proof on the state to prove that it is a matter of state concern. I have never seen any opinion with so many incorrect statements.

Van Doren: In going over the materials that I sent to you and as I explained to John Bebout, that of course, these are all drafts, Vic Fisher's work is draft, Doug Pope's work is draft. Is there anything, other than what we've talked about before this that sticks out in your mind as good, bad or indifferent?

John Bebout: I have one change to suggest. Just happens to be appropriate to do, and that has to do with the calling of the convention. All of the consultants were shocked at the idea of a mandatory vote every ten years on calling the convention. For God's sake, at least call it, follow the State of New York and Missouri, every twenty years. That is often enough. Oh no, they said, these are bad changing times, and we want this constitution to be as accessible as possible to the people. Now, I would like to know why the people, the great people, couldn't call a convention any time they pleased, by simply using your initiative provision. How is the convention called. It's called by law, and if the legislature and the legislature is free to call a convention, call for a vote on the convention any time it wants to, by act of the legislature, so why can't the people by the initiative then, enact

a law providing for a vote on the call of the constitutional convention. That being the case, why any need for this mandatory vote. It may come at very inconvenient or inauspicious times, just by the calendar. Now of course, I don't approve of the initiative provision, because I don't believe in the initiative, but since you are stuck with it, this is the only good use I can think of for it. As a matter of fact, if I were, I guess to write a model constitution now, I would be inclined to include provisions for a popular initiative to call for a vote on the constitutional convention. That is the only use I can think of for an initiative.

Van Doren: It's interesting. There are two schools of thought right now in Alaska, and this was brought up last year. One school of thought says that a constitution cannot be called by an initiative in Alaska. The other school of thought says yes, it can be. That's been some debate. A meeting we had in Bethel last year, Doug Pope, who was an attorney hired by the committee, felt that a constitution could be called by the initiative method. Vic, who happened to be at the same meeting, didn't think we could, and this is one thing they are not sure about.

John Bebout: There is only one way to find out. I can't understand the rationale for the negative position.

Van Doren: That has been one of the things under discussion.

Whether or not the initiative can be used to call a constitutional convention, and it has not been settled yet. There has been discussion about it.

John Bebout: Of course, if I were writing your ideal revised constitution, I would eliminate the general initiative provision and just include a specific initiative for calling a convention and eliminate the 10 year vote.

George Braden: Does anyone know what they meant when they said this? The people may propose and enact laws in the initiative. Are there any other states, that the face of it, this seems to be saying that initiative is limited to legislation as opposed to constitutional amendment? Is that the only state that does that?

John Bebout: No, there are a lot of states that have the legislative initiative and not the constitutional initiative. What they were doing in Illinois was to prevent use of the constitutional amendment device to get legislation and limiting it to the legislature, they put it in one place. I think I drafted it, so it was safe, and I did an awful lot of work to to be sure that you couldn't use it as a nose under the tent. One remark in response to Frank's talking about the Texas constitution. He said I could write a state constitution in two pages, he says he could do it on a page and one

half. I say I could do it in one sentence. Let there be a legislature composed in a manner prescribed in the accompanying document which shall self destruct upon the convening of the legislature. Then have a schedule which simply provides selection of the first legislature as a part of the constitution. It destroys the concept of limited government. I have no objection to a bill of rights and I guess I have no serious objection to providing for a unified court system in one short article. As far as the executive is concerned, I would really like to leave that out, on the grounds that the legislature could decide whether to adopt the cabinet system or set up a separate executive, of course this would mean there would be no constitutional separation of powers, there could be a working separation to the effect that that's the way they want to do it.

Van Doren: In your eight and one half minutes you have left with us, is there anything that you would like to add, the same question I asked Frank about if we decide to have, if the voters decide to have a convention, anything you would like to add as far as issues or procedures or problems or anything like that?

John Bebout: No, I don't think so, I guess this is good enough repetition, that is having the constitution again, and having attended your constitutional conference at the

time of the reunion of the delegates and having read Vic Fischer's statements, I see no changes that have been seriously proposed that would be desirable that can't just as well be adopted by amendment. None of them are so urgent that anybody should say, well you can't expect to make the legislature to submit to such and such amendment. You damn well better call a constitutional convention.

Bill Cassella: There should be some kind of provision for a runoff, a primary or a runoff. In the situation in Hawaii, the constitutional convention had 102 members. There were 697 registered candidates for the seats in 51 districts. The tabulation of the election results indicate where the highest two were elected. It is really a fantastic thing. In other words, you can see, you got for example here where I am just picking one at random here. The first one who got the most votes got 537. The next 408, then next 338, the next 307, and goes all the way down. The point is that I just gave that as a random example, because it just seems to me that one of the things that exists here, and I don't think Alaska is any different than Hawaii. I think we have got some of these people churned up and then everybody files and here is the way it looks. You have just got to have a way so that you don't get a group of people who really don't represent anybody.

George Braden: There were two things from Texas. One was style manual, the committee on style and arrangement put together, which was then used by everybody else in the convention. The other thing was that toward the end we put together a specific document that went out to the research director of the convention, Dave Sander, distributed it around to the committees and chairmen, which was a compilation of all the rules which the committee had developed on particular drafting standards. For example, he said anytime you use the word "law", put "general" in front of it, so that you can be consistent all the way through, and nobody will ever get mixed up. Another rule was you never say "the legislature may". The only thing you put in, if you want to put it in, and even that's not a good idea, is a duty. "The legislature shall", and I suggest there is no way you can enforce, because you can't mandate the legislature. But never put in "may", because the legislature has all the power that there is, and you don't have to tell them that they can do things. Then there is subsidiary rule that we find from time to time in constitutions. This sort of thing is bad to talk about. One of the things is somebody will draft that the legislature may thus and so, "provided that". Now, the mistake was instead of doing it that way, we say the legislature "may not." And you just put in a limitation. Don't start out putting the grant as a device to limiting. Just put in the limit. There are a lot of these that we put together as one group.

George Braden: One of the things in terms of the drafting of the citizen's guide to the proposed constitution of the document in it, and you have to remember is the rule in Texas was that the convention could not touch the bill of rights, and the attorney general issued an opinion saying you couldn't even take an unnecessary comment. You go over the bill of rights, that's 1870 language, and every other thing in the constitution was drafted by Ric ____ and me. We put that whole constitution together without ever using the term "provided that". The reasons is that "provided that" as it appears in constitutions and statutes, means "but only if". Which is the only proper use of that term. It is also used for "except". Or "but". But not "only if". And it is also sometimes permissive. Here is another thing that just occurred to me, and I can find you in the Texas constitution, places where it's not "but only if", it's not even "except". Here's a new idea. And we finally ended up and never "provided that" at all. We either "but only if", or we said "except" and we started a new sentence. Simply because of the thing it is used so badly, that we just got away without ever using it at all. I would think that in your table of constitutional amendments, it occurred to me that if somebody says, well there must be something wrong with the constitution, look at how many times they have had to amend it. And the first thing that I noticed was that four amendments were simply conforming to the Alaska constitution to a new requirement of the U.S. constutition. Those

things I don't think you don't have. So you aren't really amending your constitution. In the Connecticut constitution, was the 1818 constitution, that's one of the reasons it's good, because it's before the Andrew Jackson days of anybody can be a public officer sort of thing, therefore elect everybody and before the days of internal improvement of the railroads and canals and all that corruption which produced so many of the limitations in the state constitutions, the Connecticut one like Vermont and Massechusetts are ancient constitutions, and tend to be true constitutions. The Connecticut constitution as of the time they redid it in 1953, which was known as the nonsubstantive revision, the reason was that when we were campaigning for a constitutional convention in Connecticut in 1950, we the League of Women Voters, said and I think this was my idea, you have to read the constitution backwards. Because it had so many amendments. And the Republicans who were avoiding like mad any idea of a constitutional convention because it would destroy the rotton borough system, which was to their advantage to keep, came up with this nonsubstantive revision and got all 38 amendments into the body of the constitution, and killed off one argument against it. That was the time when for the first time, they took out the word "male", which was still in the constitution. They had just never changed it. But what you have done every time the U.S. constitution changes, you just amend the Alaska constitution to conform, and I don't count that as amendments. That isn't to say anything is wrong with

your constitution. It is just that the U.S. says you can't do it anymore, so you might as well fix it up. I think that just in case somebody says well look how many times we have had to amend it, those four don't count.

Van Doren: One other thing is when we changed the name of Secretary of State to Lt. Governor, because basically that was a change where they decided that that was better terminology and they now have Lt. Governor instead of Secretary of State. So, that gives you another one, which would be five in there, and five out of 19, I believe is not too bad.

George Braden: Others are minor ones, about the chief justice. I don't know if that was a purely, that was like the amendment that says that the president can't be in for more than two terms, which is a backlash against Franklin D. Roosevelt, which was a foolish provision to put in, and if you raise the question today, nobody would put it in. Every once in awhile, you get one like that which is a personal amendment. One of the interesting things about the Connecticut constitution in terms of what people talking about, all these limitations that you put in, the Connecticut constitution creats a legislature, and shuts up. It then has an executive article, and a judiciary article, now it has a local government article, with some home rule which never existed. But by and large, there is the, they just created the legislature and there

isn't anything about what the legislature can do and there isn't any thing about what it can't do, except the bill of rights. So there is nothing about taxes. Absolutely in the whole works. Not a word about borrowing money, debts, so far as the state government is concerned. Interestingly enough, Connecticut has never gotten into any trouble with debt, and also it still does not have an income tax, and one time a few years ago, the legislature passed an income tax bill which was signed by the governor, and before it came into effect, they repealed the statute, because of a great "hoo haw" on the part of the public. So, you don't need to put things in the constitution that some governments have done. You don't have to tell the legislature what it can't do, because it tends not to do things it shouldn't do.

END OF TRANSCRIPTION FOR NEW YORK MEETING

**Transcription of Tapes of
Meeting with John P. Wheeler
Hollins College, Hollins, Va.
November 12, 1980**

Side 1

012 Guy Van Doren: Jake, what I thought we might do first is that we could go through the brief outline that I sent to you. First of all, and I think what we are looking for in these very, very broad questions, what we ask is, after reviewing the constitution, I know you have looked at it before, but after reviewing the constitution, what type of changes would you see if the people decide to vote on a constitutional convention, what type of new or modern ideas have come to light since 1955 when the original constitutional convention was held, and just a general overall impression of the constitution of Alaska.

021 Wheeler: I guess in talking about this, one perhaps needs to inject two caveats to begin with. One is that it is awfully hard for an outsider to recommend to a state what they ought to do, unless he is very familiar with how the constitutional system actually functions, because I think in a way the constitution is only one part of the constitutional system. You have developed a lot of traditions and practices around that basic document itself. The second thing I suppose, is that most of us outside Alaska still look to that document as we remember in 1955, and see no reason, it's one of the finer documents, if not the finest in terms of the kinds of positions the reformers have taken on the constitutional structure of the state. I think

the initial reaction outside might be that the thing is pretty good, I wouldn't tamper with it too much. As I reread it, it was hard for me to find areas where, I as sort of a generalist, would recommend that this is not really constitutional, or I don't really understand that. I am not all that familiar with how these provisions have been interpreted within Alaska, that would require constitutional attention to just sort of straighten them out. I have read Vic Fischer's analysis. I think what I'm saying is that the awareness on the part of those of us who were a part of this whole long reform effort in state constitutions to encourage change for the sake of change is to urge the possible opening of Pandora's Box. As I said earlier, I wonder whether this is the time, a good time for the testing of the public temper in these matters, although I realize you don't have a choice in Alaska. There is at least going to be the question of whether a convention should occur. I wouldn't have specific recommendations to make about changes, except in response to Vic Fisher's comments. We can go over those maybe somewhat specifically. I do not, I actually have nothing to suggest in terms of a new provision or a new concept drawn from recent developments in state constitutions, because I think generally that what we have added to state constitutions in recent years have not been all that progressive. In some cases, in terms of the paper I have done, and I can give you a copy of what happened in the last eight years of a progressive sort, the things that I would agree with generally,

you have already done either to the constitution or by statute. I'm talking about things like a judicial qualifications commission, and that sort of thing. Some states are now just getting around to it, in fact if we could characterize the early postwar period there is a period in which states paid a lot of attention to the executive. In the 1960's, it appeared, they paid more attention to the legislature. In the 1970's, they looked more carefully at the judiciary, and dealt with problems of unification, problems of removal of incompetent or incapable judges, this sort of thing. Questions like the one in Alaska, legislative pay, which is a small problem, but it's a significant problem. A number of states, have moved to a pay commission of various sorts and various kinds of power. As far as change is concerned or the adoption of new ideas, it would be more along that line, many of which you have already done.

077 Van Doren: You mentioned the fact that we've got to vote on the question of whether or not to have a constitutional convention not in 1982, I think earlier we were talking about whether or not we really ought to have this type of review every ten years. Whether or not, I just wonder sometimes whether or not the general public feels that they have enough information or do they really care about whether or not the state holds a constitutional convention. I wonder if 10 years might be just a burden more than an advantage.

085 Wheeler: Sometime ago, I might have said 10 years is a good time and now I'm inclined to suggest a much longer period. I think a number of things have happened. One is, as you well know, the idea of putting a periodic question of this sort on the ballot was a way of getting around recalcitrant legislatures. They are balking for selfish reasons of some sort and won't respond to public will, therefore the public has to have some kind of way to force a vote. This argument is not as strong as it was in pre-reapportionment days. Reapportionment has changed a lot of this. Legislatures may not now do, I won't even say majorities won't give them what it might want, but certainly the new clamoring interests might want, but the argument isn't as strong anymore because these people are on the one man one vote proposition. They do represent the people. If they are not doing what the people want, then the people can, more than theoretically choose someone that will. Frankfurter's admonition in turning down the reapportionment, when he said that if the people don't like the legislature they have, let them elect one that will do what they want. It was nonsense in 1946, but it is not at this time. If it is of sufficient interest that people are concerned about it, and the legislature is recalcitrant, they will get their way. I am wondering about, well so much of the American system is built, like elections, it's built on periodic action, which is unrelated to felt need. I don't know how we get around this, but I think it is a problem in the American system, because we don't often,

we don't tie together political needs, levels of political awareness, political involvement, with the very fundamental questions we have to answer.

114 Van Doren: One of the things we have discussed in New York was the possibility of, if say, by constitutional amendment or by the convention method, whichever one seems to be indicated, that particular section be changed to possibly every 20 years on a public referendum and every 10 years, the idea of appointing a constitutional commission to look into any problems or anything that might have changed during the decade and if they felt there was a necessity for calling a convention, they could recommend that to the legislature for calling it, or recommend amendments rather than having the people voting on it every ten years. That way you would have some interim work being done every 10 years, and then the vote of the people very 20 years. It was something we just touched on in New York.

126 Wheeler: Well, that is an interesting idea because you know what you should build up over a period of time is a history of the development of the state, an analysis of the problems confronted by the state, and I think constitutional issues are both, the legislative process is too focused upon immediate and temporary problems. It is very difficult for legislators engaged in, in the limited time to do their work, it is difficult for them to engage in heavy questions, and

fundamental questions and broad ranging questions, because they are worried about tomorrow. I think it might very well be good to have a constitutional understanding and about every ten years we'll look into this. A very objective group will look into the situation, and decide whether they want to recommend to the legislature that they call a convention. And then maybe every 20, let the people decide for themselves on it. As a hedge against a kind of possible arbitrary behavior by the legislature.

142 Van Doren: This way you are satisfying both ways. You are looking at the constitution, the recommendations are going to be from people chosen from the state anyway, and then by the same token, the public has the power to, at least every 20 years to say, alright, none of this has been done; something should probably be done, so we are going to vote in favor of having a convention. And of course, as you well know, the other method that Alaska has is through amendment through the legislature, which there will be some changes more than likely, in that process also.

149 Wheeler: I know that you have probably talked with Al Sturm about constitutional commission, and probably this Florida thing came up, which attracted some interest 10 years ago, 12 years ago, when it was put together, but I think the experience with the Florida idea has not been encouraging. I don't think I would move in that direction in the sense of the commission, with

the authority to send directly to the people constitutional change. I think the results have been unhappy. I think the idea of studying, putting the issues before the people and helping to develop public understanding of these issues, which are hard, at best, to understand. They are very hard to understand. And this ought to be, there ought to be a kind of systematic inquiry and systematic publicity given to this.

161 Van Doren: Basically, the only commission we discussed yesterday was the Florida commission and it was interesting to note that the amendment to remove that from the constitution was turned down, so apparently the people in Florida still feel that there is something to the commission, although it could have been also very good public relation and convincing by people or former members of the commission. When I talked about a commission, I didn't have that type in mind, I had a more than likely review commission that would meet say, every ten years, but the Florida experience is interesting and I believe it is, in fact I'm positive, that it is the only state in the Union that has that system, where they can go directly to the people.

172 Wheeler: They submitted twelve or fourteen amendments I think, in 1978. Every one of them went down the drain.

174 Van Doren: Every one of them failed. That's interesting.

174 Wheeler: By a handsome majority.

175 Van Doren: One of the things I am going to do on return home is to get ahold of the background of the Florida vote and what was done toward it, and that type of information because that is interesting.

178 Wheeler: The same time that I gave this paper, which I am sending you a copy of, there was a report given, not a paper but a report, given by John De Grove the University of Florida. De Grove was a member of that commission, a political scientist on the staff of the University. De Grove is not on the staff of the University of Florida anymore, it seems to me to be, it's Florida Atlantic, or someplace like that, but Al Sturm could put you in touch with him. He gave a rather, I thought, thorough, humorous, and insightful review of what happened in that whole effort in Florida.

194 Van Doren: If this is discussed, I am sure people are going to be interested in various ways that commissions function, which is another one of the things I need to look into now. We had talked about a commission, establishing a commission, if the vote is on the affirmative side for the constitutional convention in 1982, but this is more of a preparatory commission

in this case, that the commission would be responsible for basically setting up the nuts and bolts of a constitutional convention which is different in concept from the type we are talking about. We are talking about basically a review commission, which would meet periodically.

204 Wheeler: Has the name Vernon Eney been mentioned to you? Vernon Eney is probably the most impressive man I have ever met in this business. He is a Baltimore lawyer. He chaired the constitutional convention study commission in Maryland in the mid 60's, and then was president of the convention, and was the spark plug throughout the whole effort and that effort went down to a rather disasterous defeat. But he would be well worth talking to if you are passing in that direction. He is a very thoughtful man, politically sensitive, made some mistakes in this, very obviously, but much of the result happened because of things beyond the control of anybody. Maybe I am a bit of a hero worshipper where he is concerned, but I think he is a tremendous person with a vast store of information if you could get a couple of hours with him. Eney. He is with the lawfirm in Baltimore. If you are back through Washington again, there is a Washington lawyer who was very prominent in the convention by the name of Alfred L. Scanlon. He was the only member of the commission to get appointed to a committee in the convention, he chaired the rules committee in both for the commission and for the convention. I worked with

him subsequently. He and I were consultants together to the National Education Association, and they used a national convention to try to revise their charter. I started off by saying that to the outsider looking at Alaska and looking on this constitutional document, that it is almost presumptuous for an outsider to recommend changes to a particular state, and you don't know what the constitutional structure really is. Constitution is only one part of it. On top of it you have a good deal of practice which is developed, court decisions, legal interpretations, and so on. I indicated that to the oustider looking at the Alaska constitution, that it seems to me to have most of the requirements that many of us have been preaching about for a long time. There would be a hesitancy on my part to recommend even having a convention at this point, for fear that they would do something nasty with it. Alaska is going to have a vote, that isn't a question. The vote will take place, and it could be a positive vote, and they may have a convention and so our discussion should center on what kind of issues, how do you move toward setting this up and so on.

288 Van Doren: One of the things I wanted to say when you made that comment before, is that the, as far as asking people on the outside, is we live in the state, we work with this everyday, we work with the court decisions, we work with the legislature, the statutes and that type of thing, and sometimes in

Alaska, we are a very small state, 425,000 people, which I saw more than that when I was walking down the street in New York when I was there, but we need fresh ideas. It is nice to say, well we have got our problems and we know what they are, but it is also nice to talk to somebody outside of the state looking in who can possibly see things that we may have missed. And we live in our own small community of approximately 350,000 square miles, the largest state in the Union, but we are a very small community, and people who work in this kind of field of endeavor tend to kind of oscilate together and make their own decisions. One of the reasons we are sending people outside is to get their ideas and let them look out and look in to what we have done and give us a hand. It is not being presumptuous to make recommendations that may be valid, something that we may not even recognize.

309 Wheeler: My own work has been more in the direction of the mechanics of constitutional change than in the substantive evaluation of particular issues. I might be more useful in that sort of thing, than talking about issues, although I can pick up a couple of things that Vic Fischer talked about in his paper.

Van Doren: That would be good, because the issues are fine, but also we are looking at ways to have a successful constitutional convention.

317 Wheeler: Let me just skim very quickly. I was looking at this section on civil rights, and I think I would be a little reluctant at this point to kind of read much more into this right to privacy provision than is already there. This is one of the Pandora Boxes that might be opened, not to my satisfaction, but it is interesting that you have this provision, I think I would rely on somehow allowing court interpretation of that over time, rather than trying to write much more into it as far as the constitution is concerned.

329 Van Doren: People were getting a little worried about the amount of time that was spent going into records that people had, by state agencies, but the fact that people had a right to do basically what they wanted within the law. It has something to do with the wiretapping, and observance, but it also had to do with interfering with the privacy of the people. Alaskans are a very private people, and they did not want a lot of the work that was being done, as far as agencies, and that type, to go into their private lives.

344 Wheeler: It is of course, the right to privacy which the supreme court read into the the first amendment, which has become the basis for the abortion decision. Is there, I noticed one of the pressures in Alaska now is one of the single issue groups, the Right to Life, there are obviously going to be some problems in balancing these things out. Has this concept

of the right to privacy been interpreted to deal with problems of abortions?

349 Van Doren: Not that I am aware of, no. It basically, the abortion issue is basically the people who believe in the right to life vs. the people who believe that people should have control of their own destiny. The right to life people are one of the groups that might be highly in favor of the constitutional convention in order to put something like that into the constitution, and of course we run into the problem of what is legislative, and what is the basic fundamental law of the land. In constitutions, this is very important. The State of Alaska's constitution, compared to a lot of other states, treats the subjects very broadly, leaving the interpretation of them to the legislature and the courts. And of course, this is ideal in constitution making. What we are talking about is the basic fundamental law of the land vs. the daily problems that rise and fall with the various generations.

369 Wheeler: Vic (Fischer) has a rather long disposition on the grand jury here, that I generally agree with, I think his analysis is valid. It's probably an institution that has outlived its usefulness. I can't see a state embracing that federal provision. May I ask a question about the seriousness of the interest in the unicameral legislature. Is this sort of an old saw that people from time to time bring up?

377 Van Doren: Well, it was one of the first amendments proposed for the constitution, and it has been I believe, in the research paper on issues and the preface, you should find and in my paper here, I believe, since statehood, unicameral legislature has been introduced 13 times. Now, in going through, what this paper did was take all the amendments that have been introduced into the legislature since statehood, and categorized them as to what happened to them. In the case of the unicameral legislature, it has been introduced at least 13 times and I would assume, I would have to go back through it, but I would assume in probably five or six of those cases, it was introduced by the same legislator. It has been a thing that people who are of a more progressive vent feel that it isn't necessary for two houses of the legislature, and one can function better and less expensive and there would be less of a problem with free conference committees and with the power that they have rather than a single legislature that would not duplicate the system. The other side of the story is checks and balances. It has been brought up every year.

202 Wheeler: You know with a bicameral legislature, you often have the conference committee to work out the squabbling between the two houses when they can't agree, but in my reading of Vic Fischer's analysis, you seem to have a conference committee system with a vengence up there. When you use the term free

conference committee, which I gather means that they can start fresh.

208 Van Doren: That's right. We have two systems there. One is a conference committee in which three members of each house are appointed and when they go into the meeting, it is to resolve differences in a piece of legislation, which starts in one house and has been changed by the other house, and the house of origin does not agree with the changes. The conference committee though, may only deal with the language in the two bills. If they can't reach an agreement, they are discharged, or they are upgraded, requesting an upgrade to a free conference, which means they are allowed to do anything. They may subtract, they may add language, they may add brand new language, and it sometimes gets to get to be a problem when the bill finally reaches the floor and bears no resemblence whatsoever to the original bill. The most blatant, and I use the word blatant loosely, example of it is the free conference committee on the budget, which the legislature and the various committees in their infinite wisdom, deal with the budget submission, during the whole session. Toward the end of the session, because there is difference in agreement between the house and senate, a free conference committee on the budget is appointed. They usually just completely avoid a conference committee and go right into a free conference committee. In that free conference committee, those six members are free to do just what they

darned well please with that budget and then they need to secure the vote of the majority in order to pass it and that is all it needs. They can wreck havoc with that budget bill and add and subtract things that the committees or the finance committees have never even discussed. It has been open to a lot of criticism in the State of Alaska.

240 Wheeler: I don't know of a system in which the conference committee has that much authority. Of course there is a legislative check on it, they must be authorized to do this by the delegation of the state, so there is no interest to solve the problem. But that is not really a constitutional issue, or shouldn't be, has it reached the stage where some sort of constitutional resolution has to be made to change the system.

248 Van Doren: Well I don't think that, but I think that is where the unicameralism comes in. People are saying if you have a unicameral system, you won't have that problem. I think that is where the argument comes in.

252 Wheeler: Well, you have the usual problem in Alaska with the legislature setting its own salary, I gather.

254 Van Doren: Yes, it is a problem on both sides. The constitution states that the legislature will have a salary, and at one time there was a salary commission established, that didn't seem to work out. Believe it or not, the legislators,

and of course from a practical point of view, legislators aren't exactly happy with the system now either, because they don't like to raise their own salaries, and as a matter of fact, they just raised their salary this past session, and that was the first time in six years that they have had a raise, and one of the reasons is the political ramifications of raising their own salaries, and yet they were very much behind the times in the salary situation. The legislative secretaries were making more than the legislators. So they did raise it, and of course they came in for some considerable amount of criticism from the newspapers and media and from other people. They don't particularly care bout raising their own salary either, and at this time, that is the only way that they can do it. I don't know what the remedy is. I don't really know whether, again, that should be considered as part of the fundamental law of the land or not. Some constitutions don't carry a provision in the constitution on when legislative salaries will be raised. I don't know whether, again, with the concept of whether that should be the fundamental law of the land or not. We might protect the legislators and it might be a restriction, too.

285 Wheeler: In this little paper, I will send you a copy of it, I did, I just skimmed the results, of comparing the salary actually paid legislators with the method by which the salaries are set. And of course the lowest paid legislators are those in

states where it is set in the constitution, the figures put in the constitution. Then there is no real pattern after that. It doesn't seem to matter a great deal whether the legislator sets his own salary or whether it moves toward the creation of an independent salary commission, by which the legislators can escape some of onus for raising their own salary, which for some reason the public has never been able to understand. I think part of this is the reflection of the low esteem the legislators generally have in the eyes of the people. It is true of the country, it is the least respected of the three agencies of government, and they always seem to feel that legislators are just padding their pocket, even when they raise themselves from say six thousand to ten thousand dollars. I think my own suggestion would be to give some serious consideration to it, at least an advisory pay commission of some sort to allow legislators to escape part of that, and I think it's unfortunate that it's viewed as a selfish operation.

312 Van Doren: Then again, we raise the question, should this be in the constitution or should it be something done legislatively to create this.

315 Wheeler: In one of the publications, there is reference made to some concern about some groups about the governor's abuse of his power. What is that referring to?

319 Van Doren: Well, several things happened before statehood. Number 1, the legislature had no power and the governor had very little power in the territory before we became a state, and most of the government of the state or of the territory came from the United States government. It was felt by the delegates to the original constitutional convention that the executive of the state should really wade in there and take control of the state. They also had someone in mind at that time and apparently like our country, had George Washington in mind, who was a very strong personality, a very dedicated person of the state, who was more than likely going to be governor, and they felt that one person should have a lot of power. As states go, Alaska probably has one of the strongest executives in the United States. Some states have the legislature control most of the power. In some states it is equally divided, but Alaska is definitely an executively controlled state. We are having a problem right now. Both the governor, his top aide and the people in the attorney generals office are saying that the legislature is trying to take away some of the separation of power between the executive branch and the legislative branch. I will give you an example. The legislature passed the enabling act for the constitutional convention last year. It passed both houses and was vetoed by the governor. One of the reasons that he vetoed the bill was because the preparatory commission would be appointed with several members appointed by the governor and

several members by the legislature and a member by the Chief Justice of the Supreme Court. This should make for a well balanced preparatory commission. The governor vetoed that bill, using as his basis in one case the separation of powers that the legislature makes the law, and it is up to the executive to carry out the law. So therefore, we could make the law, creating the commission, but was up to the governor to make the appointments to be responsible for the commission. He also based it on the disqualification of legislators. Our constitution states that no public person in public office can serve more than one governmental job. So they are saying that a legislator is a legislator, but if he becomes a member of the commission, he is serving in two public positions, even though the commission is not paid. OK, so he based his veto on that. There are certain other bills that the governor has vetoed because of the separation of powers argument.

410 Wheeler: This is by far a most serious issue, but I sense in this whole business, because most of the other things seem to be sort of a problem, but manageable. This one is far more serious, and I don't know quite how it lends itself to constitutional resolution, but it would certainly be something that somebody will address attention to.

420 Van Doren: As I mentioned earlier to you, until four years ago, every single amendment that the legislature passed and put before the people was ratified by the people and was

approved, which was sixteen amendments. Since or beginning four years ago, three amendments were on the ballot in 1978 and four amendments were on the ballot this year. All of those amendments had to do with extending power to the legislature. Giving them more power, the disqualification provision was one they were asking to vote on, and whether that restriction should stay in or not, extending the power of interim committees of the legislature, extending the right of the legislature to question more and more of the governor's appointments, and a few others. All seven of those amendments to extend the power of the legislature that have been before the people, have been defeated by the people. Prior to that, the people always passed what the legislature recommended in amending the constitution. So what we are finding here, basically what it is telling me, is although there is a problem that exists between the two departments, the people's apparent mistrust of the legislature, at least the people not wishing to extend the powers of the legislature beyond what they are now, means that they like the way it is with the executive having this much power, and this can be an inference from them. Now if there is a constitutional convention, which seems to be the only way the legislature can change their status, if the convention delegates so choose, then I would say that's the way you solve this. You would completely revise the executive and legislative branches of government in the constitution and what their powers are to be. But then remember also, that any changes made by constitutional convention

has to be ratified by the people, just like an amendment, so the people may not go along with that either. So it is kind of an interesting situation.

475 Wheeler: The governor's veto powers are very strong?

476 Van Doren: The governor's veto powers are very strong. It has been loosened up a little bit by the last constitutional amendment that did pass, which allowed the legislature to try to override a veto in the special session, however the governor has the power to line item veto any budget appropriation. Any other bill he must veto the whole bill, but if it has anything to do with appropriation or budget items, he may go through and remove those from the bill. Therefore, and again, there is an argument there, the executive branch has the control of appropriation, where the legislators feel that they should have more control over that, because they are making the law and creating it and it is up to the governor to enforce it. But the way the constitution is, it has given the governor the power to strike out things in any budget or appropriation bill that he wishes.

500 Wheeler: They have annual sessions, but they are limited?

501 Van Doren: No, they are not.

502 Wheeler: They are not limited? OK, so you don't have a problem then, as we have in this state, where the governor has a free hand to veto at the end of the session. Once the legislature went home, everthing he vetoed was dead. We just voted on an amendment here, on last Tuesday, to allow a special veto session. I don't know how I feel about this.

512 Van Doren: That is one of the changes we made also, if the legislature goes into special session, they are allowed to, within five days, they are allowed to put the question of whether to override the governor's veto or not. We have no limit on our sessions at all. We meet annually, we and it's open ended.

524 Wheeler: This hostility between the executive and legislature may explain a couple of things that I read in here, without fully understanding, and that was that Alaska has a very short ballot. You elect only the Governor and Lt. Governor on the same ticket. In here, there is some criticism of the Lt. Governor and then there is the raising of the issue of the election of the attorney general. Now I gather this must be part of this general picture of hostility or have these issues come independently?

536 Van Doren: I think probably those issues have come up independently. There has always been a group which has favored the election of the attorney general, election of judges, and election of district attorneys.

524 Wheeler: Alaska has a modified Missouri plan for the election of judges?

544 Van Doren: Of course, we do have review of judges by the electorate every so often.

SIDE TWO:

003 Van Doren: Basically, the governo- has the power to appoint judges, subject only to confirmation of the legislature. People who argue for this are saying that because the governor is able to appoint his own attorney general, that basically he is the governor's attorney, and serves the governor and does not serve the state correctly. Whereupon if the attorney general was to be voted on by the public, they would have a say in the type of person they want as the attorney general. Of course the argument against it is that it is up to the attorney general's office to defend the state and the governor. Therefore, he should be working in the executive branch. There are pros and cons there.

013 Wheeler: This is probably one of the most confused positions in state government, because of the varying roles of the attorney general is supposed to play. This, I tend toward the position of the attorney general ought to be the fellow the governor turns to and says this is what I want to do, now how can I do it constitutionally? Not whether it is constitutional

or not because lawyers can always build a case one way or another, but it is hard for them to play that role and play an independent as the top prosecutor of the state for example. Of course in this state, we elect the attorney general and in most of the states, he is elected, and we end up with the situation that we have here now of a republican governor, democratic lt. governor, and a republican attorney general. We formerly had a republican governor and democratic attorney general.

025 Guy: You elect your Lt. Governor separate from the governor?

026 Wheeler: Yes, there are three different offices. There is something of stepping stone to go through. But we have a situation in the previous administration where the democratic attorney general was often suspect of making rules, so to embarrass the republican governor, and also to build up his own position for his race for the governorship. Alaska, I don't know if I am helping you out at all. In Alaska, this is an area in which this question of what is fundamental really comes up and where we have to be a little relaxed, because what is fundamental to one state might not be fundamental to another state. We have mentioned the old classic of water in Arizona and the levies in Louisiana. Natural resources in Alaska. This is something, controls of natural resources, which ought to be something that you leave to the legislature's judgment but Alaskans, evidently, feel natural resources. is something fundamental that they want stated in the constitution.

040 Van Doren: That is correct. When the delegates met at the constitutional convention, one of the problems in Alaska is they felt that we had been exploited by various companies outside. By including the natural resources provision in the constitution, it shows you how much the people of the State of Alaska think of their natural resources, even in the actual enab'ing act it was put in that fish traps would be outlawed in the State of Alaska. That is how Alaskans felt about their natural resources. Well, that is one example, but our state is totally dependent on natural resources for economic development. In the past as a territory, our major money came from the federal government. We had boom and bust days. One boom was fish, one was lumber industry and one boom was gold. In all these cases, the majority of the money that was made went to outside interests, and so when the framers of the constitution wrote the constitution, they felt that they wanted to stop this, that the natural resources were so important that they would put a provision in that constitution to stop some of the exploitation from outside. Now you can't have a restraint of trade, you can't stop it all, but they certainly wanted to state in the constitution that we had important control over our own natural resources and it's even more so now, especially with the federal government locking up the land. One of the reasons the statehood commission was developed was in order to explore the ways where we can utilize and control our natural resources without federal government interference. This section is one of the things people have

asked about more than anything else "why this section on natural resources is in there?" As you said, it is the same reason why levies are in the constitution in Louisiana, and other special sections in various states, because it is so important to our state to have some say in our natural resources.

080 Wheeler: I think we have to break away from the standard reformer's definition of what constitutes fundamental law. It has to be within the context of the political climate and political curture of every state. Just skipping through here, one area in which there has been constitutional changes in recent years, and I think of dubious value is in financial and taxation areas, where at least for the most of my career in this business which spans the late 50's into the late 70's, the question of constitutional change within the direction of cleaning up the legislatures, lifting restraints from the political practice of governments so they could more adequately confront the problems of the day, etc. Now we have reached the period where the questions seem less in that direction than for putting some of the strength back in and I am talking about now, the administrations in terms of taxing powers and in terms of expenditures and so on. We went through it in this state, and nothing came up, in both the constitutional amendment and statutory thing on taxing and spending but this legislature did nothing on that. The one provision that disturbs me more than anything else in the question of the proposition 13 amendment is the placing of the absolute or requirement of an extraordinary majority for passing

of taxes, the two thirds bit, which is part of proposition 13, which is part of the Tennessee constitution now. It seems to be occurring in enough places that somebody might think that it is the popular thing to do. Is there a significant question in Alaska to start putting this kind of restraint on taxing?

107 Van Doren: Not as much at this time. You may be aware that we have eliminated our state income tax just recently. We do have property tax, which of course proposition 13 addressed itself to, and some people are getting very uptight about the amount of property taxes that we pay. Other than talking about it, in other than several bills introduced in the legislature which really didn't go that far, we have not addressed that as much as some of the other states have, and of course we derive our money mainly now through oil taxation and revenues, and we have a severence tax. Of course there is a decision coming out very shortly from the federal government on severence taxation. That should be out, the report should be out, within the next week or so. The Western United States, as you may be aware of, is very worried about what this report is going to be, because of it severely hampering the severence tax on the major companies that have been developing natural resources in the state. Other than that, and the taxation problems that we faced in the last few years, mostly regarding oil, and oil related products, we have not gone into that very much.

127 Wheeler: I think one of the areas here that would trouble

me, and I don't know whether it requires constitutional attention, but it might, is to avoid a situation which the only reaction seems to be a clamp which threatens the legislature. We talked about this in class, but proposition 13 was largely an outgrowth of the system in California which was so effective in reassessing and reappraising property. In the time of rapid inflation that all the state had to do, the local government had to do was sit back and assess all these new resources. So in effect what they were doing, they were raising taxes without ever suffering the onus of raising taxes. I think this is the problem. I think it is something we ought to do to avoid the kind of reaction the people gave in California. It is going to have a long, there is a long time indication of what is happening. I am troubled by the two-thirds requirement too, because at least theoritically it seems to me to undo in certain respects Baker vs. Carr. What you are doing now is embracing a new form of discrimination. I think this is dreadfully dangerous. It seems to me a short run answer to an immediate problem which will have very long term effects that the people may not be aware of or appreciate what it will do. Why don't we get into something I know something about? What kinds of questions have come up in regard to the planning for this convention, for the commission first, and then the possible convention?

154 Van Doren: Most of the books that have been published, and I memorized the manual, which I noticed you have a copy of,

have been very helpful. I think one of the things that Alaska is facing is that we have never had a constitutional convention, we haven't really talked about it that much, and my committee and my work is the first work that has been done since Tom Stewart traveled around the country in 1954 and 1955 and prepared for the original convention. What has happened since then, is at that time there wasn't too much written about it, and there weren't too many people involved in it. Fortunately, I have the advantage of being able to read a lot of the things that have happened, a lot of the ways that people have prepared for constitutional conventions. How and what has worked and what hasn't worked. Then going ahead and doing what I am doing now and talking to people and I think a lot of the work that I have done, and a lot of the people that I have talked to, have borne out things that I have already read previous to traveling because I had definite ideas of what we should or shouldn't do. I think probably that rather than what we should do is that I am interested in the pitfalls that we should avoid. The manual brings up some very good things, and some of the other writings that I have read bring out some good things. I am looking, if we are going to have a convention, I would like it to be a successful convention. The Alaska constitutional convention if we have one, is totally unlimited. We do not limit it to any subject at all. That means the whole thing is wide open for revision. So two things have to happen. Number 1 is if they make changes, how are

those changes to be presented to the people. Do we want a situation similar to Hawaii where the people can either vote on any individual change in the constitution or vote on it as a whole or a combination of the two thereof. If it is going to be done, if we are going to have a convention, if it is going to be wide open, what do we have to look for to avoid any problem? And of course if it is changed, and it is changed for the better, then how do we go about convincing the people that we are doing great and wonderous things for the state in changing this and that. I think my interest might be to discuss the pitfalls to avoid rather than to exactly what to do, although I am interested in what to do also, but from my point of view, and in speaking to other people who have either been through it, or have studied it.

197 Wheeler: This manual, when I did it in the late 50's or early 60's, it was done largely on the basis of intuition and astrology. As you said, there was very little experience at that time. I was tempted to depend on the work that Emil Sadie did in preparation for the Alaska convention. I used his written materials and I talked to him on a number of ocassions. I had the experience in Hawaii to some extent. The Missouri convention of the 40's and the president of that convention was still alive at that time, and some of the other people I talked with then. But it was, based more on limited experience and common sense than upon a lot of the experience, but I think this

is both useful and I think it has been. I think subsequent experience has sort of supported some of the warnings and suggestions that we have made. There are a number of things that have come up since then that I would call attention to, and I may be overly influenced by the intensive experience in Maryland, but I feel stronger than ever about some of the things that I said in here. If you are going to have a convention, have a session previous to the opening of the convention. In other words, a gap between the opening day and an organizational session. I think this is very important. Have an organizational session a couple of months, prior to the convention for planning for assigning personnel, these sorts of things before you get underway. I would even do what Maryland did, I think, and have some kind of preconvention discussion sessions, with the potential delegates. This is very useful in terms of developing the kind of commaradarie, to get to know each other, the election of officers, this may not be as serious a problem in Alaska, but it, everybody knows there is a lot of good men there. It was very important in Maryland, and it helped elevate the discussion in the convention. That is, it helped deal with the problem of fundamentals more clearly, because the business that the constitution ought to be fundamental is constantly hammered home in the three day session. One problem though, that I don't know how to address, because I don't think you ever tell the journalists anything, is to try to educate the journalists. This is what a constitutional convention is all about. I ran into this in Maryland, along with the school school for the delegates.

I recommend a school for the journalists, say one morning, but they felt this was a bad idea, and it may have been, but what happened was the journalists showed up, they didn't really know what a convention was all about, they thought it was another kind of legislature, and they started reporting it in legislative terms. The convention works a bit like a legislature, but it ought to be less political. It works like a legislature in the sense that a lot of the work is put off, nothing happens for awhile, and then it all builds up at the end. But you send a reporter to a convention, and what happens, he has got a deadline to meet, who is going to talk to him, probably somebody who isn't terribly important to the convention operation, or is off to the side, and he is perfectly willing to talk with some aspiring politician who wants to get some headlines. For several weeks in the process of the convention, you are hearing this kind of information about the convention, not about the great issues the convention has to face and about the resolution of the problems, but at best, human interest political stories. Now anybody who wants to say something critical at all about what is going on is going to say it. Rumors get played up like that, so you tend to build up in the public, an attitude of suspicion at least, toward what the convention is doing, before the convention has really started to do anything. It is just one suggestion, if something could be done in that area of reporting in the preparation state, I think it would be useful. Backing that, in drawing from the Maryland experience, a real item of controversy in terms of the action of the planning commission was to bring out that draft constitution and I had

very strong mixed feelings about the wisdom of this. I think on the balance, I would not have done it, looking back, it was a mistake, because what the commission wanted to do, this was the convention commission planning for the convention. They not only studied the issues, they not only made a recommendation to the governor and to the people that the convention should be called, but they had drafted a constitution. The idea was that they never had the idea that this would be the finished product, all they wanted to do was show how the existing constitution was not necessarily the form of that constitution was necessary, that you could draft a reasonable constitution in a much shorter way, dealing more with regular fundamentals. But this thing got picked up by really right-winged nut groups. They got an attack on that constitution long before the convention ever met, so that the draft constitution which had no official status whatever, became a rallying point for the dissident elements that were ultimately fairly successful in rallying opposition to the real constitution when it was proposed almost two years later. I don't know if this is in the works anywhere, but I think it is a grave concern. You were talkirg about and made referennce on how to present the quesion to be decided. Make the first decision! Do you want it to pass or not. This may be a real question, when you get into this process, which direction are the people going in, and how the readers are responding to this. You can package these things in different ways. Mayrland's experience, as you know, was to present an

entirely new constitution on a one vote deal to the people, and this got voted down. Everybody says a one shot deal, I'm not going to go. So Virginia learning from this, decided to make their proposal in four pieces. They had the general draft of the constitution, and three, what they felt were controversial arguments, that they isolated out in seperate votes. All four things passed and passed handsomely. I think they would have probably passed handsomely if it had all been one single document. But if you do put it in one single document, you do tend to mobilize the opposition, because the people, whoever they are, find it, tend to respond to single bits of concern here. It contains the provision on that or this or something else, and you can get small minorities in opposition to various parts of the constitution, then a smart politician who is opposed to the document as a whole, can put together a majority out of these individual opponents. You can't look at the constitution in terms of a single piece, it has to be looked upon as reflecting a complex integrated structure. Has any thought been given to where a convention might be held?

320 Van Doren: I noticed in your manual that you discussed the fact that the University of Alaska was the site of the original convention and the fact that New Jersey held their convention at Rutgers University. In 1971 I was chosen by the legislature to do a constitutional convention site survey. At that time, we had concluded that the University of Alaska would possibly

be the best selection for a convention at that time. Since then, and the people that, the chairman of this committee, as well as other people, including Vic Fischer, feel that it should be still on campus. I have recommended another site survey study to be done next year to see what the best site would be.

403 Wheeler: Except for the need for these very important things, provisions for housing, feeding and that sort of thing. The demands on a constitutional convention would seem to me to be perhaps even less than the legislature, in terms of the different kinds of equipment you need. So much of the activity of the constitutional convention takes place in committees or on the floor that you don't need the office structure for delegates like you need for a legislature, in other words, you don't have the same demand for secretarial help, intensive work, but you do need some secretaries, but in terms of reproduction equipment, it is a smaller scale, so you probably don't need to put it where the legislature is with all these facilities. Of course you have a legislature that can meet year round if it chooses, so you have a problem of dovetailing, these two operations, if you decide to do it at the capitol. One of the great arguments John Bebout has of doing it in Fairbanks, is what if these guys do work on the constitution in Fairbanks in November, December and January, whenever it is, you can't or don't want to get out of the building.

428 Van Doren: What you have to realize is that not only do we have technological changes in Alaska, but there is a lot of

warmer clothing that isn't so heavy and allows you to move around.

431 Wheeler: Well, it has been very interesting, and I am hope that I have been able to help you in my small way. I wish I could spend more time, but I realize you have a plane to catch.

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Transcripts of Hearings Held by the

Joint Committee on the Constitutional Convention

1980

TRANSCRIPTS OF HEARINGS

held by

JOINT COMMITTEE ON

CONSTITUTIONAL CONVENTION COMMITTEE

Prepared and edited by:

GUY A. VAN DOREN,
Administrative Assistant
to the Committee

January 10, 1981

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INTRODUCTION

FORWARD:

In 1982, the electorate of the State of Alaska will be faced with the question of whether or not to hold a constitutional convention.

The Legislature has established a Joint Interim Committee on the Constitutional Convention in order to prepare materials which will be useful whether the electorate votes to have a convention or not.

There has been some question relating to the establishment of the committee by those who feel it is "too early to plan for a convention which we may not even have." I can only answer that if we fail now to deal with the uncertainties of the convention method, we could be undermining the success of a convention before it even begins. If we wait until the voters approve of a convention before undertaking proper planning, we would be running the enormous risks that procedures for the convention would have to be developed in a time of devisive controversy and confusion over pertinent constitutional issues and with a restricted time frame.

It is far more prudent to confront the problem openly and to supply safeguards and general rules in advance. In addition

to being good governmental technique, a forthright approach to the convention methods seem far more likely to yield beneficial results than to delay to the last moment.

For the construction and operation of a constitution convention there can be drawn no simple blueprint for success. But the process can be substantially simplified by using the experience of prior similar activities in other states and by meeting with persons with prior experiences in constitutional convention endeavors.

To this end, the committee authorized me to meet with recognized authorities on constitutional revision in the hope that the information gleaned from their vast experience will pave the way for a successful constitutional convention in Alaska, should the voters authorize it in the 1982 election.

The following edited transcripts are a result of that trip. Each transcript is preceeded by a summary of the meeting with the highlights and salient information set forth.

For the purists who enjoy listening to "ums" and "you knows", the original tapes are available from the committee staff.

Finally, I would like to thank the National Municipal League and its Director, Dr. William Cassella, Jr., for assisting the committee, providing facilities, and arranging for the various meetings. The League's contribution to the project is greatly appreciated.

A very special thanks to Ms. Landa Krcssa, Secretary to the Joint Committee on Constitutional Convention, who spent untold hours assisting with and producing the transcripts.

Guy A. Van Doren,
Administrative Assistant
Joint Committee on the
Constitutional Convention

January 1981

MEETING IN NEW YORK

with

MR. BILL CASSELLA
MR. JOHN BEBOUT
MR. GEORGE BRADEN
MR. FRANK GRAD
MR. GUY A. VAN DOREN

November 7, 1980

NEW YORK

The following is a summary of a meeting held in New York City at the headquarters of the National Municipal League. The League, at the request of the administrative assistant to the Joint Committee on the Constitutional Convention, Mr. Guy A. Van Doren, arranged the meeting and invited recognized experts in the field of constitutional revision, constitutional issues and constitutional conventions.

Attending the meeting were:

1. Mr. Bill Cassella, Jr., Executive Director, National Municipal League and participant in the Alaska Constitutiotnal Review Conference held in Fairbanks in 1976.

2. Mr. John Bebout who has been associated with revision efforts in New Jersey and was a major consultant to the Alaska Convention in 1955-56.

3. Mr. George Braden, Assistant Attorney General, State of New York, who has been involved in revision efforts in Connecticut, New York, Illinois and Texas, and has authored and co-authored books on the Illinois and Texas constitutions.

4. Dr. Frank Grad, Director, Legislative Drafting Research Fund, Columbia University. Dr. Grad has been responsible for the "Funds" publication, including the Index Digest and has done considerable research and writing on the form and functions of state constitutions.

5. Mr. Guy A. Van Doren, Administrative Assistant to the Joint Committee on the Alaska Constitution. Mr. Van Doren has been with the legislature for eleven years, a consultant and staff member to the Joint Committee and has written two articles for the committee entitled State Constitutional Conventions in the '70's and Constitutional Amendments Introduced in the Alaska Legislature; 1960 - 1979. Mr. Van Doren also edited the New York transcripts.

January 31, 1981

CONVENTION - YES OR NO

All persons attending the New York meeting felt Alaska has one of the best and shortest constitutions in the United States and that it should only be changed by the amendment process rather than opening up the total document for revision by calling a constitutional convention.

Comments:

1. Why bother with a convention when you don't need one.
2. Do not have one just because special interest groups are clammoring to have their issue included in the constitution.
3. The only reason there should be a convention when a good one already exists, is if the e is a serious scandal or if provisions in the constitution are so loose or so stringent that the function of government is thwarted.
4. All issues indentified by your committee thus far can and should be handled by amendment.
5. Find out what issues are troubling people either by survey or public hearings and attempt to address those concerns by amendment.

6. **Change the voting period on whether or not to call a convention from ten to twenty years, or eliminate the requirement totally and provide that a convention can be called by the people at anytime through the initiative procedure.**

In states which have had fairly good constitutions and have called a convention, the resulting documents have been wordier, and less fundamental than the original, with unnecessary language and provisions usually advocated by special interest groups. States cited include Hawaii, New Jersey and Connecticut.

PUBLIC HEARINGS

1. Find out what the concerns of the people are through public hearings and attempt to solve them through the amendment process.
2. In public hearings try not to give people the impression that the hearings are in preparation for a convention, or that the committee is trying to prevent or discourage the calling of a convention. Be neutral!
3. Try to inform the public on what should and should not be in a constitution.

VOTE PREPARATION

1. Make sure the people know as much about the constitution and a constitutional convention before the 1982 vote. This can be accomplished through the media, brochures, citizen's guide to the Alaska Constitution and public information meetings.
2. Make summaries and papers available from the 1976 reunion of the delegates from the 1955-56 convention.

ELECTION OF DELEGATES

1. If possible try to structure the election so that there are not too many people running for delegates to the convention through:
   (a) Nominating petition or process;
   (b) Runoff if there is not a clear majority for any one delegate;
   (c) Primary election first;
2. Decide whether the election should be a partisan or nonpartisan election.
3. If nominating petition is going to be used, decide the procedures.
4. Provide a way to fill a vacancy or to choose a delegate if no one runs for a specific seat.

MATEPIALS FOR DELEGATES

1. Solicit "Citizen's Papers" from Alaska and outside.
2. Citizen's Guide to Alaska Constitution.
3. Papers on Alaska Constitutional history.
4. Summary papers on original constitutional convention.
5. Papers on constitutional convention reunion (1976).
6. Papers on the results of surveys and public meetings.
7. Annotated version of Alaska constitution.
8. Sytle and drafting manual for delegates and staff.
9. Temporary rules developed.
10. Special orientation session for delegates, press and staff prior to convening the convention.

THE CONVENTION

1. Have staff resumes available.
2. Have temporary rules available for review and formulation of permanent rules.
3. Have physical location ready to go with all facilities operational.
4. Recommendations were that the convention be held again at the University of Alaska if possible.
5. Seating should be alphabetical or by lot-drawing. not by regions or party affiliation.
6. Keep the number of standing committees small, only those which are necessary.
7. Do not have a delegate on too many committees.
8. Allow plenty of time between election of delegates and the convening of the convention.

9. Establish a leadership committee consisting of officers and committee chairmen:
   (a) This committee or the President and Vice-President(s) should constitute a strict agenda committee;
   (b) The leadership should meet regularly to discuss what each committee is doing so everyone knows what is happening in the other committees.
10. Style and drafting committee should be one of the first committees established and should be small with a good experienced constitutional draftor as either a consultant or staff to the committee:
   (a) Do not write articles in committee or on the floor;
   (b) Constitutional drafting is very important and different than legislative drafting . . . more permanent.
11. Provide for either a recess during the convention or committee hearings away from the convention site.

ISSUES

1. You do the people of the state a service if you subtract from the constitution rather than add to it.
2. Alaska may wish to work on the "Home Rule" article.
3. May wish to look at "water rights" section.
4. May want to look into calling a convention by initiative and eliminate the necessity to vote every 10 years provision.
5. All consultants stressed that one very good thing in the constitution was the lack of allocation of funds except in the case of the permanent fund.

MISCELLANEOUS

1. Tight control over the agenda must be kept by the convention leadership, to keep things from going off the track.
2. If there is a convention, perhaps the delegates would be interested in new innovative ideas in the revised constitution (i.e. a new way of doing things.)
3. The people stressed that the document has undergone only a few substantive changes since its inception. Because of that, it is viewed as a very good constitution.

New York Meeting

November 7, 1980

Present: Guy A. Van Doren,
Administrative Assistant
Constitutional Convention Committee

Frank Gard

New York

Bill Cassella, Executive Director
National Municipal League

George Braden, Attorney General
New York Attorney General's Office

John Bebout (Involved with constitutional revision for a number of years, and who was a consultant to the original constitutional convention in the State of Alaska).
Massechusetts

Van Doren: I feel quite honored to be here before you today. I have read almost all the material that you have written and feel like I know your ideas and know your views on constitutional revision and constitutional subjects and the things that have happened with constitutional conventions in other states. One of the main reasons that I am making this trip is in order for myself and the committee to solicit ideas and basically pick your brains so that if we do have a constitutional convention in the State of Alaska, if the voters approve of it in 1982, we will have a little bit of a head start and we will be able to move the convention along and hopefully have it as successful as the one in 1955. I was asked a question prior to this trip about why we needed to go outside for the information of this type, and my answer was, and I feel it is quite justified, especially after spending quite a bit of time with John last

night, is that it's good to get the point of view of somebody from outside the state. We know what is going on in our state, we live with it all the time, but you people have not only had experience of working with constitutional conventions and what makes a good and successful one, and what makes one that doesn't work. I think getting the perspective of somebody from outside the area will do a lot to help us. I think probably we will just have a sort of an informal format at this meeting. I would like you to express your views and your feelings and each of you kick your ideas around, ask me any questions you want, and we'll see what happens. I will answer questions as best I can, but I'm really not here to have you listen to me talk, I am here to listen to you talk. As you are probably well aware from the correspondence that I had with you, it was at the suggestion of John Bebout and Bill that we are together as a group. I am going to meet some of you people individually, but it was suggested that we get together and kind of kick around some of the subjects that I sent you in that little paper of questions. We are looking for information and help in case that we do have a constitutional convention after 1982 if the people vote on it. We don't know how it is going to go. There are some special interest groups that feel they have not been adequately taken care of by the legislature and feel that the only way they can get some of the changes that they want is through a constitutional convention. There is some pressure mounting in the state by some of these groups to have a convention called and I'm sure they are going to be very active in

the next couple of years. We don't know at this time how the people are going to react. This committee was set up to prepare for a convention in case we are going to have one. Basically, what I am doing, as I was telling John Bebout last night, is kind of retracing a little bit the steps that Tom Stewart took prior to the 1955 convention, going around and meeting the people in the country to get their ideas and views of our constitution and the changes that you people might think are necessary or could improve the constitution, ideas on how to conduct the convention, how to prepare for it and that type of thing. Of course there is a wealth of material that is available now in printed form that wasn't available in 1955, which doesn't necessitate traveling as extensively and meeting with as many people as Judge Stewart did, but the committee felt that it was desirable to meet with you people who are recognized and have been active in revision all of these years.

John Bebout: As I told Guy, one of the main reasons why there is so much material on constitutional conventions is because of the Alaska convention. Th whole body of material that the league has put out on constitutional studies as well as the compilation of state constitutional materials was funded by the Columbia Research Fund and the Carnegie Foundation and is the result of the frustration we felt in planning for the Alaska constitutional convention. There was a lack of ready materials which we could easily get at and so we came back

and put together some materials, received a foundation grant and developed the materials which you have been studying. That's how it happened.

It is only fitting that Alaska should now benefit from this material because its convention was responsible for the birth of this idea and the need for this kind of material.

Van Doren: Relating to the materials that I sent to you several months ago, one of the reasons that I sent them out was in order that you familiarize yourself with what has taken place. I included the constitution so you could look at that, and also I believe that Bill Cassella had sent you out that little question sheet, which although informal, was prepared for the committee, of the things that we were going to do. Bill said "Well do you have an idea of what your're looking for", and so I just went ahead and sent those to you so that you would have an idea of some of the things that we are looking into, and I guess with that, we could run down the questions, or I would welcome any comments. It is totally informal, so we can just have at it.

John Bebout: Since we do have limited time, it seems to me that we ought to focus in on what you might describe as a big question first, rather than getting into details on whether we think that the provision on grand juries could be

improved or excised or something of that sort. I guess one question would be, do you need a constitutional convention, and in any case, whether you think you need one or you don't, what kind of preparation ought to be made so as to get a more informed vote as possible in 1982 on the call of the convention. That may be some question of substance, naturally.

Van Doren: Well, I think I'll just let you, if you would like, go ahead and maybe tell me what you think on that subject. I am here to listen to you as far as what you think might be beneficial to Alaska.

John Bebout: Since we didn't talk to the tape recorder at the restaurant last evening, maybe I might just recap briefly what I said on these issues. Number 1, as I just said to George Braden, paraphrasing those remarks, I don't think Alaska needs a constitutional convention at this time, and if I were in Alaska and were voting or were active, I would be trying to educate the public on the proposition that you don't need a convention at this point, but that any improvements that people generally ought to make in the constitution can readily be made, in my judgment, by the amendment process, whereas a convention could well open one of the best state constitutions up to considerable degradation in substance and of character.

George Braden: Let me give an example of the Connecticut constitution. The Connecticut constitution, except for the one man one vote problem, pre one man one vote, there is really nothing wrong with the Connecticut constitution. I mean, I don't quite agree on what I consider minor details, such as an election of the attorney general.

John Bebout: The election of judges by the legislature.

George Braden: No, it's not the election, it's confirmation. The governor appointed, but they had a strange technique because of the gerrymandered house. The house was always Republican and the senate was always Democratic. So they decided that the governor could choose which house, in terms of judicial appointments. This is not in the constitution, I don't think it was in the constitution. I think that it's just the statute must have said that he shall appoint subject to confirmation and it was set up that way so the governor could always get his own appointees confirmed by the same party that he belonged to but otherwise, it was an extremely good constitution. But in 1965, they had a constitutional convention to take care of the redistricting problem because they did have a terribly gerrymandered house of representatives and the senate was subject to 10 year redistricting but nothing ever happened because the two parties always controlled separate houses, whenever it came

up for a vote. So they had a convention and this was the primary reason. The convention, the provision for setting up of the convention was agreed by both parties, strange thing. Parties work together in strange ways, they rigged it so that there would be an even number of delegates, one half of them Republican and one half Democrat. Literally, it was just set up that way. The first thing they did was to adopt the rule of the people that anything done by the convention in the way of changing the constitution had to be approved by a two thirds vote, which was a device to make sure that everything was done and the parties agreed on. One of my very good friends who was a delegate told me that this was the most valuable thing, because it kept all of the special interest nonsense out. There was no way that any special interest groups would prevail. All special interest groups tend to want to use the constitution for what is statutory. There could be an exception or two, according on how you define special interest groups, but that is the general problem. This is one way that you could rig the convention to be sure to protect yourself against that problem, and this is a problem that arises only when you start with a constitution that is pretty good. If you have a lousy constitution that is already filled with all the special interest stuff, there is nothing you can do about it, try to get it out, and you can't use the two thirds vote that way, so.

John Bebout: We had a somewhat similar problem in New Jersey. We had a short constitution. There was nothing, no matter, that was dealt with which was inappropriate for a constitution, so the trouble was that the structure of the government was very badly devised. And as we developed the case for a constitutional convention, we kept harping on the proposition that by the very virtue that the constitution was short that it was very good. We didn't talk in terms of special interest in those days but we do now, but this is partly what we meant. We didn't rig the convention quite the way they did in Connecticut, but there was a bipartisan agreement between the two parties, the leaders of the two parties which achieved a rough division among the delegates. There was a couple of county organizations on both sides that didn't play ball, but certainly it evened out, and incidentally in doing this we were following an 1844 precedent. This kept either party from running away with it, as the republican party had in the legislatively called convention of 1943 or 1944. We produced almost the same constitution that came out of the convention in 1947, but party organization tilted, and people turned it down, where, as apparently, they accepted the 1947 constitution by an overwhelming vote.

Van Doren: In the New Jersey convention, were the delegates selected on partisan or bipartisan?

John Bebout: They were nominated by the party organization.

Frank Gard: Whether you go ahead with anything of this kind, my comments start off with saying that I don't know enough about the Alaska situation to ask the real sharp questions one should ask, but I'll try. It seems to me that anything that moves in the direction of a new constitution ought to consider very carefully what the local situation is and from my own general opinion of the constitution, I would say that although the State of Alaska has some verbals in it here and there, on the whole the Alaska constitution is one of the better constitutions that we see in the United States, and it seems to me that unless there are some specific problems with the constitution that need to be resolved, the constitutional convention is in many respects a very expensive, time consuming and to some extent causes a disturbing event. In other words, it does disrupt the normal political processes. It suffers for a short period of time the nice question of who's doing what. There are certain things that ought not to be handled by the legislature, but there is a question of whether they are properly before the constitutional convention, and there is a kind of interface with many of the people in the constitutional convention and the legislature to change, basically, specific points which are raised in a constitution committee. I would, my general choice is that I don't see that any kind of a setting of this sort would help. Why bother with a convention if you

don't need to. Now, the question arises of course, if there are problems with the present constitution which in some way stops you from doing what you think you ought to do or you have to do, or there are things you cannot do because of constitutional obstacles, well then, you've got to remove those obstacles, but whether one ought to undertake the rather substantial effort, costly, time consuming, energy depleting, of a constitutional convention unless there is a very real need for it, I just plain don't know. I would think that unless there is such a need, you feel, on the political side, you might simply say that you are getting into this at a time when there are substantial changes in the duration of your politics I suppose, and one thing I would be very leary about is to get some of these directions in some way frozen into the constitution. That kind of stuff can best be taken care of by legislation and the temptation to in some way freeze certain political directions of the constitution may become almost irrestible, and so from that point of view, too, unless there is some really compelling reason to go into a constitutional convention, I see no reason on the face of the Alaska constitution to do so. My first question if I were asked to serve as a consultant to the convention, or the commission, or what have you, that's neither here nor there, my first question is what are you trying to accomplish? Where are the present problems in your system that you need to resolve by constitutional convention? The next question would be, supposing there are some problems, obvious, significant, specific, and

isolated, so that it would be possible to manage them by way of a constitutional amendment rather than by getting into the rather massive and difficult and substantial effort of a convention. Your constitution has rather liberal amendments, unlike some others, where you have kinipsion fits before you can change anything, and that being the case, while obviously you have to, you are under the obligation under the constitution to present the question to the people from time to time, unless there is some compelling need to go ahead, I don't know, it's simply just a question of not knowing the territory. I'd almost like you to tell me first what is ailing you at the present time.

Van Doren: Just to answer quickly, really nothing. Well, I won't say that. There are, we had talked about this a little bit earlier, there are special interest groups that feel that they have not had the type of satisfaction that they believe they deserve in trying to get constitutional amendments through the legislature. The other gentlemen here have received papers from me. We have some issues that have been presented thirteen - fifteen times over the period since statehood. Of course, as you mentioned, some of the times are changing, and some of the special interest would like to see changes in the constitution, and notwithstanding all of that, we do have to present the question before the people in 1982. But I think the major push toward holding a constitutional convention will come from various interest groups that would like to see changes that they

are concerned with, that they have not been able to convince the legislature that these things should be part of the fundamental law of the land. I think they are the ones that will be looking toward having a constitutional convention.

Frank Grad: You are given the classical reason not to have one. Because that is precisely what you want to keep out of the documents, some particular special interest concerns and strongholds, and if you can't get them through the legislature, that to me is a very good reason not to have another constitutional convention.

George Braden: It seems to me in the process of thinking about and educating yourselves on the question of whether you want a convention or not, you want to go back and look at some of the older states. Texas is a pretty good example as any, New York is another good one, that have been changed either by convention or by the amendment process or both. I have had to recognize most special interests in one way or another, and the more you recognize them, the more they have to be recognized, and re-recognized. Everybody likes to be, and generally is, mentioned in the constitution, but not everybody is recognized equally. And once you get a constitution like the Texas constitution, it becomes inordinately hard to unstuff it. It becomes impossible to do by amendment, and I was down in Texas recently, it was almost impossible

to do it, at least it takes an awful long time by convention.

Frank Grad: One aspect of this which you see and I find particularly difficult, let's assume that you get a vote and the vote of the people is go through a convention, and then what happens is that all of these special interests are going to get into the constitution. The first thing that happens in forming a convention is that the people in the convention are going to demand that there are special committees on any number of these issues, and that is a very difficult part to resist. Why not have a committee on a particular kind of interest area? The next thing you know is, who is your committee? That particular segment of learning or governmental concerns, inevitably gets into the constitution. I can predict within a number of pages how long the constitution is going to be, depending on the number of committees in the convention. You get those special interest groups tied into a particular committee, you can bet your bottom dollar that that's going in the constitutional document, one way or the other, because each convention committee must get its particular thing into the constitution.

George Braden: That was one reason why PAS sternly advised Alaska when it set up its convention, to keep the number of committees down, if you didn't, each committee felt it was a major subject appropriate for a constitution. We did the

same thing in the Texas convention, and the Illinois convention, so if you are thinking of the structure of the convention, the committee structure is item number 1 on the agenda. This was agreed in Michigan, so this has been learned, you see, and pretty widely accepted as true. Alaska helped set the pace for a modern convention.

Frank Grad: This thing is so difficult to resist because when you start some special interest group, you hope to satisfy them at least half way by giving them their own committee, but that's a major commitment. That is, it seems to be so petty, not to let them have their own committee on whatever it wants. Well alright, you know now that you have already made the decision to put their special thing in the constitution.

George Braden: The 1938 constitutional convention in New York was of course held during remedial days, public housing was a great issue, and public housing had to be recognized in the New York constitution, and so they had to develop a committee and they introduced the housing article which was as long as any good constitution ought to be all by itself. It's a nuisance and was not necessary. They were under the illusion, I guess, that somehow public housing had to be authorized under the constitution, while actually the housing article in the New York constitution

isn't a housing article at all, it's just an article which is very complicated.

Frank Grad: The constitution is probably, in our existence, the original P.R. document, in other words, what you are saying to the people is to consider which of these values are important. You start off with the bill of rights, and then you cause anything else which you think is important on the constitution, that's how you get it. It is a P.R. document, you get anything which you think important in the constitution, the substantial statements on, you know, the obligation of the state to provide for the public health. You don't need it, but it's nice, providing for health and safety of the people.

John Bebout: Well, the consultants at the Alaska convention protested against that. We said, you don't need that, it's implied that the state will take care of the welfare of the people, but these are in the order of "good things." The delegates thought they ought to recognize it. Fortunately, they didn't tie it down with specifics.

George Braden: Let's go back to the first proposition we started out, whether we should have a constitutional convention. I would say we all agree that you should not have one in Alaska. One thing worthwhile figuring out is what are the ways of convincing people. I don't know why the Alaskans

put this voting for a convention clause in at a ten year period instead of 20 years. Twenty years is a magic number which goes all the way back to something that may or may not be a proper quote. Thomas Jefferson said that "You will have a revolution in your government every 20 years," or something like that. But the real reason for putting it in I have always assumed was, that people realize that if you depend upon the legislature to call a constitutional convention, the legislature is likely not to do it, and you have to have an escape hatch to be sure that the people have some say, can at least get action because the legislature won't do it, and so 20 years is this magic number. The point is that if you remember it from that point of view, you have got one tendancy, if you look at it the other way, it's like climbing a mountain, you climb it because it's there, and here's this vote coming up and, so obviously, if we are to vote on it, it must mean we ought to have a constitutional convention. This is ridiculous! I think you go back, so that you say, the fact that it's coming up on the ballot, don't pay any attention to that fact. That just gives you an opportunity to think. Now think. Do you really need a constitutional convention?

Bill Cassella: I think this is a very important point, and my feeling is that one of the things that you people should look at and I think you already have, is look very closely at Hawaii, because here Hawaii had a constitution with quality, I don't think it's as good as the Alaska constitution is,

as adopted, but it certainly is one of the better constitutions, and they have had two constitutional conventions, as you know, since the original one. I have been there at the time of both of them, and really, they didn't do much, I mean they were a total waste of money. They gave me two trips to Hawaii, and gave John one, but as far as the second one was concerned, the one that was two years ago, it seems to me that it was just exactly what you don't want to have happen in Alaska, now in terms of what you don't want to have, what was threatened in Hawaii, happen in Alaska, and I'm not certain but what it might be impossible to diffuse the thing in Alaska the way it was diffused in Hawaii. It was diffused in Hawaii purely and simply because the establishment got control of the convention, there was no question but that is what happened, and the establishment of the leadership was a very traditional leadership in the state, and it got control of the convention and did what amounted to a cleanup job, I mean, you know, a few little things here and there. I don't think what they did did any harm, but there was this outrageous waste of money, and it obviously didn't really do the thing which I had hoped it would originally do, and the League of Women Voters had this big deal which they did with the Endowment for the Humanities, where they had this project that went on for months in which they did all kinds of surveys on what the people thought should happen and all that sort of thing, and the truth is that I think that the people who really wanted a

convention and felt that was the way to do it, when all was said and done, felt that they had wasted their time. When I went out there, and I gave a talk which in effect said to keep out the crap, you know, that's what it was, it was a talk which, in effect, said do as little as possible. Clean up a few details, and that's it. The point was that they wanted to get into the constitution all, in this instance, all the "good" things, they wanted quote, unquote, and it was the environmental protection kind of thing in the neighbor islands, and a whole lot of other things that which was just evidence of a general mistrust of the legislature. This brings me back to exactly the kind of thing that George was saying. I don't know what the substance is, it would seem to me that one of the most important single things is that, if there is a general consensus among leaders that they don't think a constitutional convention would be useful, there are certain things that need to be put to the vote of the people, I think that getting the amendments through the legislature in this next session that's coming up, the session before the '82 referendum, tactically would be the most important thing to do and it may blunt the possibility of having a convention if you could. Now, I don't know if the time table will work, you could get that on the ballot in '81, couldn't you? Could you get the proposition on the ballot or some amendments on the ballot?

Van Doren: We had approximately four propositions on the ballot

this time, and I haven't heard the results at this time, and some of them did address some of the concerns of the people in the state. How they fared, I don't know right now.

Bill Cassella: I think this is the single most important thing. And then on the other thing, and it would seem to me there are certain issues which we all say are legislative, and shouldn't get into the constitution, the legislature has the power to handle those, well, it seems to me that if there is a substantial agreement that it should be handled, it certainly would be important to handle these, if possible, before you go to the people with a referendum on the convention, so you can say, "Well, the legislature is responsible." In Hawaii, the problem was that a lot of the people, with a certain amount of justification, were saying that the legislature had not handled things well, and then of course, there was a very very major dissatisfaction, in certain aspects of the judiciary, which was the fault of the governor, because of the people he appointed to the courts.

Frank Grad: Let me say, let me add one little point, my own, while I'm always strongly in favor of support and protection of the environment, I have nonetheless resisted constitutional amendments to write the environment into the constitution every step of the way, and it seems to me that we are much better off with decent legislation, not an amendment to the constitution.

George Braden: As a matter of fact, I thought that the "forever wild" division in the New York state constitution was an acceptable exception to the rule of keeping it out, on the grounds legislatures by definition are short term people and they will do something today, because they don't much care what it is going to be 20 years from now, and a "forever wild" provision, I decided, made some sense.

Frank Grad: The legislatures in some states are constantly under pressure by the variety of industries including the paper industry, to allow the trees to be chopped down, so in a sense the legislature generally doesn't mind this "forever wild" division.

George Braden: The truth of this is not important, it is still the idea. The other thing is, again, this is related to whether you want to have a constitutional convention or not, with the constitutions I've watched and that I've worked with, I have worked up a theory that if you want constitutional revision, one of two things has to be around. One is that the government is in great trouble because of the restrictions in the constitution, and the other one is you have some cerrific scandal involving the state government. This was what got a constitutional convention in Texas, but by the time they voted on it, the scandal was passed and they had forgotten about it.

John Bebout: I have a theory for example, that when we voted in '77 for a constitutional convention in New York, the only possibility would have been if whatever his name was, had succeeded in uncovering the corruption of the judiciary of the State of New York. He never succeeded. He got blocked. That would have been the only thing I think would have gotten a favorable vote. Now if you don't have either problem in Alaska, then why the hell does anybody want a constitutional convention? You could cook up a good scandal between now and then!

Bill Cassella: My feeling is that the tactics, and I don't know, I was looking over this stuff that Victor Fischer put together, and so on, and looking at the issues, and it seems to me that there are so few fundamental things that are issues that need to be addressed, that I think would be the real, that the danger is that if you got or chose a convention and got one elected, the people would then determine they had to do something to demonstrate that there was any reason for it being there, and that gives a tremendous opening to all the crazy stuff which gets in for whatever reason, because then they are just doing something, and I think that the polorization potential is just incredible. Now, in Hawaii, there is just no question but that the convention polorized the feelings in the state because of the fact that there were so many of these

limited special interest groups, and of course the geographical problem was very significant there because of the geography of the state. Another thing that seems to me is important to consider is the fact that the whole process itself, in other words, in order to go through any kind of preliminary work, it seems to me that one of the things that's got to be very, very carefully handled, is this kind of going out to the people to decide what the people want because I think that when they did that in Hawaii. . . . that by going out and trying to get the people to identify problems, my feeling is, and I discussed this with the people in the League of Women Voters Education Committee in Hawaii, and I said that I felt there was some real risks in going out and asking people, as part of the preliminary to a constitutional convention, when the people knew in this case, that a convention was actually going to be held, what should be done. In other words, what are some of their concerns, because I think that when you look through that product, so much of it and I shouldn't say all of it, but so much of it was stuff that really was not constitutional material or were not constitutional issues, and one of the things I did was to try to get the convention to issue a report on issues which were considered as things that were really not appropriate for the convention but which should be considered by the legislature.

John Bebout: This is very important, and I think, we discussed this last night, I would like to ask Bill if he knows much about what really happened in Florida with the last constitutional revision commission. They went out and did the same thing they did in Hawaii, and they asked all ensundry what they would like to have in the constitution, and of course, they would like to have everything but the kitchen sink in it, but it seemed to me that number 1, the commission over-loaded this job by freewheeling input by the public and number 2, it was super conscientious in trying to respond to too many of these wishes. Happily, the people of Florida turned down that proposal.

Van Doren: One of the questions I was going to ask you, Bill, in relation to your comment, is what about the case, as our committee had contemplated doing, of holding hearings to find out the issues before they even vote on the question of whether to have a convention or not. One of the reasons being that we possibly, in identifying the issues that the people will come up with, could draft amendments that go through the legislature to take care of their problem before they even vote on the constitution issue.

Bill Cassella: Well, I think that is an entirely different situation, and I am in complete agreement with the process whereby you do something to get people to identify concerns

and use that as part of the process prior to the referendum on the call. I don't think there is any problem there, because I think that is an opportunity to do just exactly what you are saying, in other words, to get some of these things, and I think it is not just a matter of enacting amendments, but as a matter of fact, you have an opportunity to enact statutes to demonstrate the fact that you don't need a convention.

Frank Grad: I would, however, interject just a very small thing. And that is if you do, play it very low key. Quite simply because if you are going to do a real kind of side show of getting public feelings and getting people into the stating of their concerns, in a way, this may almost compell you then to make a case for a constitutional convention. In other words, if you are in a sense, still being an atmosphere in which the next logical step is to proceed, it seems to me you can have a subcommittee, take testimony without too much fanfare and keeping it low key, then I would think that's fine. You inform yourself as to what needs to be done, and do it legislatively rather than saving it for the convention. On the other hand, for a convention, if you are going to have public hearings all over Alaska, a great deal of fanfare and newspaper coverage, and what have you, you are then creating an aura in which the next logical step could be to proceed with the convention. I think it is not what you do, it is the way you do it.

Bill Cassella: I think that you have to be careful and not make it have any sort of an almost hypothesis that "We're trying to find out what a convention should do," in other words, that, I think, is where you see in many places where this kind of problem exists, like in Illinois for example, the whole purpose of those preparatory groups ahead of time was to demonstrate the need for a convention. You see, we are dealing with exactly the opposite kind of problem. We are, I am not suggesting that we are not using this for a perfectly legitimate purpose to find out what are some things that should be done, but we certainly are not using this as the process to go to the convention route for doing them. And, in view of the fact that a great many people, apparently including all of us, feel that a convention would not be appropriate, we have got to be awful careful that we don't get ourselves trapped into using some of the techniques which would be appropriate for getting exactly opposite results of what we want. On the other hand, in view of the fact that there are those out there that think that you can't trust the legislature, you can't trust anybody, and that's the reason we want a convention, to give the people that right to do it, you have got to be awful careful that we don't seem to be subverting that process too. I mean this is a delicate P. R. thing, you've got. You can be too cozy about it, as well as giving it the fanfare.

George Braden: You can also, being very careful how you do it, if you play around with the line that I use when I am talking about limitations in a constitution, I've said the reason for a constitution is to limit the government. You have to be careful. You have two types of limitations, what I call general limitations which are primarily the bill of rights, which is designed to protect the minority against the majority. Then you have what I call special limitations which are all these things the special interest groups want and all these things like debt limits, and tax limitations and other things. I say these are constitutional provisions to protect the majority from itself because they are incompetent when it comes to electing the legislature. Now it is a little difficult, but this is the idea. All of these special interest groups or anybody else who wants to put this crap in the constitution is literally saying for some reason or other we don't seem to be able to elect people to the legislature to do what we want. Therefore, we have to get it into the constitution.

John Bebout: I think we have a beautiful historical equation of that. In the wave of constitutional amendments that were adopted to limit the legislative power after the civil war, we discovered that after 100 years or less, the legislatures aren't always wise and that state and local governments weren't wise, necessarily, in handling finance and so the post civil war amendments adopted into parts of the New Jersey document and many

other states, put severe limitations on the power of the legislature in the fiscal area and some other areas. Well, it has taken us now nearly 100 years and we haven't finished it. We ar· overcoming the unfortunate effect of those things on state government.

Bill Cassella: Now we are doing the same thing all over again by the tax cuts. The expenditure cuts.

John Bebout: Now while we are talking about history and we are in the process of making some new history presumably, signalized by the election of our next president, which calls for a less active national government, and greater reliance on state, local and individua' ıitiative, leadership, energy and so on. And if states continue the process started by Proposition 13, for example, they will be hobbling themselves and depriving the people of the opportunity to demonstrate whether or not it is really possible to operate this country on a substantial degree of decentralization of responsibility and authority.

Van Doren: Well, I think we have kicked around our feelings about whether or not Alaska should have a constitutional convention, and I think the concensus definitely in here is that we should be very careful about having one or promoting one. I think the next question we probably ought to move to is, we

can say that it would not be a good idea to have one, and maybe some of the people that are involved with this committee back in Alaska can say the same thing, still, the people may vote for one, and I think probably the next thing that we ought to look into is if indeed the people vote for one, the preparation for it, the various ways that you gentlemen have had experience with in setting up a convention and then perhaps get into if we are going to look into it, what specific things in the constitution exist right now that you feel need revision, and I know I've sent three of you some of the things that we looked to before this meeting. I'm sorry that you weren't included in that, Frank. I think probably we could move on to that.

George Braden: I wonder if, you see you are thinking of preparation for a convention to be called, I think at the same time you need to be considering preparation for the vote on the convention. Now, let's refresh our memory. If the people vote for a convention, is the election the following year?

Van Doren: Not necessarily. That's not spelled out. The way it's spelled out in the constitution at this time, is that the convention would be held as near as practical to the 1955 convention, unless changed by law. Now, the legislature in 1971 and also last year, introduced an enabling bill for holding a constitutional convention. The bill passed the legislature, both

houses of the legislature, and was vetoed by the governor for various reasons. He questioned the constitutionality of the legislature appointing the constitutional commission, stating number 1, separation of powers, number 2, disqualification of legislators because of holding dual office. There were several other reasons why he vetoed it, but the enabling legislation was vetoed, and we did not take up any of the vetoes during our special session, so what needs to be done is the establishment of another piece of legislation, this coming legislative session, which the chairman has decided he is going to do. Whether he sets up a procedure for the legislature to authorize the establishment of a commission and to fund it, and then allow the governor to make appointments, or whether he has it a totally legislative commission, I don't know which way he is going to go at this time, but one of the things that we are looking into is developing that type of legislation. The procedure which they had envisioned in this bill was that if the people did vote to have a constitutional convention, that an election would be held on the third Tuesday of May following the referendum vote. The election of delegates would be held on that third Tuesday of May, and then the convention would convene on the second Monday in September. I believe there was a 90 day limit, but I'm not quite positive about that. That was the procedure they were going to use, and of course, it is impractical now to hold a convention similar to the way the one was held in 1955.

There has to be changes as far as the vote, the number of delegates, the representation, the time period, a few other things. So, in effect, it would be totally new legislation, enabling legislation, to hold a constitutional convention if the people do vote for it.

John Bebout: Certainly the people ought to know as much as possible about their present constitution before they vote on the question, before the convention is held, if it is held. My number 1 suggestion would be that you see if you can't possibly do a citizen's guide to the Alaska constitution similar to the citizen's guide of the Texas constitution, preferably with George doing it. If he can't, he could possibly coach somebody or help somebody put it together. I think that would be a very enlightening document and have permanent value. Every state ought to have one, whether there is any question of a constitutional convention or not. It's a little like the League of Women Voters' "Know Your State Constitution", but frankly, this is part of their jobs, and this other is a highly professional one. Present it very clearly so everyone can read it and can understand it. It's too bad it isn't out now. I supposed that following the constitutional reunion session in Fairbanks, the material, the record of that would have been gleaned to produce a permanent document which would in effect have told the people of Alaska what those who have had the most

important experience in working with the constitution think about it, what problems they have found, what problems there are. Now, I don't know what the state record is but I think it would be worthwhile to review it and get some of it in the public domain. Now, for example, we talked about Judge Stewart's work, which was an excellent piece of work, he had a manuscript as I recall, which wasn't completed, and he had said he would be glad to complete it. Tom told me that nobody's asked him to complete it, and therefore, it hasn't been done. That should be completed, and made available. That record should of course be valuable to anybody who is working on a citizen's guide to the constitution.

Bill Cassella: I think that a very well put together guide to the Alaska constitution might be valuable to every point of view. Valuable, simply because of the fact that it is the kind of thing that is needed. But also, if it is done right, it can certainly put the thing in perspective, and my feeling is that if there was enough description, it seems to me it would convince the people that they are in pretty good shape.

John Bebout: In addition to a citizen's guide, it occurs to me there should be an annotation of the Alaska constitution. First, it would not be difficult to write. You don't have historical problems of tracing the constitution and things of that sort, you have a much shorter period of time in which to put in the explanation. The annotation of what happened to the constitutional provisions. But the comparative analysis will

be a device to show how good the Alaska constitution is. And on the comment part, if you follow the rules, and everybody does, that the author can say what he wants to, he will get over this idea very quickly that this is a very good constitution, and you can justify in advance of the vote on the constitution, that the citizen's guide is worthwhile. But the other thing, the annotation, is worthwhile, too. The Illinois one is now obsolete and nobody particularly wants it. I asked for five more copies of it, I am running out, and I instantly got 25 from Joe. He's trying to get rid of them. But the Texas one is not obsolete, because they didn't chang the constitution. So, you could say the preparatory commission ought to commission the annotated and comparative analysis. Everyone agrees that this is the best thing you can have for a constitutional convention, and point out that there wouldn't be time to do it, if you waited until after the vote. Between the vote and the convention. So therefore, you go ahead and do it on the very simple ground that if voters vote it down, (the constitutional convention), it is still an awfully good book to have, and if they do vote in favor of it, then of course it is essential and you haven't wasted any money.

Bill Cassella: It seems to me that you don't say it just exactly the way you said it. You said that you are preparing it for the convention. My feeling is that you are preparing it for the State of Alaska. We need to know what our consti-

tution is and how it compares with other states, in order to better understand it. And if we should decide that we have to have a constitutional convention, then it would be useful to the convention, but if we don't have a constitutional convention, it is a document and it is a publication of continuing utility in any case.

John Bebout: And furthermore, of course, unless the convention drastically changes the old constitution, it would be very easy to update it after the convention, in this case at least, because the certain shape of the document won't change very much.

Frank Grad: Of course if nothing else changes, they cut up the constitution, put it in a hat, churn it up and change the numbers. What of course happens is you haven't improved anything, you haven't necessarily changed anything, but you make it more difficult to find anything and you make it more difficult for people like George and myself to index it and do anything with it. But that is the inevitable consequence.

Bill Cassella: I think that would be a project that would be enormously valuable from every point of view, and would probably have the result of just demonstrating to people the fact that you are in damned good shape.

John Bebout: Now I can say what George can't say, and that is

that you ought to make every effort to get him to either do one or both of these projects, if they are done. He ought to be made editor and chief and select and coach the person to do it. In the case of the Texas annotation, it was much too big a job for one man or even two, so what we did was to recruit a cadre of co-authors, most of whom were very good, but they worked very closely under his direction and he edited the whole thing.

Frank Grad: In the convention, Illinois, I was in Illinois on a couple of occasions and George's work was absolutely brilliant. If I hadn't had him, I would have had to work myself, and that's terrible. There are very few people around who really have a familiarity of the kind of detail regarding the constitution. You can save yourself a lot of trouble by getting someone who really knows the stuff, there's an awful lot of people who write on constitutions, and what have you, and you have a room full of people right here, including you, obviously, but it is a different matter when you've got people who have some kind of familiarity with broad things and broad analysis, for now this is broad policy issues and people have done some actual work in the drafting of constitutions and close analysis of constitutional provisions. And of course, that is where the real difference lies. This is an area where, let's face it, the broad policy, the broad outlines, rather simple to say, but that is pretty much how we talked in the

earlier conversation. The real difficulty in this field when you are going to go into any kind of developmental effort, is to work with the very persnickety and sometimes hard details, and there are very few people around who really do that. As a matter of fact, there are very few people around who have any experience in constitution drafting. The reasons why our constitutions are in such bad shape is quite simply because they are drafted by legislative draftsmen. The technique of legislative drafting, I do a bit of both, the technique of legislative drafting and the technique of constitution drafting has really got to be dissimilar. In legislation, very often, the effort is to be highly specific and highly detailed, particularly in fields where this is called for, this is always called for and in many instances, it is just as bad as constitution drafting. But the level of the generality and the level of broad statement that you aim for on the constitutional side simply is different from the legislative drafting side, so if you just throw in a bunch of legislative drafting and constitution drafting, the likelihood is you are going to get yourself a very detailed and involved constitution. The real sense of distinction between the two documents, and this, I think, is something to be very careful of if indeed you do go into the constitution drafting effort. Your legislative draftsmen really need some rather hard-nosed retraining and reorganization because it is a different kettle of fish.

George Braden: Well of course the law schools simply don't train people for constitution drafting.

Frank Grad: No, they don't because they barely train them for any kind of drafting. Columbia is one of the few schools who train people for legislative drafting to some extent. That is a very real problem. There isn't all that much of a market for legislative drafting, you would be training a lot of people for very little work.

George Braden: I hope that you agree that, I have made the statement a number of times, and I have said this a true statement, whether you agree with or not. There are only six experts on constitutions in the United States. I define that as people who have advised and worked with more than one constitution. When it comes to drafting there are only two of us in the United States, Frand Grad is one, and I'm the other. The sad story is that I accidently got the job I now have, otherwise I would have been available, but as you say, the demand is so high. There was one time when John could have gotten me three jobs. But then when the Texas one ended, there weren't any around. The idea is that you bring in somebody from outside to do your drafting indicates you haven't got anybody that can do it, and nobody likes to admit that, and my problem is that I am pretty well committed to my job until

December 31, 1982. The Attorney General and my boss, the Assistant General, are in agreement that I can help other states and they allow me some leeway, for example, not having me take this as personal leave or annual leave. I am officially here, as long as the state doesn't have to pay my expenses.

Van Doren: OK, we are down to, we have gotten into some of the things that possibly should be done before the vote is taken, we're talking about the annotation of the Alaska constitution and also a citizen's guide. Let's keep on maybe before the vote and then go into after the vote, should the vote be in the affirmative. Of course, if it's in the negative, I think probably a lot of the work that has been done, will be done and is being done right now is going to be beneficial in the future, because we are going to have this unless it is changed by amendment, without a constitutional convention, we are going to have this vote every ten years. There is also a case if something comes up as you discussed, the scandal, or real trouble in the government that the legislature in our state can call a constitutional convention. So, any of these things that you have suggested so far are going to be beneficial and we are definitely working along those lines, but let's go in the case of the voters approving a constitutional convention, from your experience, where do we go from here?

Frank Grad: Election of delegates. That presumably would be provided in the enabling act of the coming year.

Bill Cassella: My feeling is that it is absolutely imperative that you avoid the situation that we got into in Maryland on the election of delegates, where you had a mulitiple, you had so many delegates running for each spot that it ended up that most of the members of the convention were elected by a minority, and in Illinois they had a runoff election, so you didn't get a certain percentage, in other words, you got a, I can't remember what it was, in other words, you got a substantial percentage of the vote.

George Braden: In Illinois you had a primary for delegates and the two highest ran in the runoff and you chose one of the two.

Bill Cassella: I thought in some cases there wasn't any runoff. There wasn't any . . .

George Braden: I had heard that if one guy got the majority the first time . . .

Bill Cassella: If a guy got the majority the first time, then you didn't have the runoff.

George Braden: It's the typical Southern primary.

Bill Cassella: Which actually got a better composition of the convention. Maryland had a lot of extraordinarily fine people, but they just didn't represent the state.

Van Doren: Just to give you an idea of what has been discussed so far in the selection of delegates, the enabling legislation that was passed and vetoed last year called for the same representation as the legislature, in other words, 60 representatives, elected from the House Districts, and Senate Districts, and then five members elected at large throughout the state. This was considered a good balance still using the legislative apportionment, and it was the general feeling that the five members at large would probably reflect more of the leadership type of people, these people who ran from the whole state at large. But at least in that draft of the enabling legislation, it called for 65 members as I explained.

Bill Cassella: The problem was that if there were each of those 65 districts, I mean for the 60 districts that are going to run from the senate districts and house?

Van Doren: Senate and house districts.

Bill Cassella: Well, in each of those districts, was there any provision to keep you from having multiple candidates, and

end up having them like in Maryland, representing just a few people? This is the caveat that I raised, and I think it is a very important one.

John Bebout: I certainly agree. Again, in New Jersey, both in 1824 and 1947, we side-stepped the issue by the bipartisan agreement, which resulted in no contest or no significant contest. We were able to do that in New Jersey both times. In New York in the election, the members at large have generally speaking, been some of the best members of the convention, distinquished citizens, this is especially true in 1915. I remember what happened in 1967. What happened in 1967, it was proposed that the two parties get together and nominate some of their top people. Governor Rockefeller was so sure that the Republicans were going to sweep the convention that he refused to play ball, whereupon the Democrats took the delegates at large. Now, some such deal, I think, if possible, should be made for the five or whatever number of delegates at large that you have.

George Braden: I understand the thing in New York has always been operated on a party basis and the experience in New York, plus the experience in Illinois in the 1922 convention, which was one of these where the Republicans ran roughshod on a

party basis, there was no difficulty in Illinois in getting the nonpartisan, non-party thing, and the consensus of wisdom now is don't ever put together a constitutional convention on a party basis, but don't set it up as you do in Maryland, where you don't, at least as you did in Illinois, get a number of culls on both sides, but the nonpartisan one gets an intermediate group of good government, knowledgeable people who broker between the two parties, is what happened in Illinois, and it worked out beautifully.

Bill Cassella: In Montana, they excluded the legislature.

Van Doren: By the constitution, our legislators are allowed to run.

George Braden: They were allowed to run in Illinois, after a great hassle as I remember, but sometimes they wouldn't get elected because they had to run on a nonpartisan ballot. Keeping the party label off is important.

John Bebout: I think in Alaska you could follow that pattern, but I do think it is very important to have a runoff.

Van Doren: In other words, what you are suggesting is if a person doesn't have a clear majority, he should be subject to a runoff?

John Bebout: Yes, because if you do it on a nonpartisan basis, you get on the ballot by petition, and so you are going to have a good number.

Frank Grad: Is there any real risk of having th[illegible] or much desire for participation in the convention with [illegible]ultiple candidates?

Van Doren: I don't know. First of all, we are a very nonparty oriented state as such, we have an open primary, there are more democrats registered than republicans, but there are three times as many who register as independent as anything else. People in Alaska tend to vote for the person rather than the party, and party lines are not followed at all to the degree they are in the Lower 48 and especially in the East. I would feel that yes, there probably is, mainly because number 1, the prestige, number 2, there are people who would not normally run for the legislature because of their own business commitments, their own personal lives, they don't want to spend the amount of time serving in the legislature, but would be willing to serve for a 60 to 90 day period in a constitutional convention. I believe there are very qualified people who would never consider running for the legislature who might consider running for the constitutional convention, and one of the reasons for that probably is because the initial convention was so successful.

Bill Cassella: I feel that is one of the big things in Alaska, because there is an enormous prestige associated with the first constitutional convention and I think they are near enough in time that people would say that maybe we can use it as important step to accomplish all kinds of good things.

Van Doren: Certainly, you also have to evaluate the fact that perhaps the young person who has just started out in politics may not feel he has a chance to be elected to the legislature, but if he could be elected as a delegate, that is a stepping stone, on the way up.

Bill Cassella: It is also a terribly tempting part for the special interest groups, and in my way of thinking, the real danger is with special interest and single interest types, and the problem of this, you see, if you have a bunch of candidates, like Maryland and so many of them, you really stand an awful good chance of getting one of those really heavy emotional issue people coming out at the top of the ticket or close to it. Now, the point of it is, if they were one, if you use the situation of Illinois, even if one of them comes out at the top of the ticket, you will probably have a pretty good chance of knocking him off in the runoff.

Van Doren: Do you have a suggestion as to how you could limit the number of people who are going to run, I don't know how you can do that.

Frank Grad: You can limit the runoff.

Van Doren: I think there would be quite a bit of interest. Now, I believe the number was something like 200 and some odd candidates in the primary for basically 50 seats in the legislature, this time. I would assume there would be something like that also. Of course there are outlying areas and our remote areas, there wouldn't be as many candidates for it. In the urban areas again, bringing your idea of special interest, there will be quite a few.

John Bebout: Incidentally, what does your nominating petition require? I have always thought it would be very desirable to have at the top of the list, a small group, say 10 or 12, of sponsors, people who more or less assume public responsibility for the circulation of this petition, indicating the nature of support that this person has before you get out and push a Tom, Dick or Harry. I have always resented having a petition shoved at me, asking me to sign a petition, whether for a candidate or a cause. I want to know who's doing it, and lots of people just don't know.

Frank Grad: I don't know, I suppose you can do this, is it usual?

John Bebout: In Massechusetts, it requires an initiative.

You have to have a group of sponsors.

Frank Grad: As a matter of fact, now for instance, the conflict here is constitutionally protected, I don't know. There probably would be a complication in the legislation that creates the law for the calling of a convention.

John Bebout: I don't know, I did in New Jersey, before we allowed party organization to put candidates up for the convention, proposed and wrote a bill for a nonpartisan election, and which I did supply to the sponsors. I have always been bothered by a nonpartisan election, unless you can establish some responsibility.

Frank Grad: I don't disagree at all, I just think it might be a difficult thing to adopt. In this particular instance, I wouldn't be at all opposed to creating an obstacle or two to this adoption of this whole business if you want a smoothly operating nominating process, this may give rise to some difficulty.

Van Doren: Is what you are suggesting, John. First, let me explain what we do in our petition for an initiative. You begin with one hundred signatures, and then from the 100 or so signatures, once those are certified by the Lt. Governor, then the petition is circulated throughout the state to gather enough signatures

to place the thing on the ballot. Are you talking about each candidate having enough sponsors and then going ahead and running after he gets a certain amount of signatures.

John Bebout: Yes, I wouldn't require 100, they get to be too anonymous.

Van Doren: We have and I don't really know about the other areas but in Juneau, for example if you are running for city council, or the school board, you are required to have 25 signatures I believe, before you can file. And then once you have 25 signatures, you turn that in and then you can file for city council or the school board.

George Braden: But you don't get anymore after that. Well, I think a candidate for a convention ought to get a fair number of signatures, but I wouldn't say it should be extensive, frankly, I put a good deal of reliance on the character of the sponsors.

Van Doren: In other words, you are suggesting that an X amount of people sign this and then it's turned into the Lt. Governor and then the person would be eligible for running for delegate.

George Braden: No, you file this with 10 signatures, and then on the basis of the 10 people who are promoting this guy's running, then you start getting the number of signatures required to get on the ballot.

Frank Grad: Actually, the nominating petition would say "This nominee John Smith as a convention delegate, has the support or is sponsored by the following: . . ."

George Braden: I recollect in standing for parliament, you had to get a very small number of signers to your petition and also had to pay, I don't know if they do that anymore, a fee that seems to me the more rational system than the system that is quite common, where you get a whole slew of anonymous signers. If you stand out in the rain long enough, you get any number of signers.

Van Doren: OK, so let's follow this through. Alright, we have 10 signatures on this thing. Now, once he has the 10 signatures, what happens then?

George Braden: You would then authorize the circulation of the petition, whether it was before or after filing with the Secretary of State. Get an official petition form, maybe he should go to the Secretary of State, with these 10 sponsors on his list.

Frank Grad: Then he gets the thousand, or two thousand or 10 thousand.

George Braden: At the top of the petition, "We are going with the above in nominating him."

Van Doren: Then he goes on to get his other signatures and then after he receives the required amount of signatures, he is eligible to run for delegate. OK, I guess my only question I have is why the 10 signatures in the first place?

George Braden: These are the people as I as candidate, am pleased to have or be identified with. These people indicate also they are pleased to be identified with me as a candidate. I am one of the general public, and candidate "Y" comes along, and says will you sign my peitition. Well, I don't really know the candidate, but he says at the top of the petition are 10 names of people who are promoting or sponsoring him. Well, I probably know three of them. They are the kind of people I want to be associated with.

Van Doren: This is basically what happens with our initiative. In other words, when the first 100 people sign the initiative then when they go around to the public and get the general thing, some guy can look up there and say, "Hey I don't agree with half of these people, I'm not going to sign this." Very good point.

George Braden: What you have described as an initiative in Alaska is the way. As long as you have that, it would be easy to do this.

Van Doren: Certainly, because the precedent has been set. OK, we have the delegates now, at least we have them nominated, what what are we going to do with them?

John Bebout: In addition to the citizen's guide, and the annotation, which will be available, I assume, after the election, we hope, there should be other material. Just what other materials depends on the state. Texas produced a collection of impact studies, the impact of the constitution on this, that or the other thing. It would be a much simpler job in Alaska and I think you pretty near got it made already, in terms of the stuff which is on the record for the constitutional convention reunion and the things that you have started with Vic Fischer. You can overload the delegates.

Frank Grad: The portability is important.

John Bebout: Again the statehood committee, in preparation for the 1955 convention really set a very good precedent, by getting PAS to do this series of studies, each one was quite compact. It was a lot easier, because you didn't have a constitution to start with, so that they could deal with fundamental

principles, prior experiences, and these things were so short that I think each of the committees began its work in the convention, by sitting down and reading the whole darn report together. They started with this common background. I think sticking to that sort, you might as well be, in this case, geared to the articles of the constitution that you have. There wouldn't be much more than a statement in narrative form of the contents of the annotations.

George Braden: One of the things, if I remember the time table, which is likely to be the case, any work must be done between the date of the selection and the convening of the convention. There are two things in that interim which both Texas and Illinois did. Well, in Illinois, one was a big seminar put together to educate the press which was pretty successful, and the other was a seminar for the delegates, and we had that in North Dakota, too.

John Bebout: They did that in Hawaii too, and also in New Mexico.

Frank Grad: One other thing which truthfully could be done, to save an awful lot of wear and tear at the beginning, is to have a proposed set of rules and a proposed organizational chart. You can start early if you have one from the first convention to use as a prototype, and you could use that with

whatever amendments, suggestions for revision, whatever you may have. If you get together in the convention, and you have to start that process, it is a mess for quite a few days. I think starting with some rules in the beginning is important.

George Braden: When you get a group together to work out a set of rules, and you tell them strictly, don't you dare look at the rules of the legislature of the State of Alaska. Or any other state. You look at convention rules of conventions that didn't look up legislative rules.

Frank Grad: Some of the procedural motions the legislatures permit or that some of the more complex bodies permit, one guiding principle ought to keep it as simple as can be, and to rely very heavily on moving the question.

George Braden: A technical aspect of this, it comes in at the time you are doing the rules. We succeeded in Texas. The State of Illinois, based on my experience in New York, I started in Illinois and almost succeeded, but in Texas, I totally succeeded in getting the rules set up in such a way, that not a single word went in the convention document, the constitution, that was not finally approved by the style drafting committee. We got the rules set up that way so there were no floor amendments. One of the things you want to get into the rules early on is to be sure that there is no possibility

of a floor amendment, which then gets frozen and the style drafting people can't undo the damage. We were able in Texas, absolutely nothing ever got in the final form until it went through the committee. The other thing that I succeeded in Texas was that the style and drafting committee never did any drafting, absolutely none, and I had a wonderful chairman who went along with me. I would sit next to him and I would suddenly say "Stop it. We are not going to draft You tell us what's wrong with what we have done and let us go and rewrite it

Frank Grad: Don't let the committee draft, no drafting through committee is essentially the point. Drafting is a lonesome, time-consuming thing.

John Bebout: You may not want this on record, but curiously enough, the first Alaska constitution was pretty much drafted in committee, but it was the result of a very unusual kind of chemistry among the people involved. To a large extent, this was drafted by mutual consent by Tim, Mildred Herman, George Sundborg and probably Ed Davis, who was the only lawyer in that group. Now there were other members on the committee, but they weren't too active.

Frank Grad: One device, by the way, which you used to be very strong on, which I found very persuasive, is the arrangement

which brought informally, the arrangement of regular meetings of committee chairmen in the course of the convention and that is a very important business, because you are being engaged in the preparation of a single document, and as long as you can keep the group working on any one document small, you get a certain amount of consensus, particularly if you have a strong chairman to begin with, to get that committee into shape so that things don't get out of hand, things don't get into the document or get into the document at a stage of the proceedings where they are really frozen, where you really can't deal with them anymore. The business of live consultation between the chairmen in the course of the convention. Otherwise, what is likely to happen at the tail end, is that all of the committee reports, each committee has worked on its own project and is convinced that it must go in exactly as they have it, and there is very little room for adjustment of getting in the thesis for mutual accommodation. If you have a committee of chairmen and the committee has a constant head, and the convention chairman is the best person to do this, they can know what is going on during the course of the convention. Or else you can have the committee on style draft and serve this function, in effect be constantly informed of what everbody is up to. The whole business of committees sneaking off on their own, each committee working by itself and then everybody throwing their bit into the hopper at the very end, that is to be avoided at all costs.

John Bebout: This in effect is what was done in Fairbanks. The committee chairman performed this role, I think, later on. Also, something else which should be considered very carefully, particularly in a small body is not to overload the people with too many committee assignments and I think I'm right, that each delegate from Alaska had two assignments, so that the overlapping assignments also provided a certain amount of liason between the committees that had the most common concerns like finance and oversight. This is simply kind of a rule that the chairman ought to have in mind as he makes committee assignments.

John Bebout: You people are really very fortunate in the fact that your founding fathers were very wise and they set some excellent precedents and you hardly need to look ouside of Alaska to find a model for the organization and management of the convention. The other illustrations that have been given here are basically just more back up that you really don't need to change much.

George Braden: We had a problem in Illinois, some of the committees insisted on doing all their drafting in secret, but in Texas some of the committees, particularly those dealing with local government, their staff man would come down and see me with this and what they were proposing to do. "Why don't you go through these and begin to fix it up before we have frozen it, and that will be easier for drafting." I

promoted that. As soon as I got into the drafting process, the better off we were, and that worked quite well. That means, contrary to the old notion, that the committee on style drafting should start out right at the beginning to be an active committee. (Emphasis added). I have had people say we don't really need a committee on style drafting 'till near the end. The clean up will come at the end. That's just not true.

Frank Grad: Style and drafting is one of the notions which I think we have to fight constantly. That is, that style drafting is somehow a housekeeping committee, essentially a kind of a technical committee, that it's like a budget committee that makes sure that all of the delegates get paid on time. It is, style drafting, is in a sense, on par with the substantive committees, more important than each of the standing committees, and ought to be given a real distinctive role of considerable significance and importance and it ought to be by its nature a substantive rather than a procedural housekeeping committee. In so many conventions, style and drafting is relegated down to the bottom of the list. It is kind of a housekeeping chore kind of committee, and it is not that at all! It is very essential to the preparation of the document which is the purpose of the entire enterprise.

George Braden: I have a couple of examples, where the final style drafting committee ought to make the decision early on,

where do we put the veto section? In the legislative article or the executive article. Just an example. But they are the only people in the two committees, and each one would like to do it. Also, one of the first things the executive committee did was to prepare a drafting manual which we were to use, and that went to all the committees, and they all knew what our rules of drafting were from the beginning.

Frank Grad: Together with a caveat that a drafting manual doesn't teach you how to draft.

George Braden: We did put certain rules in there. They just might as well follow them, because otherwise, we were going to rewrite it.

Van Doren: Do you have copies of that drafting manual available, George?

George Braden: I would have at least one. And I may have two. Ask the Chief of Staff of the convention. And if they still have it around, the ACIR should have them. There was another thing that was put together at the end for the benefit of the permanent record which was all the style drafting committee reports, explaining all the changes which they made in the draft that came to them and this was to provide the legislature with records, to help them interpret the constutition. We had certain

standard rules that we always followed and every time that we would draw up a footnote saying that this is according to the standard rules. Somebody put together all those, all these rules of management that covered more than one article.

John Bebout: On the whole matter of the manner of the convention . . . I don't know any Chief of Staff who was more effective than Jim Ray was, wiser and more foresighted than he was. One other gadget or gimmick that was suggested at the end was the final substantive order of the document, committee chairmen reviewed the document from beginning to end, the substance, rather than style, just to make sure if there were any mistakes that had been made inadvertently or after we finished, and we did find a few things which were changed. This was a very rush job, but if this was planned for in advance, I think it would be helpful. You talked about a limitation on the duration of the convention and I have mixed feelings about that. You don't want to be gone forever like the Rhode Island convention, on the other hand, you don't want to squeeze it so tight that you can't do the job. Now the New Mexico convention operated under a 60 day limit which I thought would be impossible. Actually, they did well because of two things. Number 1, they recognized the very severe time constraints at the outset and were really all set, quickly, to adopt a good set of rules which had been prepared and got organized. This was discussed at the meeting prior to the official opening date of the convention.

They also had a draft of the constitution prepared by the commission, just as the Texas convention, which was good and on the whole, they pretty well followed it. In your case, I don't think you need or want a draft of a new constitution prepared by any commission or anybody, because that was only due to total revision. But you do not want to limit the time severely, I think 60 days is a pretty severe limit, I would be happier with a 90 day limit, particularly if you took a break in the middle of a week or two, and gave time to review the documents and perhaps take it back and get reactions to it. Actually of course, the Alaska convention attempted to do this by taking a Christmas break, and the delegates did go back and hold public meetings and hearings in their communities and told what was going on and asked for reactions on sepcific matters. They didn't really open the whole thing up, of course. I think you need to consider the question of time and the question of convention planning together, and I'm sure you'll have something that will work. I think in your case, 60 days wouldn't be necessarily too short if you were properly prepared. But I also think that you may have a rather short time between the election of the delegates and the convening of the convention. It ought to be reconsidered. Once you know what your span will be.

Van Doren: Well, they had said that the election would be held, I believe, the third week in May and the convening of the

convention in September.

George Braden: The problem is because of the year involved, you don't want the convention and the legislature meeting at the same time.

Van Doren: What we are talking about is that the election would be held in 1982 in November, which of course if they do approve of it, a lot of this preparatory work could be done before the election of delegates, so you basically have from November 1982 until September of the following year to get a lot of the preparatory work done.

John Bebout: Well, you need all that time, you need time in order to coordinate in 1982.

Van Doren: That is what we are doing now.

John Bebout: Most of the things we have proposed, would be worth having whether the people vote for the convention or not.

George Braden: The legislature meets every other year?

Van Doren: No, the legislature meets every year. But see, normally, and we are talking about 1982 being an election year, so the first year of the legislature usually runs approximately

four months, January through an uncertain time in May. I am just going by recent history. So the legislature possibly is going to be adjourning in May. Alright, that allows the election coming in late May, that allows only a couple of weeks for anyone who is a legislator and wants to run as a delegate to go ahead and file for election. Starting in September, if we adhere to a 60 day period, you are talking about the month of September, October and possibly November, shortly into November, for 60 days. If it was 90 days, it would go further. The legislature convenes in the second week of January of each year, so that, depending on where the convention is going to be held, who is a delegate, and all that, the idea is not to overlap with the legislative session. Now, in the second year, they normally run 5 1/2 or 6 months, it just depends, but traditionally in the last few years, our second session of many legislatures has been at least 30 days longer than the first session.

John Bebout: I would have an early election because the people who know they are going to be elected are going to feel the responsibility to prepare themselves more heavily than those who are just running for delegate. They have got to arrange their affairs so that they can really devote practically full time to the convention for the two or three months. I would strongly urge a wide time between the election of the delegates and convening of the convention and the easiest way to do that is

to have the election as early as possible and then sometime not too long after that, I would have a meeting with the delegates, get acquainted and there is no reason why you couldn't have your procedures pretty well firmed up, decisions on the officers and the committees by the time that the convention meets, and you have a formal ratification to the effect that one has already been decided. In other words, I would have one meeting that would be a kind of get together meeting and create a committee on organization or something of the sort, and then another meeting later on. Not counting your 60 days, because that would be taking too much time from the regular activities and summer is not a good time to divert Alaskans from their activities.

George Braden: Where do you think you will hold your convention?

Van Doren: I don't know. In 1971, another researcher and myself did a site survey, notwithstanding the supreme court decision of 1971. and the three places considered were Fairbanks, Anchorage and Juneau. At that time, the consensus of the two of us was that the convention should be held in Fairbanks again. Number 1, historical, number 2, the tremendous cooperation that the University was willing to give us at that time, the convenience of the housing there, the necessary cafeteria facilities, the fact of holding it on campus. The problem - between 1955 and

1971 and now, 1983 or so, is that the University has grown tremendously and with the housing and all, I think the University might be very hard pressed to furnish the facilities to hold a full constitutional convention during the period that the students are going to the University, but I'm only guessing.

John Bebout: Of course in 1955 and '56, the delegates didn't live on campus. They all lived in town in hotels and apartment houses or with friends. They were brought out on busses or in private cars, but I don't think the housing of delegates would be a problem.

Van Doren: Possibly not, I mean we were talking about the facilities and their use all at the same time. I'm not making a case for any place, but these are the three major choices: The University, Anchorage, and Juneau. One of the things that the University has indicated a possible interest in and also the chairman of this committee has been to use Constitution Hall again, and remodel it for use of the convention which would upgrade the facilities and making committee rooms available, establishing a constitutional library there. It has changed a little bit since you were there. This is a possibility and I think a lot of the people that were either involved with the constitution have been very impressed by the way it functioned on the University campus and would like to have it back there again.

Juneau, let's face it, is more set up for it in the fact that the legislature has their own printing press, we have the meeting rooms, committee rooms, the building is totally wired for telecommunications, which I think are going to play a very large part of the convention this time, it's also set up for teleconferencing throughout the state. We have facilities for a lot of things. What I recommend in my report, of course it is up to the chairman whether they are going to do it or not, is that a similar site study be undertaken again to see which of the three major communities, I think we are pretty much limited to that, although Sitka is a possibility because of the fact that they have a convention hall, and they have two brand new hotels there that could house the delegates and the staff. We are dealing with much better travel situations than we were back in 1955.

John Bebout: Sounds like you are thinking about the right things, going back home again would be indicated in view of the tradition and the records and the university study, of course the Rutgers University setting proved to be a very healthy one for George's convention in New Jersey, and I think you can take into consideration all of that.

Van Doren: Since you have to leave sooner than anyone else, and I have questions on issues and such but the others have

the paper, and you haven't, is there anything other than what we've been talking about, issues and that type of thing, is there anything in the procedure or anything in conducting a convention that you feel would be helpful to be added to this discussion, other than issues, unless you have some issues that you are aware of, and I think the other question would be, has there been things in the recent past that may or may not be desirable to add in or may or may not be desirable to put in a constitution that isn't already in there?

Frank Grad: Well, I have always gone John Bebout one better, he advocates a two page constitution and I have always said that I could do it in a page and one half, so when it comes to adding things, and I think that no one in this particular crowd that you have around you here, will be in favor of adding anything much, simply because you do people a favor and the government a favor by subtracting things from the constitution rather than by adding. There are certain facilitating aspects in constitution, which must be adhered to, I am not as familiar as I used to be with the Alaska stance on home rule, for instance, which, as far as I can tell, finds very little expression in the constitution. Probably if you must have a constitutional convention, I think you can probably do home rule quite nicely in Alaska without doing much to the constitution or content on this particular subject, but only if

you leave it alone. But if you got to give them something, then it seems to me that you could have something incorporated in the constitution, whatever it is you do in fact, and you have included a presumption what the local government can do, unless there is a preventive that is in the constitution itself, but in Alaska it seems to be on the principle experience, of doing the least harm as possible if you could have that incorporated in the constitution. As for the rest of it, I think your constitution is generally speaking, free of confusing detail and I would think it is perfectly fine, I don't see any reason for change there, I would not think, in substance, anything much needs to be added to your fiscal and budgetary provisions in the constitution. They seem to be reasonable. I think in a sense, any kind of a constitutional convention effort would be toward a goal of keeping things from going off the track, rather than putting in additional things. I don't see any need for any additions to your constitution. One thought is and this is peculiar to Alaskans, but your fish and wildlife provisions relating to wilderness and the like.

Frank Gard: I absolutely must state that the constitutional protection under the 1870 hard rock mining law, that is apparently in your constitution. While we're trying to get rid of it at the federal side, you've got it solidly ensconsed in, but there I guess you are dealing with some

very, very special interest and probably difficult to dislodge the thing, so those are the areas where I think your constitution really provides somehow the special corners and it seems to me that to get rid of those, it would be fine, but obviously that's a local problem. Just as in Louisiana you have to have the levies in the constitution, there are certain things, in New York, as in Massechusetts, it is common, it is easy to criticize, but it's required. I'm perfectly aware of the fact that you live in a real and political world and you got that in there for a reason. At the very most don't make it any worse than it is, but quite obviously this is one area where possibly the constitution is probably more specific and more detailed and more protective of a special interest than you have to be. Other than that, on the procedural side, I think we have a pretty good fix on things, in terms of the limited number of committee -- I would say one aspect which ought to be considered in setting up your rules. I would make the convention chairman and possibly some selected few committee chairmen be a very strong agenda committee. One of the problems that I see is keeping control of proceedings and I for one, like to see a strong chairman if you've got the right one. One aspect of the chairmanship which to me is very significant in running the show is to have him have a very tight control of the agenda.

George Braden: You have to tailor to the situation. In Illinois, the important thing was to have three vice-presidents, one representing the Daley machine out of Chicago, one representing the down state republicans and one representing the good government group. Three vice-presidents, plus the president, control the agenda and you have to work it out in terms of whatever the situation is once you have the convention. You have a background that way, in fact, that is why I suggested doing that.

Van Doren: Again, Frank, I'm not leaving you gentlemen out, but he's leaving soon, so I am trying to get as much out of him as I can here. Any suggestions or specific pitfalls that we ought to look out for or any other suggestions that you have before I lose you?

Frank Grad: Suggestions, obviously all of us have rather good government instincts and if you are going to have another constitutional convention, it gives you another chance to try the old things again or at least to try to put them across. For instance, why you have a two house legislature where in any number of states and particularly with two house legislatures, defeats the normal standards, but then of course my imagination is limited and any number of people feel you need it because you need the jobs around and it's the way things are done, and after all, from the beginning of American history, which

always boxed itself up with at least two houses but, obviously, another convention gives you another change to try to do something else. Obviously the League too, has kind of given up on that one, the Model State Constitution, the most recent revision, has gone both ways on this subject. You do have one aspect that it is in your constitution which possibly could stand some strengthening is inter-governmental relations, provisions possibly of greater support for inter-government cooperation. One other aspect I note you have in your constitution, you have reapportionment provisions which are a wee bit unusual, you have a gubernatorial reapportionment essentially with the assistance of an advisory group. My question is how well is it working. Is this an area where there is some disagreement?

Van Doren: Well, of course we have only had one. We have another one coming up. The one that we had of course was beset with court cases, which the Governor and the board won. So it remained as it is now, and we're, just since statehood, experiencing our second reapportionment commission at this time, and I don't know how it's going to go. I wouldn't be surprised no matter how it goes, whether it's good or bad, if someone files suit, and it's going to have to go to court. As I say, with the first one there was a lot of dickering, because there was a lot of districts changed, there, again, was an unsuccessful court

case, and what the reapportionment board did stood up, so we are now experiencing our second one. The Governor does this. Obviously, the reapportionment comes out on his signature. Does the governor's office really get into it, or is it really the board that does it all? To what extent does the governor get into the act, or is it really the board's decision? First of all, the governor appoints the board. Now right there, right off the bat, you know that he is involved in it. The present governor that we have has appointed the current board, and it seems like the board is very geographically representational. It is a mixture of Democrats and Republicans and independents. I don't know! It will be very interesting to see their initial product come out. I can't tell you how it will turn out. I also can't tell you how much influence the Governor is going to have.

Frank Grad. What in terms of the general public, is the statewide reaction to the reapportionment. My question of course simply asks, is this particular mode, it's an Alaskan gadget. Is it working well enough? I take it from what you say that it is.

Van Doren: Right, we will have another opportunity to look into it and of course I don't know. You know we have a very geographical diversified state and of course Southeastern and the bush are going to say they don't have enough repre-

sentation, and some of the people that are redistricted in the urban areas are going to fuss about that, and also by the same token, there are some contraints they have to follow with the one person one vote. The other thing that we definitely have is very strong executive control in the state, and of course there is a lot of jealousy between legislative department and the executive department.

Frank Grad: Well you are wise in not having a legislative reapportionment, obviously, but you know, the question is, is there any other further possibility of insulating still more from the partisanship in the political process?

John Bebout: The only way I could see actually, would be the monkeying with the composition of the commission and get the legislature into that act to work along with the governor. Get somebody from each house to appoint board members, and so on. I think the convention was quite proud of this innovation and I would hope that until or unless Alaska has a real bad experience with it, they wouldn't tamper with it.

Van Doren: I do know that there is some feeling against and it goes beyond just apportionment, but it's a fact that there is such a strong executive in our state.

Frank Grad: Basically my comment is it is a pretty good

constitution and really the major object of the game to me seems to be preventing this from becoming worse or becoming bollixed up in any way. I would say that obviously there is always room for some improvement and I would urge that if you have to go into the convention, there are some possibilities of dealing with home rule in more expressed ways, encompassing what you have in fact, but in the law, I would think that to some extent, that the resources part of the constitution is special interest.

George Braden: I got the impression that the article didn't really have any serious handicapping effect on the state's options on what it does or might do.

Frank Grad: The one provision which really in effect ties Alaska to hard rock mining. That is the one that is really kind of tough. Mineral leases and permits. Actually, mineral rights, Section 11, "Discovery and appropriation shall be the basis for establishing a right to those mineral reserves to the state," etc., the other one which I think may possibly be or give rise to some question is to the navigable waters provision which in effect makes the appropriation system more of a constitutional requirement and those, I think are more limiting. This is the type of things which are tighter than they need to be. But again, I'm perfectly aware there

are any number of things, which in New York you don't touch in the constitution and any number of things you don't touch in Louisiana, and things that you don't touch in Alaska.

John Bebout: Frank, before you go, though, on home rule, they thought they were providing Judge Jorden into the constitution and going one better. Section 11 of Article 10, "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter." I don't see how you can get much more conscientious than that. Of course, there is a lot of litigation, and there has been litigation over precisely the point that I disagree with Vic Fischer on. Vic Fischer said that this meant that the legislature had specifically to prohibit or deny a power before in other words, the legislature couldn't legislate in the premises in such a manner as to preempt the whole area without saying so. That is the only problem that I know of.

Frank Grad: I would think that you know. The last question with home rule, and I sort of remember that league session of a few years ago, where in one room there were all the home rule people discussing home rule, and the others were in the other room were people discussing the need for broader units of government and for broader powers and to deal with regional problems. Both groups seemed totally unaware

of each other's existence and the fact that they were really talking about entirely inconsistant matters. Then of course, the majority had a variety of points of view, and with particular emphasis on their own subject. It may get slightly sticky in some particular circumstances, but here, the provision I think could stand some squaring away.

John Bebout: The only thing I can see would be to clarify that particular issue. Now as to the inconsistency between home rule and regional government, Alaska had thought that they were solving that problem. They were very clear that they did not intend to give a government unit any right to perpetual existence, and by creating the state boundary commission, they were giving the state power through this commission to change the municipal map of Alaska. Natural resources article. That really gave the convention a great deal of intellectual difficulty. It was the hardest article to draft. They never were quite sure of what it meant, which I think perhaps is one of the merits, and reading Vic Fischer's commentary, it seems to confirm the view and I think that you picked out the two provisions in it that might ideally be reconsidered. I think the only question is whether you could reopen those questions without opening the article to a lot of more detailed descriptions in favor of the variety of special interest. That would be the question in my mind. Of course, you don't need a natural resources article in reality, but the convention people were

very anxious to demonstrate that Alaska was prepared to deal responsibly with the natural resources matter, and they wanted to do that and at the same time to protect themselves against some of the undesirable practices from all over the states and practices that they had been subjected to by the Department of the Interior and Congress. That's all I have to say on that. It was worth a further course of study, but none was prepared.

George Braden: Let me ask in terms of the home rule thing. This occurred to me, that Alaska is different from the Lower 48 except, I guess Maine. As I pointed out in the Illinois book, there are two types of local government generally in the United States. The township form of government which comes from the English town, where whereever you live in New York State or any New England state, you live in a town, which has a town government, and over that there is a county government, where you've got three levels of government. You get to the southern states, and you are either in a municipal corporation or city or the only government you have, is the county government.

John Bebout: No, this is true in Virginia, but in most southern states, cities are also within towns, for example, Houston is part of Harris County.

George Braden: Yes, but if you are not living within a city,

the only government you have is a county government. But the whole home rule thing deals with one or the other of these problems. You have the screwy thing you've got in New York State, where counties have all the home rule powers that cities have. And then you have the trouble with the southern states of trying to get the concept of home rule in their county where the county still seems to be the agent of the state. This appears to a considerable extent in the northern states. What do you do with a home rule concept in a state where a large area of it is toally unorganized? You don't have county governments.

Van Doren: No, we don't. We have boroughs, which are similar to counties, but usually only in the major urban areas.

George Braden: Your borough is different from the boroughs we have down here.

John Bebout: Just translate borough into county. If you put a whole list of names of local units of government on the blackboard with German, Japanese, Eskimo, Indian, other languages, now, and they finally hit on boroughs.

Van Doren: So we have that now, and in some cases in Alaska, we have integrated a city and a borough in a unified district. This happened in Anchorage, Juneau, and I believe it has

happened in Ketchikan, and several other places where it is now called the city and borough, and there is one governmental entity that covers both of them. Anchorage was the last one to do that.

John Bebout: We got into this ass-backwards. I told them in 1958 that as far as I could see, they didn't need any borough. All they needed was cities and then to make use of the powers to extend boundaries so that you could extend the city boundary out as far as might be desirable to provide the government where people live. In most of Alaska, they don't need a borough, not local government because there aren't many people there. Use the flexibility and freedom and the provisions of the unorganized boroughs in the constitution gives, to enable the legislature to deal differentially with the kind of local options and the problems of developing and nurturing incipient home rule self governments in the different parts of Alaska, by getting around the prohibition against special legislation for an area. This would have been simple, straighforward and a cheap way of getting around to something that they are approximating now. Now, this invitation for me to come to Anchorage next week is due to the fact that they have done nothing. I wonder what next in the unorganized borough. In other words, instead of creating several regional unorganized boroughs, they have got all Alaska outside of the organized boroughs the organized cities and borough, unorganized,

and obviously I would just traditionally next time recommend the same. Our ability to promote and nurture growth of self governing institutions to the best they can. I think the Alaska constitution provides plenty of leeway to doing this. I don't see any constitutional problems yet, maybe they can identify some for me in doing anything that is reasonable, as I said. I was interested in the fact that Vic Fischer was a little disappointed in the way that Alaska has dealt with the home rule provision. Says he does not see there are any problems with the way we wrote the home rule article.

Van Doren: Did you have some specifics on the home rule article?

George Braden: No, I didn't understand it, but now I do. I was just suddenly wondering how you handled the home rule problem of an unorganized borough. I don't know, is there a general special law for prohibition for the courts to interpret this correctly? Now when you look at the section on local and general legislation in Illinois, and then in the Texas one, which is even better. It depends on how you define "general." When you define general in a way that permits exactly what we are saying, in other words, it's the only way you can do it, and it's not, the trouble with local legislation is that it, it's a device to destroy home rule because you run to the legislature when you can't get what you want from the local government. And this is very special legislation.

John Bebout: Of course in Texas, as you well know, it's a device by which the local government would have all the home rule they damned well need to evade the responsibility for doing what they had ought to do, so they go to the legislature and ask for a special law. It happened in New York State, but the corporation counsel can say or the county attorney can say we probably can do this, under our home rule power, but let's get a special act and then we know we don't have any problem. There is no prohibition against special acts in the State of New York if the local government requests it. But the problem I think, is control by correct analysis of the general and special rural problems. I don't think there is any problem. I do want to say one more thing about local government in New York. It is one of the most complicated and irrational systems of local government ever devised by the minds of man, if you blame it on the mind of man. There have been, in the last five years, three absolutely superb cases in the court of appeals in great favor of home rule. On April 28, they handed down a two page thing in which they set back home rule 20 years. In the first place, the decision is probably wrong, unanimous but wrong, but there is a statement like this: "Home rule doesn't exist except in the case of property affairs of government." This is not true. Also, if the sate, if a matter is a matter of state concern, that's the end of it. You no longer have any home rule. And they say in here, the cities (New York City), the city has not established by, this is not a matter

of state concern. In other words, the burden of proof is on the city, instead of the burden of proof on the state to prove that it is a matter of state concern. I have never seen any opinion with so many incorrect statements.

Van Doren: In going over the materials that I sent to you and as I explained to John Bebout, that of course, these are all drafts, Vic Fisher's work is draft, Doug Pope's work is draft. Is there anything, other than what we've talked about before this that sticks out in your mind as good, bad or indifferent?

John Bebout: I have one change to suggest. Just happens to be appropriate to do, and that has to do with the calling of the convention. All of the consultants were shocked at the idea of a mandatory vote every ten years on calling the convention. For God's sake, at least call it, follow the State of New York and Missouri, every twenty years. That is often enough. Oh no, they said, these are bad changing times, and we want this constitution to be as accessible as possible to the people. Now, I would like to know why the people, the great people, couldn't call a convention any time they pleased, by simply using your initiative provision. How is the convention called. It's called by law, and if the legislature and the legislature is free to call a convention, call for a vote on the convention any time it wants to, by act of the legislature, so why can't the people by the initiative then, enact

a law providing for a vote on the call of the constitutional convention. That being the case, why any need for this mandatory vote. It may come at very inconvenient or inauspicious times, just by the calendar. Now of course, I don't approve of the initiative provision, because I don't believe in the initiative, but since you are stuck with it, this is the only good use I can think of for it. As a matter of fact, if I were, I guess to write a model constitution now, I would be inclined to include provisions for a popular initiative to call for a vote on the constitutional convention. That is the only use I can think of for an initiative.

Van Doren: It's interesting. There are two schools of thought right now in Alaska, and this was brought up last year. One school of thought says that a constitution cannot be called by an initiative in Alaska. The other school of thought says yes, it can be. That's been some debate. A meeting we had in Bethel last year, Doug Pope, who was an attorney hired by the committee, felt that a constitution could be called by the initiative method. Vic, who happened to be at the same meeting, didn't think we could, and this is one thing they are not sure about.

John Bebout: There is only one way to find out. I can't understand the rationale for the negative position.

Van Doren: That has been one of the things under discussion.

Whether or not the initiative can be used to call a constitutional convention, and it has not been settled yet. There has been discussion about it.

John Bebout: Of course, if I were writing your ideal revised constitution, I would eliminate the general initiative provision and just include a specific initiative for calling a convention and eliminate the 10 year vote.

George Braden: Does anyone know what they meant when they said this? The people may propose and enact laws in the initiative. Are there any other states, that on the face of it, this seems to be saying that initiative is limited to legislation as opposed to constitutional amendment? Is that the only state that does that?

John Bebout: No, there are a lot of states that have the legislative initiative and not the constitutional initiative. What they were doing in Illinois was to prevent use of the constitutional amendment device to get legislation and limiting it to the legislature, they put it in one place. I think I drafted it, so it was safe, and I did an awful lot of work to to be sure that you couldn't use it as a nose under the tent. One remark in response to Frank's talking about the Texas constitution. He said I could write a state constitution in two pages, he says he could do it on a page and one

half. I say I could do it in one sentence. Let there be a legislature composed in a manner prescribed in the accompanying document which shall self destruct upon the convening of the legislature. Then have a schedule which simply provides selection of the first legislature as a part of the constitution. It destroys the concept of limited government. I have no objection to a bill of rights and I guess I have no serious objection to providing for a unified court system in one short article. As far as the executive is concerned, I would really like to leave that out, on the grounds that the legislature could decide whether to adopt the cabinet system or set up a separate executive, of course this would mean there would be no constitutional separation of powers, there could be a working separation to the effect that that's the way they want to do it.

Van Doren: In your eight and one half minutes you have left with us, is there anything that you would like to add, the same question I asked Frank about if we decide to have, if the voters decide to have a convention, anything you would like to add as far as issues or procedures or problems or anything like that?

John Bebout: No, I don't think so, I guess this is good enough repetition, that is having the constitution again, and having attended your constitutional conference at the

time of the reunion of the delegates and having read Vic Fischer's statements, I see no changes that have been seriously proposed that would be desirable that can't just as well be adopted by amendment. None of them are so urgent that anybody should say, well you can't expect to make the legislature to submit to such and such amendment. You damn well better call a constitutional convention.

Bill Cassella: There should be some kind of provision for a runoff, a primary or a runoff. In the situation in Hawaii, the constitutional convention had 102 members. There were 697 registered candidates for the seats in 51 districts. The tabulation of the election results indicate where the highest two were elected. It is really a fantastic thing. In other words, you can see, you got for example here where I am just picking one at random here. The first one who got the most votes got 537. The next 408, then next 338, the next 307, and goes all the way down. The point is that I just gave that as a random example, because it just seems to me that one of the things that exists here, and I don't think Alaska is any different than Hawaii. I think we have got some of these people churned up and then everybody files and here is the way it looks. You have just got to have a way so that you don't get a group of people who really don't represent anybody.

George Braden: There were two things from Texas. One was style manual, the committee on style and arrangement put together, which was then used by everybody else in the convention. The other thing was that toward the end we put together a specific document that went out to the research director of the convention, Dave Sander, distributed it around to the committees and chairmen, which was a compilation of all the rules which the committee had developed on particular drafting standards. For example, he said anytime you use the word "law", put "general" in front of it, so that you can be consistent all the way through, and nobody will ever get mixed up. Another rule was you never say "the legislature may". The only thing you put in, if you want to put it in, and even that's not a good idea, is a duty. "The legislature shall", and I suggest there is no way you can enforce, because you can't mandate the legislature. But never put in "may", because the legislature has all the power that there is, and you don't have to tell them that they can do things. Then there is subsidiary rule that we find from time to time in constitutions. This sort of thing is bad to talk about. One of the things is somebody will draft that the legislature may thus and so, "provided that". Now, the mistake was instead of doing it that way, we say the legislature "may not." And you just put in a limitation. Don't start out putting the grant as a device to limiting. Just put in the limit. There are a lot of these that we put together as one group.

George Braden: One of the things in terms of the drafting of the citizen's guide to the proposed constitution of the document in it, and you have to remember is the rule in Texas was that the convention could not touch the bill of rights, and the attorney general issued an opinion saying you couldn't even take an unnecessary comment. You go over the bill of rights, that's 1870 language, and every other thing in the constitution was drafted by Ric ____ and me. We put that whole constitution together without ever using the term "provided that". The reasons is that "provided that" as it appears in constitutions and statutes, means "but only if". Which is the only proper use of that term. It is also used for "except". Or "but". But not "only if". And it is also sometimes permissive. Here is another thing that just occurred to me, and I can find you in the Texas constitution, places where it's not "but only if", it's not even "except". Here's a new idea. And we finally ended up and never "provided that" at all. We either "but only if", or we said "except" and we started a new sentence. Simply because of the thing it is used so badly, that we just got away without ever using it at all. I would think that in your table of constitutional amendments, it occurred to me that if somebody says, well there must be something wrong with the constitution, look at how many times they have had to amend it. And the first thing that I noticed was that four amendments were simply conforming to the Alaska constitution to a new requirement of the U.S. constutition. Those

things I don't think you don't have. So you aren't really amending your constitution. In the Connecticut constitution, was the 1818 constitution, that's one of the reasons it's good, because it's before the Andrew Jackson days of anybody can be a public officer sort of thing, therefore elect everybody and before the days of internal improvement of the railroads and canals and all that corruption which produced so many of the limitations in the state constitutions, the Connecticut one like Vermont and Massechusetts are ancient constitutions, and tend to be true constitutions. The Connecticut constitution as of the time they redid it in 1953, which was known as the nonsubstantive revision, the reason was that when we were campaigning for a constitutional convention in Connecticut in 1950, we the League of Women Voters, said and I think this was my idea, you have to read the constitution backwards. Because it had so many amendments. And the Republicans who were avoiding like mad any idea of a constitutional convention because it would destroy the rotton borough system, which was to their advantage to keep, came up with this nonsubstantive revision and got all 38 amendments into the body of the constitution, and killed off one argument against it. That was the time when for the first time, they took out the word "male", which was still in the constitution. They had just never changed it. But what you have done every time the U.S. constitution changes, you just amend the Alaska constitution to conform, and I don't count that as amendments. That isn't to say anything is wrong with

your constitution. It is just that the U.S. says you can't do it anymore, so you might as well fix it up. I think that just in case somebody says well look how many times we have had to amend it, those four don't count.

Van Doren: One other thing is when we changed the name of Secretary of State to Lt. Governor, because basically that was a change where they decided that that was better terminology and they now have Lt. Governor instead of Secretary of State. So, that gives you another one, which would be five in there, and five out of 19, I believe is not too bad.

George Braden: Others are minor ones, about the chief justice. I don't know if that was a purely, that was like the amendment that says that the president can't be in for more than two terms, which is a backlash against Franklin D. Roosevelt, which was a foolish provision to put in, and if you raise the question today, nobody would put it in. Every once in awhile, you get one like that which is a personal amendment. One of the interesting things about the Connecticut constitution in terms of what people talking about, all these limitations that you put in, the Connecticut constitution creats a legislature, and shuts up. It then has an executive article, and a judiciary article, now it has a local government article, with some home rule which never existed. But by and large, there is the, they just created the legislature and there

isn't anything about what the legislature can do and there isn't any thing about what it can't do, except the bill of rights. So there is nothing about taxes. Absolutely in the whole works. Not a word about borrowing money, debts, so far as the state government is concerned. Interestingly enough, Connecticut has never gotten into any trouble with debt, and also it still does not have an income tax, and one time a few years ago, the legislature passed an income tax bill which was signed by the governor, and before it came into effect, they repealed the statute, because of a great "hoo haw" on the part of the public. So, you don't need to put things in the constitution that some governments have done. You don't have to tell the legislature what it can't do, because it tends not to do things it shouldn't do.

END OF TRANSCRIPTION FOR NEW YORK MEETING

MEETING AT HOLLINS COLLEGE
HOLLINS, VIRGINIA

with

DR. JOHN (JAKE) WHEELER
and
MR. GUY A. VAN DOREN

November 13, 1980

The following is a summary of the edited transcript of a meeting between Dr. John (Jake) Wheeler of Hollins College and Mr. Guy A. Van Doren, Administrative Assistant to the Joint Interim Committee on Constitutional Convention which took place in Hollins, Virginia, on November 13, 1980.

Dr. Wheeler is a professor at Hollins College and directed the National Municipal League's State Constitutional Studies Project in the 1960's and authored The Constitutional Convention: A Manual on its Planning, Organization and Operation; and co-authored Magnificent Failure: The Maryland Constitutional Convention of 1967-1968.

THE CONSTITUTION

1. The Alaska Constitution is one of the finer if not the finest documents in terms of the kinds of positions the reformers have taken on the constitutional structure of a state. I would not tamper with it too much.
2. To encourage change just for the sake of change is to urge the possible opening of Pandora's Box.
3. Because of unrest throughout the United States, this may not be an appropriate time for holding a convention.

THE CONVENTION

1. There should be an organizational meeting prior to convening the convention:
   (a) Allow the delegates to get to know each other;
   (b) Possible election of officers;
   (c) Planning for and assigning delegates to committees and planning for staff assignments and selection;
   (d) Inpress on the delegates the difference between fundamental constitutional issues and law and statute issues and law.
2. Orientation session for press corps:
   (a) Explain difference between a constitutional convention and a legislative session;
   (b) Explain the goals of a constitutional convention;
   (c) Explain what to expect and what not to expect;

voter can usually change the makeup through the election process. A constitutional committee could be appointed every ten years to look at the constitution and recommend amendments to the legislature for consideration or even recommend the calling of a convention. The people could have the opportunity to vote on holding a convention every twenty years.

Under normal circumstances, the legislatures have limited time to do their work and are concerned with limited and immediate problems. They very seldom have time to engage in heavy constitutional issues. An objective group can look into the situation and decide whether or not to recommend the calling of a convention to the legislature.

3. Recommends that no changes be made in the civil rights section.
4. Feels that the grand jury is probably an institution which has outlived its usefulness.
5. Feels that the free conference committee in Alaska is the most powerful he has even seen. Questions whether, because of this power and authority, this is the reason a unicameral legislature has been proposed so many times in Alaska.
6. Feels there may be justification for looking into separation of powers between the Executive Branch and the Legislature since Alaska has very strong executive powers and some legislators feel there is too much power.

(d) Explain mechanics of press information availability.

3. It is probably not a good idea to have a draft constitutional document because it tends to polarize people and groups immediately. They focus on the draft document and not what will be developed as the convention meets and addresses the issues.

4. It must be decided early on how the revised document shall be presented to the people:

   (a) One vote covering all changes;

   (b) Vote on each individual change;

   (c) A combination of the above where the voter can choose to approve all the changes or only selected changes.

5. A convention does not need the space and staff requirements of a legislature.

6. Favors convention at the University of Alaska.

ISSUES

1. Legislative Pay. Recommends that there be an advisory pay commission mandated in the constitution if the people are upset with the present plan. Does not recommend the amount of salary be in the constitution since it would require an amendment just to change salaries. States which have the amount of salary stated in the constitution are the lowest salaried legislators in the U.S.

2. The periodic voting on whether or not to have a convention should be changed to every 20 years. Before the one-person - one-vote mandate, it was more difficult to vote someone out of office. Now it is much easier and if the legislature is not functioning properly, the

7. Favors appointment of the Attorney General by the Governor as is now the case. In Virginia, the Governor, Lt. Governor and the Attorney General are all elected separately and many times the offices are used as a stepping stone.
8. Any type of Proposition 13 provisions being included in a constitution is dangerous.
9. Feels any of the above issues can be taken care of through the regular amendment process and a convention is not necessary.

Transcription of Tapes of
Meeting with John P. Wheeler
Hollins College, Hollins, Va.
November 13, 1980

Side 1

012 Guy Van Doren: Jake, what I thought we might do first is that we could go through the brief outline that I sent to you. First of all, and I think what we are looking for in these very, very broad questions, what we ask is, after reviewing the constitution, I know you have looked at it before, but after reviewing the constitution, what type of changes would you see if the people decide to vote on a constitutional convention, what type of new or modern ideas have come to light since 1955 when the original constitutional convention was held, and just a general overall impression of the constitution of Alaska.

021 Wheeler: I guess in talking about this, one perhaps needs to inject two caveats to begin with. One is that it is awfully hard for an outsider to recommend to a state what they ought to do, unless he is very familiar with how the constitutional system actually functions, because I think in a way the constitution is only one part of the constitutional system. You have developed a lot of traditions and practices around that basic document itself. The second thing I suppose, is that most of us outside Alaska still look to that document as we remember in 1955, and see no reason, it's one of the finer documents, if not the finest in terms of the kinds of positions the reformers have taken on the constitutional structure of the state. I think

the initial reaction outside might be that the thing is pretty good, I wouldn't tamper with it too much. As I reread it, it was hard for me to find areas where, I as sort of a generalist, would recommend that this is not really constitutional, or I don't really understand that. I am not all that familiar with how these provisions have been interpreted within Alaska, that would require constitutional attention to just sort of straighten them out. I have read Vic Fischer's analysis. I think what I'm saying is that the awareness on the part of those of us who were a part of this whole long reform effort in state constitutions to encourage change for the sake of change is to urge the possible opening of Pandora's Box. As I said earlier, I wonder whether this is the time, a good time for the testing of the public temper in these matters, although I realize you don't have a choice in Alaska. There is at least going to be the question of whether a convention should occur. I wouldn't have specific recommendations to make about changes, except in response to Vic Fisher's comments. We can go over those maybe somewhat specifically. I do not, I actually have nothing to suggest in terms of a new provision or a new concept drawn from recent developments in state constitutions, because I think generally that what we have added to state constitutions in recent years have not been all that progressive. In some cases, in terms of the paper I have done, and I can give you a copy of what happened in the last eight years of a progressive sort, the things that I would agree with generally,

you have already done either to the constitution or by statute. I'm talking about things like a judicial qualifications commission, and that sort of thing. Some states are now just getting around to it, in fact if we could characterize the early postwar period there is a period in which states paid a lot of attention to the executive. In the 1960's, it appeared, they paid more attention to the legislature. In the 1970's, they looked more carefully at the judiciary, and dealt with problems of unification, problems of removal of incompetent or incapable judges, this sort of thing. Questions like the one in Alaska, legislative pay, which is a small problem, but it's a significant problem. A number of states, have moved to a pay commission of various sorts and various kinds of power. As far as change is concerned or the adoption of new ideas, it would be more along that line, many of which you have already done.

077 Van Doren: You mentioned the fact that we've got to vote on the question of whether or not to have a constitutional convention not in 1982, I think earlier we were talking about whether or not we really ought to have this type of review every ten years. Whether or not, I just wonder sometimes whether or not the general public feels that they have enough information or do they really care about whether or not the state holds a constitutional convention. I wonder if 10 years might be just a burden more than an advantage.

085 Wheeler: Sometime ago, I might have said 10 years is a good time and now I'm inclined to suggest a much longer period. I think a number of things have happened. One is, as you well know, the idea of putting a periodic question of this sort on the ballot was a way of getting around recalcitrant legislatures. They are balking for selfish reasons of some sort and won't respond to public will, therefore the public has to have some kind of way to force a vote. This argument is not as strong as it was in pre-reapportionment days. Reapportionment has changed a lot of this. Legislatures may not now do, I won't even say majorities won't give them what it might want, but certainly the new clamoring interests might want, but the argument isn't as strong anymore because these people are on the one man one vote proposition. They do represent the people. If they are not doing what the people want, then the people can, more than theoretically choose someone that will. Frankfurter's admonition in turning down the reapportionment, when he said that if the people don't like the legislature they have, let them elect one that will do what they want. It was nonsense in 1946, but it is not at this time. If it is of sufficient interest that people are concerned about it, and the legislature is recalcitrant, they will get their way. I am wondering about, well so much of the American system is built, like elections, it's built on periodic action, which is unrelated to felt need. I don't know how we get around this, but I think it is a problem in the American system, because we don't often,

we don't tie together political needs, levels of political awareness, political involvement, with the very fundamental questions we have to answer.

114 Van Doren: One of the things we have discussed in New York was the possibility of, if say, by constitutional amendment or by the convention method, whichever one seems to be indicated, that particular section be changed to possibly every 20 years on a public referendum and every 10 years, the idea of appointing a constitutional commission to look into any problems or anything that might have changed during the decade and if they felt there was a necessity for calling a convention, they could recommend that to the legislature for calling it, or recommend amendments rather than having the people voting on it every ten years. That way you would have some interim work being done every 10 years, and then the vote of the people very 20 years. It was something we just touched on in New York.

126 Wheeler: Well, that is an interesting idea because you know what you should build up over a period of time is a history of the development of the state, an analysis of the problems confronted by the state, and I think constitutional issues are both, the legislative process is too focused upon immediate and temporary problems. It is very difficult for legislators engaged in, in the limited time to do their work, it is difficult for them to engage in heavy questions, and

fundamental questions and broad ranging questions, because they are worried about tomorrow. I think it might very well be good to have a constitutional understanding and about every ten years we'll look into this. A very objective group will look into the situation, and decide whether they want to recommend to the legislature that they call a convention. And then maybe every 20, let the people decide for themselves on it. As a hedge against a kind of possible arbitrary behavior by the legislature.

142 Van Doren: This way you are satisfying both ways. You are looking at the constitution, the recommendations are going to be from people chosen from the state anyway, and then by the same token, the public has the power to, at least every 20 years to say, alright, none of this has been done; something should probably be done, so we are going to vote in favor of having a convention. And of course, as you well know, the other method that Alaska has is through amendment through the legislature, which there will be some changes more than likely, in that process also.

149 Wheeler: I know that you have probably talked with Al Sturm about constitutional commission, and probably this Florida thing came up, which attracted some interest 10 years ago, 12 years ago, when it was put together, but I think the experience with the Florida idea has not been encouraging. I don't think I would move in that direction in the sense of the commission, with

the authority to send directly to the people constitutional change. I think the results have been unhappy. I think the idea of studying, putting the issues before the people and helping to develop public understanding of these issues, which are hard, at best, to understand. They are very hard to understand. And this ought to be, there ought to be a kind of systematic inquiry and systematic publicity given to this.

161 Van Doren: Basically, the only commission we discussed yesterday was the Florida commission and it was interesting to note that the amendment to remove that from the constitution was turned down, so apparently the people in Florida still feel that there is something to the commission, although it could have been also very good public relation and convincing by people or former members of the commission. When I talked about a commission, I didn't have that type in mind, I had a more than likely review commission that would meet say, every ten years, but the Florida experience is interesting and I believe it is, in fact I'm positive, that it is the only state in the Union that has that system, where they can go directly to the people.

172 Wheeler: They submitted twelve or fourteen amendments I think, in 1978. Every one of them went down the drain.

174 Van Doren: Every one of them failed. That's interesting.

174 Wheeler: By a handsome majority.

175 Van Doren: One of the things I am going to do on return home is to get ahold of the background of the Florida vote and what was done toward it, and that type of information because that is interesting.

178 Wheeler: The same time that I gave this paper, which I am sending you a copy of, there was a report given, not a paper but a report, given by John De Grove the University of Florida. De Grove was a member of that commission, a political scientist on the staff of the University. De Grove is not on the staff of the University of Florida anymore, it seems to me to be, it's Florida Atlantic, or someplace like that, but Al Sturm could put you in touch with him. He gave a rather, I thought, thorough, humorous, and insightful review of what happened in that whole effort in Florida.

194 Van Doren: If this is discussed, I am sure people are going to be interested in various ways that commissions function, which is another one of the things I need to look into now. We had talked about a commission, establishing a commission, if the vote is on the affirmative side for the constitutional convention in 1982, but this is more of a preparatory commission

in this case, that the commission would be responsible for basically setting up the nuts and bolts of a constitutional convention which is different in concept from the type we are talking about. We are talking about basically a review commission, which would meet periodically.

204 Wheeler: Has the name Vernon Eney been mentioned to you? Vernon Eney is probably the most impressive man I have ever met in this business. He is a Baltimore lawyer. He chaired the constitutional convention study commission in Maryland in the mid 60's, and then was president of the convention, and was the spark plug throughout the whole effort and that effort went down to a rather disasterous defeat. But he would be well worth talking to if you are passing in that direction. He is a very thoughtful man, politically sensitive, made some mistakes in this, very obviously, but much of the result happened because of things beyond the control of anybody. Maybe I am a bit of a hero worshipper where he is concerned, but I think he is a tremendous person with a vast store of information if you could get a couple of hours with him. Eney. He is with the lawfirm in Baltimore. If you are back through Washington again, there is a Washington lawyer who was very prominent in the convention by the name of Alfred L. Scanlon. He was the only member of the commission to get appointed to a committee in the convertion, he chaired the rules committee in both for the commission and for the convention. I worked with

him subsequently. He and I were consultants together to the National Education Association, and they used a national convention to try to revise their charter. I started off by saying that to the outsider looking at Alaska and looking on this constitutional document, that it is almost presumptuous for an outsider to recommend changes to a particular state, and you don't know what the constitutional structure really is. Constitution is only one part of it. On top of it you have a good deal of practice which is developed, court decisions, legal interpretations, and so on. I indicated that to the oustider looking at the Alaska constitution, that it seems to me to have most of the requirements that many of us have been preaching about for a long time. There would be a hesitancy on my part to recommend even having a convention at this point, for fear that they would do something nasty with it. Alaska is going to have a vote, that isn't a question. The vote will take place, and it could be a positive vote, and they may have a convention and so our discussion should center on what kind of issues, how do you move toward setting this up and so on.

288 Van Doren: One of the things I wanted to say when you made that comment before, is that the, as far as asking people on the outside, is we live in the state, we work with this everyday, we work with the court decisions, we work with the legislature, the statutes and that type of thing, and sometimes in

Alaska, we are a very small state, 425,000 people, which I saw more than that when I was walking down the street in New York when I was there, but we need fresh ideas. It is nice to say, well we have got our problems and we know what they are, but it is also nice to talk to somebody outside of the state looking in who can possibly see things that we may have missed. And we live in our own small community of approximately 350,000 square miles, the largest state in the Union, but we are a very small community, and people who work in this kind of field of endeavor tend to kind of oscilate together and make their own decisions. One of the reasons we are sending people outside is to get their ideas and let them look out and look in to what we have done and give us a hand. It is not being presumptuous to make recommendations that may be valid, something that we may not even recognize.

309 Wheeler: My own work has been more in the direction of the mechanics of constitutional change than in the substantive evaluation of particular issues. I might be more useful in that sort of thing, than talking about issues, although I can pick up a couple of things that Vic Fischer talked about in his paper.

Van Doren: That would be good, because the issues are fine, but also we are looking at ways to have a successful constitutional convention.

317 Wheeler: Let me just skim very quickly. I was looking at this section on civil rights, and I think I would be a little reluctant at this point to kind of read much more into this right to privacy provision than is already there. This is one of the Pandora Boxes that might be opened, not to my satisfaction, but it is interesting that you have this provision, I think I would rely on somehow allowing court interpretation of that over time, rather than trying to write much more into it as far as the constitution is concerned.

329 Van Doren: People were getting a little worried about the amount of time that was spent going into records that people had, by state agencies, but the fact that people had a right to do basically what they wanted within the law. It has something to do with the wiretapping, and observance, but it also had to do with interfering with the privacy of the people. Alaskans are a very private people, and they did not want a lot of the work that was being done, as far as agencies, and that type, to go into their private lives.

344 Wheeler: It is of course, the right to privacy which the supreme court read into the the first amendment, which has become the basis for the abortion decision. Is there, I noticed one of the pressures in Alaska now is one of the single issue groups, the Right to Life, there are obviously going to be some problems in balancing these things out. Has this concept

of the right to privacy been interpreted to deal with proolems of abortions?

349 Van Doren: Not that I am aware of, no. It basically, the abortion issue is basically the people who believe in the right to life vs. the people who believe that people should have control of their own destiny. The right to life people are one of the groups that might be highly in favor of the constitutional convention in order to put something like that into the constitution, and of course we run into the problem of what is legislative, and what is the basic fundamental law of the land. In constitutions, this is very important. The State of Alaska's constitution, compared to a lot of other states, treats the subjects very broadly, leaving the interpretation of them to the legislature and the courts. And of course, this is ideal in constitution making. What we are talking about is the basic fundamental law of the land vs. the daily problems that rise and fall with the various generations.

369 Wheeler. Vic (Fischer) has a rather long disposition on the grand jury here, that I generally agree with, I think his analysis is valid. It's probably an institution that has outlived its usefulness. I can't see a state embracing that federal provision. May I ask a question about the seriousness of the interest in the unicameral legislature. Is this sort of an old saw that people from time to time bring up?

377 Van Doren: Well, it was one of the first amendments proposed for the constitution, and it has been I believe, in the research paper on issues and the preface, you should find and in my paper here, I believe, since statehood, unicameral legislature has been introduced 13 times. Now, in going through, what this paper did was take all the amendments that have been introduced into the legislature since statehood, and categorized them as to what happened to them. In the case of the unicameral legislature, it has been introduced at least 13 times and I would assume, I would have to go back through it, but I would assume in probably five or six of those cases, it was introduced by the same legislator. It has been a thing that people who are of a more progressive vent feel that it isn't necessary for two houses of the legislature, and one can function better and less expensive and there would be less of a problem with free conference committees and with the power that they have rather than a single legislature that would not duplicate the system. The other side of the story is checks and balances. It has been brought up every year.

202 Wheeler: You know with a bicameral legislature, you often have the conference committee to work out the squabbling between the two houses when they can't agree, but in my reading of Vic Fischer's analysis, you seem to have a conference committee system with a vengence up there. When you use the term free

conference committee, which I gather means that they can start fresh.

208 Van Doren: That's right. We have two systems there. One is a conference committee in whi h three members of each house are appointed and when they go into the meeting, it is to resolve differences in a piece of legislation, which starts in one house and has been changed by the other house, and the house of origin does not agree with the changes. The conference committee though, may only deal with the language in the two bills. If they can't reach an agreement, they are discharged, or they are upgraded, requesting an upgrade to a free conference, which means they are allowed to do anything. They may subtract, they may add language, they may add brand new language, and it sometimes gets to get to be a problem when the bill finally reaches the floor and bears no resemblence whatsoever to the original bill. The most blatant, and I use the word blatant loosely, example of it is the free conference committee on the budget, which the legislature and the various committees in their infinite wisdom, deal with the budget submission, during the whole session. Toward the end of the session, because there is difference in agreement between the house and senate, a free conference committee on the budget is appointed. They usually just completely avoid a conference committee and go right into a free conference committee. In that free conference committee, those six members are free to do just what they

darned well please with that budget and then they need to secure the vote of the majority in order to pass it and that is all it needs. They can wreck havoc with that budget bill and add and subtract things that the committees or the finance committees have never even discussed. It has been open to a lot of criticism in the State of Alaska.

240 Wheeler: I don't know of a system in which the conference committee has that much authority. Of course there is a legislative check on it, they must be authorized to do this by the delegation of the state, so there is no interest to solve the problem. But that is not really a constitutional issue, or shouldn't be, has it reached the stage where some sort of constitutional resolution has to be made to change the system.

248 Van Doren: Well I don't think that, but I think that is where the unicameralism comes in. People are saying if you have a unicameral system, you won't have that problem. I think that is where the argument comes in.

252 Wheeler: Well, you have the usual problem in Alaska with the legislature setting its own salary, I gather.

254 Van Doren: Yes, it is a problem on both sides. The constitution states that the legislature will have a salary, and at one time there was a salary commission established, that didn't seem to work out. Believe it or not, the legislators,

and of course from a practical point of view, legislators aren't exactly happy with the system now either, because they don't like to raise their own salaries, and as a matter of fact, they just raised their salary this past session, and that was the first time in six years that they have had a raise, and one of the reasons is the political ramifications of raising their own salaries, and yet they were very much behind the times in the salary situation. The legislative secretaries were making more than the legislators. So they did raise it, and of course they came in for some considerable amount of criticism from the newspapers and media and from other people. They don't particularly care bout raising their own salary either, and at this time, that is the only way that they can do it. I don't know what the remedy is. I don't really know whether, again, that should be considered as part of the fundamental law of the land or not. Some constitutions don't carry a provision in the constitution on when legislative salaries will be raised. I don't know whether, again, with the concept of whether that should be the fundamental law of the land or not. We might protect the legislators and it might be a restriction, too.

285 Wheeler: In this little paper, I will send you a copy of it, I did, I just skimmed the results, of comparing the salary actually paid legislators with the method by which the salaries are set. And of course the lowest paid legislators are those in

states where it is set in the constitution, the figures put in the constitution. Then there is no real pattern after that. It doesn't seem to matter a great deal whether the legislator sets his own salary or whether it moves toward the creation of an independent salary commission, by which the legislators can escape some of onus for raising their own salary, which for some reason the public has never been able to understand. I think part of this is the reflection of the low esteem the legislators generally have in the eyes of the people. It is true of the country, it is the least respected of the three agencies of government, and they always seem to feel that legislators are just padding their pocket, even when they raise themselves from say six thousand to ten thousand dollars. I think my own suggestion would be to give some serious consideration to it, at least an advisory pay commission of some sort to allow legislators to escape part of that, and I think it's unfortunate that it's viewed as a selfish operation.

312 Van Doren: Then again, we raise the question, should this be in the constitution or should it be something done legislatively to create this.

315 Wheeler: In one of the publications, there is reference made to some concern about some groups about the governor's abuse of his power. What is that referring to?

319 Van Doren: Well, several things happened before statehood. Number 1, the legislature had no power and the governor had very little power in the territory before we became a state, and most of the government of the state or of the territory came from the United States government. It was felt by the delegates to the original constitutional convention that the executive of the state should really wade in there and take control of the state. They also had someone in mind at that time and apparently like our country, had George Washington in mind, who was a very strong personality, a very dedicated person of the state, who was more than likely going to be governor, and they felt that one person should have a lot of power. As states go, Alaska probably has one of the strongest executives in the United States. Some states have the legislature control most of the power. In some states it is equally divided, but Alaska is definitely an executively controlled state. We are having a problem right now. Both the governor, his top aide and the people in the attorney generals office are saying that the legislature is trying to take away some of the separation of power between the executive branch and the legislative branch. I will give you an example. The legislature passed the enabling act for the constitutional convention last year. It passed both houses and was vetoed by the governor. One of the reasons that he vetoed the bill was because the preparatory commission would be appointed with several members appointed by the governor and

several members by the legislature and a member by the Chief Justice of the Supreme Court. This should make for a well balanced preparatory commission. The governor vetoed that bill, using as his basis in one case the separation of powers that the legislature makes the law, and it is up to the executive to carry out the law. So therefore, we could make the law, creating the commission, but was up to the governor to make the appointments to be responsible for the commission. He also based it on the disqualification of legislators. Our constitution states that no public person in public office can serve more than one governmental job. So they are saying that a legislator is a legislator, but if he becomes a member of the commission, he is serving in two public positions, even though the commission is not paid. OK, so he based his veto on that. There are certain other bills that the governor has vetoed because of the separation of powers argument.

410 Wheeler: This is by far a most serious issue, but I sense in this whole business, because most of the other things seem to be sort of a problem, but manageable. This one is far more serious, and I don't know quite how it lends itself to constitutional resolution, but it would certainly be something that somebody will address attention to.

420 Van Doren: As I mentioned earlier to you, until four years ago, every single amendment that the legislature passed and put before the people was ratified by the people and was

approved, which was sixteen amendments. Since or beginning four years ago, three amendments were on the ballot in 1978 and four amendments were on the ballot this year. All of those amendments had to do with extending power to the legislature. Giving them more power, the disqualification provision was one they were asking to vote on, and whether that restriction should stay in or not, extending the power of interim committees of the legislature, extending the right of the legislature to question more and more of the governor's appointments, and a few others. All seven of those amendments to extend the power of the legislature that have been before the people, have been defeated by the people. Prior to that, the people always passed what the legislature recommended in amending the constitution. So what we are finding here, basically what it is telling me, is although there is a problem that exists between the two departments, the people's apparent mistrust of the legislature, at least the people not wishing to extend the powers of the legislature beyond what they are now, means that they like the way it is with the executive having this much power, and this can be an inference from them. Now if there is a constitutional convention, which seems to be the only way the legislature can change their status, if the convention delegates so choose, then I would say that's the way you solve this. You would completely revise the executive and legislative branches of government in the constitution and what their powers are to be. But then remember also, that any changes made by constitutional convention

has to be ratified by the people, just like an amendment, so the people may not go along with that either. So it is kind of an interesting situation.

475 Wheeler: The governor's veto powers are very strong?

476 Van Doren: The governor's veto powers are very strong. It has been loosened up a little bit by the last constitutional amendment that did pass, which allowed the legislature to try to override a veto in the special session, however the governor has the power to line item veto any budget appropriation. Any other bill he must veto the whole bill, but if it has anything to do with appropriation or budget items, he may go through and remove those from the bill. Therefore, and again, there is an argument there, the executive branch has the control of appropriation, where the legislators feel that they should have more control over that, because they are making the law and creating it and it is up to the governor to enforce it. But the way the constitution is, it has given the governor the power to strike out things in any budget or appropriation bill that he wishes.

500 Wheeler: They have annual sessions, but they are limited?

501 Van Doren: No, they are not.

502 Wheeler: They are not limited? OK, so you don't have a problem then, as we have in this state, where the governor has a free hand to veto at the end of the session. Once the legislature went home, everthing he vetoed was dead. We just voted on an amendment here, on last Tuesday, to allow a special veto session. I don't know how I feel about this.

512 Van Doren: That is one of the changes we made also, if the legislature goes into special session, they are allowed to, within five days, they are allowed to put the question of whether to override the governor's veto or not. We have no limit on our sessions at all. We meet annually, we and t's open ended.

524 Wheeler: This hostility between the executive and legislature may explain a couple of things that I read in here, without fully understanding, and that was that Alaska has a very short ballot. You elect only the Governor and Lt. Governor on the same ticket. In here, there is some criticism of the Lt. Governor and then there is the raising of the issue of the election of the attorney general. Now I gather this must be part of this general picture of hostility or have these issues come independently?

536 Van Doren: I think probably those issues have come up independently. There has always been a group which has favored the election of the attorney general, election of judges, and election of district attorneys.

524 **Wheeler: Alaska has a modified Missouri plan for the election of judges?**

544 Van Doren: Of course, we do have review of judges by the electorate every so often.

SIDE TWO:

003 Van Doren: Basically, the governor has the power to appoint judges, subject only to confirmation of the legislature. People who argue for this are saying that because the governor is able to appoint his own attorney general, that basically he is the governor's attorney, and serves the governor and does not serve the state correctly. Whereupon if the attorney general was to be voted on by the public, they would have a say in the type of person they want as the attorney general. Of course the argument against it is that it is up to the attorney general's office to defend the state and the governor. Therefore, he should be working in the executive branch. There are pros and cons there.

013 Wheeler: This is probably one of the most confused positions in state government, because of the varying roles of the attorney general is supposed to play. This, I tend toward the position of the attorney general ought to be the fellow the governor turns to and says this is what I want to do, now how can I do it constitutionally? Not whether it is constitutional

or not because lawyers can always build a case one way or another, but it is hard for them to play that role and play an independent as the top prosecutor of the state for example. Of course in this state, we elect the attorney general and in most of the states, he is elected, and we end up with the situation that we have here now of a republican governor, democratic lt. governor, and a republican attorney general. We formerly had a republican governor and democratic attorney general.

025 Guy: You elect your Lt. Governor separate from the governor?

026 Wheeler: Yes, there are three different offices. There is something of stepping stone to go through. But we have a situation in the previous administration where the democratic attorney general was often suspect of making rules, so to embarrass the republican governor, and also to build up his own position for his race for the governorship. Alaska, I don't know if I am helping you out at all. In Alaska, this is an area in which this question of what is fundamental really comes up and where we have to be a little relaxed, because what is fundamental to one state might not be fundamental to another state. We have mentioned the old classic of water in Arizona and the levies in Louisiana. Natural resources in Alaska. This is something, controls of natural resources, which ought to be something that you leave to the legislature's judgment but Alaskans, evidently, feel natural resources. is something fundamental that they want stated in the constitution.

040 Van Doren: That is correct. When the delegates met at the constitutional convention, one of the problems in Alaska is they felt that we had been exploited by various companies outside. By including the natural resources provision in the constitution, it shows you how much the people of the State of Alaska think of their natural resources, even in the actual enabling act it was put in that fish traps would be outlawed in the State of Alaska. That is how Alaskans felt about their natural resources. Well, that is one example, but our state is totally dependent on natural resources for economic development. In the past as a territory, our major money came from the federal government. We had boom and bust days. One boom was fish, one was lumber industry and one boom was gold. In all these cases, the majority of the money that was made went to outside interests, and so when the framers of the constitution wrote the constitution, they felt that they wanted to stop this, that the natural resources were so important that they would put a provision in that constitution to stop some of the exploitation from outside. Now you can't have a restraint of trade, you can't stop it all, but they certainly wanted to state in the constitution that we had important control over our own natural resources and it's even more so now, especially with the federal government locking up the land. One of the reasons the statehood commission was developed was in order to explore the ways where we can utilize and control our natural resources without federal government interference. This section is one of the things people have

asked about more than anyth[illegible] else "why this section on natural resources is in there?" As you said, it is the same reason why levies are in the constitution in Louisiana, and other special sections in various states, because it is so important to our state to have some say in our natural resources.

080 Wheeler: I think we have to break away from the standard reformer's definition of what constitutes fundamental law. It has to be within the context of the political climate and political curture of every state. Just skipping through here, one area in which there has been constitutional changes in recent years, and I think of dubious value is in financial and taxation areas, where at least for the most of my career in this business which spans the late 50's into the late 70's, the question of constitutional change within the direction of clearing up the legislatures, lifting restraints from the political practice of governments so they could more adequately confront the problems of the day, etc. Now we have reached the period where the questions seem less in that direction than for putting some of the strength back in and I am talking about now, the administrations in terms of taxing powers and in terms of expenditures and so on. We went through it in this state, and nothing came up, in both the constitutional amendment and statutory thing on taxing and spending but this legislature did nothing on that. The one provision that disturbs me more than anything else in the question of the proposition 13 amendment is the placing of the absolute or requirement of an extraordinary majority for passing

of taxes, the two thirds bit, which is part of proposition 13, which is part of the Tennessee constitution now. It seems to be occurring in enough places that somebody might think that it is the popular thing to do. Is there a significant question in Alaska to start putting this kind of restraint on taxing?

107 Van Doren: Not as much at this time. You may be aware that we have eliminated our state income tax just recently. We do have property tax, which of course proposition 13 addressed itself to, and some people are getting very uptight about the amount of property taxes that we pay. Other than talking about it, in other than several bills introduced in the legislature which really didn't go that far, we have not addressed that as much as some of the other states have, and of course we derive our money mainly now through oil taxation and revenues, and we have a severence tax. Of course there is a decision coming out very shortly from the federal government on severence taxation. That should be out, the report should be out, within the next week or so. The Western United States, as you may be aware of, is very worried about what this report is going to be, because of it severely hampering the severence tax on the major companies that have been developing natural resources in the state. Other than that, and the taxation problems that we faced in the last few years, mostly regarding oil, and oil related products, we have not gone into that very much.

127 Wheeler: I think one of the areas here that would trouble

me, and I don't know whether it requires constitutional attention, but it might, is to avoid a situation which the only reaction seems to be a clamp which threatens the legislature. We talked about this in class, but proposition 13 was largely an outgrowth of the system in California which was so effective in reassessing and reappraising property. In the time of rapid inflation that all the state had to do, the local government had to do was sit back and assess all these new resources. So in effect what they were doing, they were raising taxes without ever suffering the onus of raising taxes. I think this is the problem. I think it is something we ought to do to avoid the kind of reaction the people gave in California. It is going to have a long, there is a long time indication of what is happening. I am troubled by the two-thirds requirement too, because at least theoritically it seems to me to undo in certain respects Baker vs. Carr. What you are doing now is embracing a new form of discrimination. I think this is dreadfully dangerous. It seems to me a short run answer to an immediate problem which will have very long term effects that the people may not be aware of or appreciate what it will do. Why don't we get into something I know something about? What kinds of questions have come up in regard to the planning for this convention, for the commission first, and then the possible convention?

154 Van Doren: Most of the books that have been published, and I memorized the manual, which I noticed you have a copy of,

have been very helpful. I think one of the things that Alaska is facing is that we have never had a constitutional convention, we haven't really talked about it that much, and my committee and my work is the first work that has been done since Tom Stewart traveled around the country in 1954 and 1955 and prepared for the original convention. What has happened since then, is at that time there wasn't too much written about it, and there weren't too many people involved in it. Fortunately, I have the advantage of being able to read a lot of the things that have happened, a lot of the ways that people have prepared for constitutional conventions. How and what has worked and what hasn't worked. Then going ahead and doing what I am doing now and talking to people and I think a lot of the work that I have done, and a lot of the people that I have talked to, have borne out things that I have already read previous to traveling because I had definite ideas of what we should or shouldn't do. I think probably that rather than what we should do is that I am interested in is pitfalls that we should avoid. The manual brings up some very good things, and some of the other writings that I have read bring out some good things. I am looking, if we are going to have a convention, I would like it to be a successful convention. The Alaska constitutional convention if we have one, is totally unlimited. We do not limit it to any subject at all. That means the whole thing is wide open for revision. So two things have to happen. Number 1 is if they make changes, how are

those changes to be presented to the people. Do we want a situation similar to Hawaii where the people can either vote on any individual change in the constitution or vote on it as a whole or a combination of the two thereof. If it is going to be done, if we are going to have a convention, if it is going to be wide open, what do we have to look for to avoid any problem? And of course if it is changed, and it is changed for the better, then how do we go about convincing the people that we are doing great and wonderous things for the state in changing this and that. I think my interest might be to discuss the pitfalls to avoid rather than to exactly what to do, although I am interested in what to do also, but from my point of view, and in speaking to other people who have either been through it, or have studied it.

197 Wheeler: This manual, when I did it in the late 50's or early 60's, it was done largely on the basis of intuition and astrology. As you said, there was very little experience at that time. I was tempted to depend on the work that Emil Sadie did in preparation for the Alaska convention. I used his written materials and I talked to him on a number of ocassions. I had the experience in Hawaii to some extent. The Missouri convention of the 40's and the president of that convention was still alive at that time, and some of the other people I talked with then. But it was, based more on limited experience and common sense than upon a lot of the experience, but I think this

is both useful and I think it has been, I think subsequent experience has sort of supported some of the warnings and suggestions that we have made. There are a number of things that have come up since then that I would call attention to, and I may be overly influenced by the intensive experience in Maryland, but I feel stronger than ever about some of the things that I said in here. If you are going to have a convention, have a session previous to the opening of the convention. In other words, a gap between the opening day and an organizational session. I think this is very important. Have an organizational session a couple of months, prior to the convention for planning for assigning personnel, these sorts of things before you get underway. I would even do what Maryland did, I think, and have some kind of preconvention discussion sessions, with the potential delegates. This is very useful in terms of developing the kind of commaradarie, to get to know each other, the election of officers, this may not be as serious a problem in Alaska, but it, everybody knows there is a lot of good men there. It was very important in Maryland, and it helped elevate the discussion in the convention. That is, it helped deal with the problem of fundamentals more clearly, because the business that the constitution ought to be fundamental is constantly hammered home in the three day session. One problem though, that I don't know how to address, because I don't think you ever tell the journalists anything, is to try to educate the journalists. This is what a constitutional convention is all about. I ran into this in Maryland, along with the school school for the delegates.

I recommend a school for the journalists, say one morning, but they felt this was a bad idea, and it may have been, but what happened was the journalists showed up, they didn't really know what a convention was all about, they thought it was another kind of legislature, and they started reporting it in legislative terms. The convention works a bit like a legislature, but it ought to be less political. It works like a legislature in the sense that a lot of the work is put off, nothing happens for awhile, and then it all builds up at the end. But you send a reporter to a convention, and what happens, he has got a deadline to meet, who is going to talk to him, probably somebody who isn't terribly important to the convention operation, or is off to the side, and he is perfectly willing to talk with some aspiring politician who wants to get some headlines. For several weeks in the process of the convention, you are hearing this kind of information about the convention, not about the great issues the convention has to face and about the resolution of the problems, but at best, human interest political stories. Now anybody who wants to say something critical at all about what is going on is going to say it. Rumors get played up like that, so you tend to build up in the public, an attitude of suspicion at least, toward what the convention is doing, before the convention has really started to do anything. It is just one suggestion, if something could be done in that area of reporting in the preparation state, I think it would be useful. Backing that, in drawing from the Maryland experience, a real item of controversy in terms of the action of the planning commission was to bring out that draft constitution and I had

very strong mixed feelings about the wisdom of this. I think on the balance, I would not have done it, looking back, it was a mistake, because what the commission wanted to do, this was the convention commission planning for the convention. They not only studied the issues, they not only made a recommendation to the governor and to the people that the convention should be called, but they had drafted a constitution. The idea was that they never had the idea that this would be the finished product, all they wanted to do was show how the existing constitution was not necessarily the form of that constitution was necessary, that you could draft a reasonable constitution in a much shorter way, dealing more with regular fundamentals. But this thing got picked up by really right-winged nut groups. They got an attack on that constitution long before the convention ever met, so that the draft constitution which had no official status whatever, became a rallying point for the dissident elements that were ultimately fairly successful in rallying opposition to the real constitution when it was proposed almost two years later. I don't know if this is in the works anywhere, but I think it is a grave concern. You were talking about and made referennce on how to present the quesion to be decided. Make the first decision! Do you want it to pass or not. This may be a real question, when you get into this process, which direction are the people going in, and how the readers are responding to this. You can package these things in different ways. Mayrland's experience, as you know, was to present an

entirely new constitution on a one vote deal to the people, and this got voted down. Everybody says a one shot deal, I'm not going to go. So Virginia learning from this, decided to make their proposal in four pieces. They had the general draft of the constitution, and three, what they felt were controversial arguments, that they isolated out in seperate votes. All four things passed and passed handsomely. I think they would have probably passed handsomely if it had all been one single document. But if you do put it in one single document, you do tend to mobilize the opposition, because the people, whoever they are, find it, tend to respond to single bits of concern here. It contains the provision on that or this or something else, and you can get small minorities in opposition to various parts of the constitution, then a smart politician who is opposed to the document as a whole, can put together a majority out of these individual opponents. You can't look at the constitution in terms of a single piece, it has to be looked upon as reflecting a complex integrated structure. Has any thought been given to where a convention might be held?

320 Van Doren: I noticed in your manual that you discussed the fact that the University of Alaska was the site of the original convention and the fact that New Jersey held their convention at Rutgers University. In 1971 I was chosen by the legislature to do a constitutional convention site survey. At that time, we had concluded that the University of Alaska would possibly

be the best selection for a convention at that time. Since then, and the people that, the chairman of this committee, as well as other people, including Vic Fischer, feel that it should be still on campus. I have recommended another site survey study to be done next year to see what the best site would be.

403 Wheeler: Except for the need for these very important things, provisions for housing, feeding and that sort of thing. The demands on a constitutional convention would seem to me to be perhaps even less than the legislature, in terms of the different kinds of equipment you need. So much of the activity of the constitutional convention takes place in committees or on the floor that you don't need the office structure for delegates like you need for a legislature, in other words, you don't have the same demand for secretarial help, intensive work, but you do need some secretaries, but in terms of reproduction equipment, it is a smaller scale, so you probably don't need to put it where the legislature is with all these facilities. Of course you have a legislature that can meet year round if it chooses, so you have a problem of dovetailing, these two operations, if you decide to do it at the capitol. One of the great arguments John Bebout has of doing it in Fairbanks, is what if these guys do work on the constitution in Fairbanks in November, December and January, whenever it is, you can't or don't want to get out of the building.

428 Van Doren: What you have to realize is that not only do we have technological changes in Alaska, but there is a lot of

warmer clothing that isn't so heavy and allows you to move around.

431 Wheeler: Well, it has been very interesting, and I am hope that I have been able to help you in my small way. I wish I could spend more time, but I realize you have a plane to catch.

MEETING IN
HOUSTON, TEXAS

with

MR. JAMES F. RAY
MRS. KATHERINE RAY
DR. JANICE MAY
MR. GUY A. VAN DOREN

November 17, 1980

The following is a summary of a meeting held in Houston, Texas on November 17, 1981 between Dr. Janice May, Mrs. Katherine Ray, Mr. James Ray, and Mr. Guy A. Van Doren, Administrative Assistant to the Joint Committee on the Constitutional Convention.

Dr. May is a Professor of Political Science, University of Texas at Austin. She was a member of the Constitutional Revision Committee and is the author of The Texas Constitutional Revision Experience in the '70's, and will be responsible for the segment on the state constitutions in the next Book of the States.

Mr. James F. Ray was Executive Director of the Constitutional Revision Commission and the Texas Constitutional Convention.

Mrs. Katherine Ray was assistant to the Executive Director for both the Constitutional Revision Committee and the Texas Constitutional Convention.

THE CONSTITUTION

You have a good constitution. If a convention is called now, in this period of public unrest and distrust of government, you may get irrational proposals that will only be temporary solutions or solutions for special interests. You do not want this type of material in your constitution. Place the burden of proof of holding a convention on those who want a convention. Your constitution is one of the best there is.

PRE-CONVENTION

1. Stress the importance of preparatory studies and to get them started before the vote is taken.
   (a) Useful even if there isn't a convention.
   (b) Citizen's Guide to the Constitution.
   (c) Annotated version of constitution.
   (d) Simplified explanation of constitution.

   It is good to have different levels of information, beginning with a generalization, citizen-type thing and progressing to the more professional in-depth studies.
2. It is important to have quality research done on constitutional issues.
   (a) Work accomplished in the above two sections is very useful for civic education. It is good to make the public aware of constitutional contents.

3. The committee should prepare something that shows the Alaska Constitution as compared to other states. In all textbooks on constitutions, the Alaska constitution is held as a model constitution in terms of length and fundamental principals.

4. Prior to the vote the committee should utilize all forms of media to inform the public. You should certainly use T.V.

5. Important to stress to anyone working on the constitutional convention or related activities (public hearings, media, brochures, etc.) that everything be done with integrity and statesmanship.

6. Hold public meetings to inform the public and to find out what issues the public is concerned with.
In Texas, when there was a loss of integrity in the public's mind, the revision of the constitution didn't stand a chance.

7. Begin planning for ratification of the revised document even before the vote on whether or not to have a convention. That way, you are ahead of the game.

8. Non-partisan election of delegates.
   (a) People may not run if they have to run on a partisan basis or must adhere to partisan polic'es.
   (b) Conventions should be above politics.

9. Regarding putting constitutional amendments on the same ballot as the question of whether or not to have a constitutional convention, the following comments were made:

(a) If you are giving the people the choice between voting for the amendments so you don't need a convention, it might be a good idea.

(b) People might feel that if there is an affirmative vote for holding a convention, the issues will pass also just because they are on the same ballot.

(c) If the people voted for the issues and a convention, you would know what changes the public would like made.

(d) People may be happier because they have had a chance to vote on the issues.

(e) Do not contrive the issues just to get a "no" vote on the holding of a convention.

(f) If something needs imeediate attention, O.K., you shouldn't put on anything that would affect or impact the vote on calling the convention.

(g) Keep in mind the "integrity factor".

CONVENTION SITE

The most important decision about choosing a site is the neutrality of the site.

(a) Some people feel it should be away from the seat of government (capitol) in order to be free from politics, political influence, special interest groups, etc.

(b) Some people believe that if a convention is held at a University, the public may regard the convention as

an "ivory tower" type of convention and thus that type of document.

(c) Some people feel it should be where the population center is located.

(d) The consensus of the three people at this meeting was that since the original convention was held at the University and the people accepted that, the University could be used again.

PRE-CONVENTION PLANNING

1. Enabling legislation:

(a) Spell out the preparatory commission and its powers.

(b) Prepare mechanics for the convention and that is all!

2. Orientation session recommended.

Texas held one for preparatory commission and prior to the convention, itself.

(a) Brought in people brom both inside and outside the state. Consultants and experts on conventions and revision: Mr. George Braden, John Bebout, Harold Blodget and Frank Elliott.

(b) Texas received tremendous help from the National Municipal League .

Texas also held an orientation session for the press and a press forum.

It is good to provide a committee by committee expert during the early part of the convention.

3. It is very important to develop temporary rules prior to convening the convention. That way the delegates have something to work with at the beginning of the convention. It is also important to have someone who is familiar with constitutional convention rules, either a consultant or a former presiding officer of a convention, to assist at the beginning.

   (a) Alaska could probably use most of the rules which were used at the first convention.

   (b) Do not use legislative rules.

4. Have a list of staff and consultants prepared in advance for use of convention officers and committee chairmen. This list can be prepared after the vote on whether or not there will be a convention.

   (a) In selecting staff, try to select people who are familiar with the type of job they will be doing. Try to avoid patronage positions.

5. Immediately following election of delegates, start educating them on the process of style and drafting and the functions of a style and drafting committee. This is very important.

   (a) During the convention give the style and drafting committee time to complete their work during reasonable working hours and not during the night after working all day.

CONVENTION

1. Get organized groups to express their opinions early.
   (a) During pre-convention period public hearings.
   (b) In solicited issue papers.
   (c) Early convention work.

   If this is adhered to, there will not be surprises when the document is up for ratification. You can be prepared for all eventualities. Again, the key is public awareness and public participation. Do not do things in the dark.
2. Physical setting.
   (a) Seat delegates alphabetically or have them draw lots to prevent cliques from forming.
   (b) Adequate room for committees, press rooms, lounging areas and staff space.
3. Sumbit all work to style and drafting committee and give that committee adequate time and expertise to do their job.
4. Make sure there is an adequate budget for the convention.
5. Make sure floor debate is handles firmly, that no final drafting is done on the floor and that there is hard copy wording of proposed amendments and language available for all delegates, staff and press. Require written amendments.
6. It is a good idea to have experts and consultants right on the floor to answer questions and to advise the delegates, although they should not enter debate, only advise. If there are any questions or problems, hold over the matter. This is unusual with most parliamentary bodies, but it

can assist either the presentor or committee chairman.

7. Texas did not hold public hearings during the convention, only before and afterwards. The people at this meeting do not feel having a recess is a good idea. They felt in their case, holding a recess was a disaster.

ISSUES

Extend period for voting on whether or not to have a convention from 10 to 20 years.

POST CONVENTION

1. Texas mailed a copy of the revised constitution to every household. They feel many of those ended up in the waste-basket.
   (a) They had the revision translated into Spanish.
   (b) Some people were against it because it was too easy to understand.
   (c) They feel just summaries should be mailed out and if people want the whole document, it would be available at schools, libraries and so forth. (In Alaska, at information offices).
   (d) Another suggestion is that the state could mail out request forms. If the people ordered the full document, it would be sent.
2. Send out a pamphlet with a summary and explanation of the changes.
3. It's a good idea to have a small public relations staff.

4. Anything you can do to get the revision document out to the public; media releases, T.V. spots, pamphlets, speaker forums, meeting with service clubs, participation by groups (League of Women Voters, and other organizations). The most important thing is to get the word out to the people.

5. Enlist the help of delegates for public relations work.

6. Speaker tapes are a good tool, they can be sent anywhere.

7. Hold the special election for ratification no sooner than forty-five days following the end of the convention and no longer than 100 days.

   (a) People cannot say you are ramming it down their throats.

   (b) It won't be so long before the vote that people will lose interest.

MISCELLANEOUS

1. A very important thing which Texas did and you may want to use is a WATTS line.

   (a) Used all during the convention to answer questions (A hotline).

   (b) Used between end of convention and ratification for informational purposes.

   (c) They also taped news releases for radio and T.V. use. The stations could call and get a taped summary of each days activities.

(d) It was used effectively to squelch rumors of what they were doing.

(e) They used the Texas News Network, we could use the Alaska Radio Network.

(f) Cut tapes of debates or summarization of the days activities.

(g) There was some live coverage similiar to our Capitol '81 program. This also created information.

(h) Hotline was kept in use all the way until closing of the polls on ratification day.

2. Overall you must pay attention to even simple detail that may not seem like much at the time but is very important and remember the statesmanship and integrity.

613 Van Doren: I have given you all a brief background of what we have done so far, what the purpose of this meeting is and what this trip has been for. I am open to suggestions and it can be totally informal. I would like for this to be informal and just a little bit of discussion of what we have talked about.

621 J. May: I was a member of the commission, and I would like to stress the importance of preparatory studies and to get them started even before the vote is taken. Now you are familiar with George Braden's work and other works like the citizen's study of the constitution, what did he call it? Citizen's Guide. But more useful are the annotated versions. We have a very convoluted constitution. We had it simplified and pluralized, plus the annotation and comparative analysis. That was very useful, but of course I don't know how experienced your people will be. Either the commission or the delegates. It is good to have different levels of information, beginning with a generalization, citizen type thing, and then progressing to the more professional and in-depth studies. Of course we deal from the Texas experience. We just needed lots of information and that was

one of our problems. We had to absorb so much on the commission. There was a lot. I don't know how many people understand the Texas constitution even today, more do now than they did. It is so involved and yours is not, but even so, I am sure there are some technical and intellectual brain twisters, so you need to have lots of information.

659 Van Doren: Janice, let me ask you one thing: Do you think this type of information would be helpful even if they don't decide to have a constitutional convention?

663 J. May: Well, it certainly would be, I do some lobbying and of course I teach, and I use the materials all the time. Of course we did go through the experience of a convention, but then we failed. I teach the simplified constitution, I bring it down and look at it, and I use it all the time in my teaching, and I have talked to others who are in the legislative process, and I am sure they use it.

674 J. Ray: I would respond to that by saying that I second that, what Janice said on the importance of getting started early. Quality research on the constitutional issues, which in your case particularly, it seems to me that you have a wonderful opportunity for a civic education kind activity

where you, whether the proposition passes for a convention or fails, and you don't have a convention, would serve to enhance and lay out the level of citizen awareness throughout the state of what is and what isn't in a constitution. I realize you have a newer constitution and a shorter one, and probably there is a much greater number of people who understand it. But I suspect that the great masses of the citizenship does not fully appreciate the provisions in your constitution. If they do, it would be very different from any other state that I kow of.

704 Van Doren: I am glad you describe our population as great masses.

707 K. Ray: I think one of the most valuable tools, resource tools, that we have is the annotation, which didn't come out really in final form until after the vote had failed and everything else. That is what I refer to most and what I think a lot of other people, lay people, refer to most in trying to understand it. I would think it would result in a new constitution being newer and shorter, you could do an annotation easily because your constitution has been adopted more recently. You have the records of your first convention and everything like that, which we didn't have. I think that would be the

primary resource document that I would recommend in terms of the one of the things which should be done. Janice, you may disagree with that.

731 J. May: No, I would agree with that. As I understand it, it is kind of unique. Now, you did have one in Illinois, the new Illinois constitution was passed so that the old annotated one probably doesn't serve as much of the purposes we're discussing.

END OF SIDE ONE

Side Two: 001 J. May: Of course, since we didn't get a new constitution, ours has proved invaluable. But I would think in connection with what we are doing here at the conference, there is a concern about citizen's attitudes toward government and the need to get citizens involved again, at least for a community spirit or in a civic sense. This is ideal, this just puts some meaning into a civic education conference. So even if it fails, it might prove its worth in getting citizens involved. I think a lot of us who participated here in Texas were the better off for it, the citizen's advisory groups and so forth, even if the whole thing failed, I think, I saw a definite change in the legislature. They were referring, I would go to committee hearings, they referred to those propositions that failed, they wanted to at least have some of them altered, and they were definitely influenced by their experience, there is no question about that. So even if it fails, I think in terms of civic education, it would be helpful.

013 K. Ray: Of course the annotation would be even more valuable if the proposition failed. It is something that you could have for all times.

015 Van Doren: Certainly, because we will be able to keep those on file, and we know that we are going to have a vote again in another ten years. The time may be extended.

018 J. May: You probably need an amendment to extend it to 20 years.

018 J. Ray: Careful research will pay off, I think, regardless of the vote, and will be well worth every penny that you put into it. I heartily believe that from our experience. There is very little out of the short body of materials that are not being picked up and used, in some form or fashion.

023 Van Doren: I think Janice had a good point too, which was the feeling that has been brought out at this conference on how important it is for the public to know what is going on and the citizen awareness. I think that if nothing else, it has driven home to me the need for a good citizen awareness of even a question of a constitution. What the convention would do, could do, can't do and shouldn't do. But I sure have heard it echoed these last couple of days here in this meeting.

030 K. May: What is your committee going to do as far as education about the referendum?

032 Van Doren: That is of course, up to the committee. One of the things that I have proposed to them and that I have been working on prior to taking this trip, is an informational brochure. This brochure is in draft form now, and what we are working on is trying to have a fairly simplistic brochure that explains about what a constitution is, what a constitutional convention is, what a constitutional convention isn't, how important citizen participation is, and we have been thinking very seriously of basing it on the type of format that Hawaii used, the League of Women Voters in Hawaii, with their semi-cartoon type brochure, where it is good enough and general enough so that we are not insulting any adult by giving it to them to read, but it is also simple enough so that it can be distributed to school children.

043 J. May: The adults are going to be more apt to read it if you have something more like a cartoon.

044 K. Ray: Some kind of pictures and sketches somewhere.

045 Van Doren: One of my sneaky propositions is that we would be handing them out to the school children throughout the whole state, and as soon as it appears at home, sitting

on the table, someone is going to pick it up and look at it. It will be distributed other ways too, but that is one way of getting it both to the schools and then into the home, so that when it is sitting there, an adult is going to pick it up and read it, and I am trying to make it very readable and enjoyable to read too.

051 K. Ray: Are you going to include in there information about what is in your present constitution and how relatively new it is? As compared to other constitutions and things like that, I think that would be valuable to the people in trying to decide whether they need to really take a major look at it again.

055 J. Ray: It should be a simple comparison of the Alaska constitution as compared to those of other states. Most states, Texas being a bad example to compare with, in terms of length, in terms of fundamental principals.

058 Van Doren: Right. The one thing that we cannot do, and I have been instructed very strictly on this, is we cannot, due to the fact of the state supreme court decision regarding the language on the ballot relating to the question of calling a constitutional convention. They have asked that there not be any real opinions expressed in the brochure as such, possibly a comparison, which is a good idea Kathy, in some general form, but we don't want the brochure slanted toward the fact that we are

saying you really shouldn't have a constitutional convention, we don't need it. We have got to be very careful with that.

J. May: Of course, all of the text books compare the Alaska constitution and how good it is with other states and how their constitution should be more like the Alaska one. I wanted to stress one thing, I have been involved in some other citizen activity, and we have to keep in mind the fact that most people watch television, that is where they get their news, and so you need to use the broadcast media or you probably aren't going to have much of an impact as far as the mass citizen. So maybe little spots or kind of shows, I don't know how you would work that situation, the radio is helpful also, I suppose.

076 J. Ray: I was going to ask about the great distances and isolations, I don't know enough about the complexity of that, but I am sure you have a whole set up of communications considerations that you have to bring to bear that are particular and unique to Alaska.

080 Van Doren: Actually, we have a fairly good system, we have our satellite system, which reaches all the bush communities. They all have television now, it's not 100 percent but it certainly covers quite a few of them. And of course there is educational TV out there, and that type of thing.

It is ideal for that type of work, plus even our teleconferencing network from the legislative halls, which we can get out to 16 or 18 different places, and we can actually call a meeting in Juneau, have people in one of the locations, and they see us on television and we see them on television when they are talking back and forth, so we can have committee meetings in two different places in the state. But that is good, I think you are correct. I think the TV spots would also be a good way to do it, depending on how much time and money can be spent. But I am certain that different groups are going to be involved in this, too. The League of Women Voters, and special interest groups that are going to have their say-so too, about whether or not we should call a convention.

097 J. May: It will be tough to be the person to make up these spots. You know, to have that short period of time and try to get enough information involved to make it interesting at this point. This kind of material is kind of difficult to get to the mass public, but of course, maybe you don't have to, maybe it's just the elite public.

102 Van Doren: No, I don't think so, I think we would have to get to the mass public. It's kind of a challenge to me, possibly to design some of these, too.

104 J. May: I know, our prople worked hard on it.

105 J. Ray: Related to what we have discussed thus far, if I could single out one thing, that I would put more emphasis on than anything else, where you are now, where will you go, depending on the chain of events, it's not only the complete appearance but also the complete fact of the integrity of the substance or the depth in your work of statesmanship, all the way through. You know your political situation, but whatever you have to do to begin now, to line up that kind of series of contributions by the various group leaders in a statesmanlike atmosphere. That, more than anything else, I think to me, would bear directly on the outcome of your referendum and on the question, if there really is work beyond that, a preparatory commission of the convention and ultimate quality of your work. That similarity is the one that, had I the opportunity to go back and do ours over, I would want to spend much, much more time on developing that sense in the public's conception and eyes, complete and total statesmanship and the integrity just as we used to revere the judiciary. I think we have come a ways on that, and it's seen in a little more humanlike way, but we used to think of the judiciary as the high bench and the robes and the complete integrity, and I wished we had the chance again to work at that in our preparatory work. Spend as much time counseling the people as you can.

135 J. May: It is a tough row to hoe.

140 J. Ray: In my sense of where our whole process began to go downhill was when we lost the appearance of integrity. I am not entirely sure that there still weren't great statesmahship in those members of the legislature. There really was, but political careers went down the drain over votes. Almost no one in the legislature that I know of really gained from that process politically, economically, or any other way. But we lost the appearance of integrity, and it went downhill all the way to the vote, downhill to the end of the convention and then there was the attempt through the legislature to bring the proposition back on the ballot and it still carried that taint in the point of view of the voters.

154 J. May: As I say, though, keep in mind that we had a tough row to hoe. We were going against some ingrained prejudices of many years standing against the legislature.

156 K. Ray: And the governor, who didn't support it. That was the difference, also.

157 J. May: Well, you don't have that problem. You will probably have the problem that so many states have, and that is to continue the momentum after the convention is over, and to go right into ratification campaign. Think of that right

now. The ratification right now, in order to get it adopted.

163 Van Doren: OK, the preparation that we have talked about, we have talked about the citizen's guide, the annotation, the need for integrity, the commission, itself. Let's see, I am just trying to review Texas, and I realize that you, since it was the legislature, you basically would say that it was partisan delegates, because t' y . . .

170 J. May: Well, they were mostly Democrats. I don't know whether in fact there was a two party contrast, although the Republicans didn't vote as a block, but there were a number of them that stuck together, and I think they were playing a game.

173 Van Doren: Do you have any feelings, any of you, over the partisan vs. nonpartisan election of delegates?

175 J. Ray: I would be very prejudiced myself, in going for a nonpartisan election of delegates.

177 J. May: I think that proved to be better.

178 Van Doren: That's fine, this is your idea, so . . .

178 J. May: It's not our experience.

179 J. Ray: It's not our experience, I was just trying to think through this, your situation on this. I still feel it should be nonpartisan.

181 K. Ray: You might leave out some of your most qualified people to serve on this if you had to have so many Republicans or so many Democrats, or people had to run on a party basis or something.

184 J. Ray: I really think that starts to lay out provisions early on. It draws the line, and creates a majority going in, a more rigid philosophy.

188 J. May: You are trying to get above politics, I think. You need to make it a cohesive unit a sort of community policy.

190 Van Doren: What, and this is one of the things which has been discussed with the various people with whom I have been meeting, is what are your feelings toward the, say first of all, the site? I realize you are not that familiar with Alaska, where we basically have our choice between the University of Alaska, where the previous convention was held in Fairbanks, and I imagine the larger community of Anchorage might possibly be looking for hosting it since they would probably like it to be near the majority of the people. Also, we have the facilities and rooms in Juneau, which is the state capitol, or

some other site. Do you have any feelings about whether it is good or bad to have it in the state capitol because of the feelings, possibly, of the public towards a state capitol atmosphere, or a university atmosphere, or anything of that type?

207 J. May: Mostly, the university or possibly Anchorage. The university is a little isolated, isn't it?

209 Van Doren: Not as much as it was in 1955. It would have the facilities, because they are thinking of renovating Constitution Hall and using it for that particular purpose, we don't have to compete with the students because the people would be housed probably in Fairbanks, as they were before, and you also don't necessarily need the amount of facilities that we have in Juneau, although that is very nice, with the teleconferencing system, it makes it very convenient, but . . .

216 J. May: I would say as to the seat of government, if we are going to carry it to the extreme, with the civic community and spirit of nonpartisanship, you might keep in mind those who are distrustful of governments. I think it is best to put it in the university. Don't make trouble, in other words, if there is, if you have in Alaska a bad feeling, like other places, get away from there.

222 K. Ray: But then when you give people the impression of having it in the university, you succeeded before doing it in the university setting, but I think sometimes the rank and file citizens get the feeling when things are done in a university setting, as if it was some ivory tower kind of lofty concept that is somehow placing itself above the rest of the population or something like that. You may have to balance that concept vs. the distruct of government concept. I would say Anchorage.

231 J. Ray: I would think, I don't mean to dodge your question but to throw it back at you in a way, the fact in my mind would be the public sense of neutrality. I don't know enough about Alaska to know which of those sites or others might meet that requirement best. I know that it would have been very difficult for us to hold a constitutional convention in Texas in Houston or in Dallas, because it would not have been perceived as neutral in terms of economic interests. I think it would have been very, very difficult to hold it on the University of Texas campus.

241 K. Ray: I think so too, with all the university articles.

241 J. Ray: The university ties into the constitutional articles, in fact we had problems, I do recall, with our one

public hearing on the University of Texas campus, and remember how the regents came down and blocked off all the seats in the front part of the hearings for themselves? There were people who were quite offended by that, and there certainly was not a neutral feeling about our hearings on the university campus.

248 J. May: You do in your state have the history that it was done sucessfully on a university campus.

249 J. Ray: I am not arguing against it.

249 K. Ray: In Alaska, that might be the best place.

250 J. Ray: That might well be the best place because the neutrality criteria is the one that I would look for the most. You got your locations, any of those would be or have certain transportation advantages.

354 J. May: Of course the capitol has the advantage of the facilities.

259 J. Ray: The biggest advantage, and this is probably showing some personal bias, but the biggest advantage to me of staying away from the capitol, would be to simply change the usual order of business of doing things. Make everybody

involved move. Make the lobbyists move. The lobbyists would want to influence the process and they would have to do it in a different environment. Change the order of business and not play to the advantage that they have of, they meaning anybody that is well entrenched in the political environment of the capitol city, the on-home turf advantages that they have, established institutions. Basically the lobbyists, in my opinion, would, from whatever side of the political spectrum, they are set up with private clubs and booze and newsletters and things where they can crank out and alert their members and all that and it is a lot easier for them to do it from the capitol base if you are in their home turf.

280 J. Ray: A new order of business and not your old regular way of doing it.

281 J. May: You probably heard from Sam Gove. They had their convention in Springfield. A lot of the lobbyists wouldn't show up, in fact they got kind of concerned on paying attention to them. There was the legislative session going on also, and that is where the lobbyists were.

287 J. Ray: I agree lightly, but more seriously, I think that is the danger that you need to watch out for, the organized groups getting involved and really showing, however you can to get them to show, their cards, what their real interests are, somehow.

The discipline of the process of forcing them to make some early choices about what their real feelings are. We had a number of groups that laid back on us during our preparation commission work, and didn't surface their real concerns during that process. They waited to surface many of the issues later and that really tore our convention apart. The right to work issue was compromised and kept silent, not silent, but it was not publicly debated in any serious sort of way. A number of other issues and specific groups that said very little about our changes and things that affected their interests, retired teachers and what not, until it hit the convention, so part, if I have to quantify it, would be one quarter or less than that of the work, in my opinion, was not real in terms of the real public debate that was going to go on in the convention, we had somehow sidestepped or ignored or compromised quietly something that should have been more thoroughly debated and these interest groups should have been drawn out so that we could really find out what their position was.

321 J. May: Now I remember all . . .

322 J. Ray: Some strong anti-legislature and anti annual session kinds of concerns that were out there, were never really fully brought before the commission.

325 J. May: Well, we did have trouble with annual sessions,

There was a long minority report, but Alaska probably won't do what we did, which is really to have a little miniconvention before we get to the main convention, because we had to do something about that constitution to make it manageable and you don't have to do that, so you may even deny to your commission the power to make any recommendations. I don't know, some of the commissions don't have the power that ours did. They just write a few pamphlets and do the mechanics and arrange the facilities. But I do remember that when I was on the panel before or after the commission had completed its labors and before the convention met. One of the panelists was a beer lobbyist, and he looked and smirked at me and said "Now we will get it", meaning yours is just the preliminary work and we know what to do now and we're convinced and we will take care of it.

343 Van Doren: One of the things the committee was considering doing, and I don't know how it is going to work in with our time frame this year, but prior to the vote, it had been planned for this year, but the committee was three months late in starting for various reasons, but one of the things that we had discussed doing was to hold public hearings throughout the state to number 1, acquaint people with, again the public relation and education that we were talking about, acquaint the people with some of the information that I would find on this trip, information about the constitution, about the

convention, that type of thing, and in turn, have them give us a feed back, and what they feel their conception is of the constitution, and what issues they feel should be looked at and just a general feeling of what they have about the constitution, and a constitutional convention. Do you think this is a good idea or not?

360 J. Ray: I would be positive about that sort of activity and again, I harken back to my earlier comment about the decorum and the statesmanlike way which that sort of thing ought to be handled. Is it going to be on the topic of the constitution? I think it may help.

365 J. May: You might uncover some things that way which you wouldn't know about otherwise. It might be that you don't want a convention because you see some problems emerging and or you might decide you should have a convention, if you follow me, there might be some say, ultra-right or ultra-left types of proposals that you, yourself, or whoever is the one to interpret these hearings from the political standpoint, wouldn't like to see get out of hand, and this might be better than a public opinion poll. Just find out what the lay of the land is from a political standpoint.

378 Van Doren: Right. Of course, we have no choice. The vote has to come before the people.

380 J. May: I know, but it might be that you will be forewarned or it might be used for people to have a no vote. In other words, there might be side results, too. Some things you don't expect might come up, but in the civic sense, it is always good to let people know what is going on.

387 J. Ray: In a neutral sense, where I think there is some kind of way that there is a possibility that the leadership of the state might learn out of a hearing process of things that might help jell their, the electorate's, opinion or the leadership's opinion of what kind of a position they want to take, yes or no, on the vote. I guess I don't expect that with the newness of your constitution and the shortness of it, the chances are that that process would alert some people that maybe didn't want to have a convention which meets to revise it. They like it the way it is.

400 J. May: You are likely to get some things tacked on that you don't have now, is what I am thinking, especially if you have this unease. You start in a time of trouble in economics, you may start getting things from under the rocks. You are starting to get irrational proposals. I don't know whether this will happen or not, but I can foresee it.

406 J. Ray: It helps people in groups indentify other, and

sometimes more appropriate avenues for expressing their concerns.

410 J. May: How is the tax situation? You have a bonanza don't you, in terms that you're giving the money back? You probably don't have that problem.

413 Van Doren: Following along with that a little bit, another thought had occurred was the possibility of a followup to these hearings, suppose that there were say a set, and I am going to pick a number out of the air, of four major things that turn up at this public hearing that the people seem to be very concerned with that the legislature hasn't addressed. Some of the work that I did last year identified every constitutional amendment that has ever been proposed by the legislature since statehood, which was interesting, what happened to it, where it went, how many committees it passed, or whether it died or whatever. One of the suggestions was that, suppose we had turned up four or five things that seemed to be in most of the hearings we held and there was a concensus that maybe those should be changed and the legislature hasn't addressed them. The other possibility was that at the same time the vote for whether or not to have a constitutional convention was up, would be that these amendments would appear on the ballot also, passed by two thirds of the legislature and place it before the voters at the same time. What are your

feelings about that?

437 J. Ray: I'll refer to Janice a minute on that, that is her field really, she has studied our amendment process and seems to have a good grasp of it.

439 J. May: Let me get this straight, you have in mind putting on some amendments at the same time as the yes or no vote? Well, in our experience I do find that the voters do discriminate in terms of, if you are thinking in terms of passage or defeat of these amendments or if you are thinking of the lightning-rod type of thing. In other words, are you saying to the voters, here are some controversial issues, you can decide them now, and you don't have to have a convention to do it. If you are thinking along those lines, it would probably be good strategy to do that. If you are thinking along the lines of just approval or disapproval of those amendments, sometimes there is a feeling that if the vote is affirmative for the convention, all these issues will pass just because it is on the same ballot, in other words, the people will vote for all of them, or the reverse might hold. I guess that is what Jim had in mind. Our research has been in connection with the convention, primarily whether to tack on amendments when you are voting up or down the constitution and I have some other situations in mind. I think, generally speaking, it has been discovered that

it is wise to separate out some of the proposed constitutional changes, some of your most controversial issues, so that they can be decided on their own merits without the whole thing being pulled down. So I think it is a different situation here, when you put them on the same ballot as a yes or no vote, from a civic standpoint, I think that it should be by itself. I don't think it should be associated with anything.

470 Van Doren: Well, basically, we are talking about just the same ballot. In other words, we only have one more chance to place amendments before the people before the question on whether to hold a convention is voted on. I mean it has to be the same time. Normally, we only put amendments on the ballot in the general election years.

476 J. May: Well, it's going to be on the ballot, the call for a convention. Well, there are just two ways of looking at it. One is, if your strategy is to kind of discourage the vote, you might say to the voters as I suggested here, some of the things that come out of the hearings, and here is your chance to vote them up or down now, you don't have to have a convention for it. Or you can leave them off on the assumption that this is premature. If you are going to have a convention, then that is the sort of thing you have to discuss when you get to the convention. So, I guess it is up

to your strategy, there is no yes or no here, it is just what you are trying to do.

488 K. Ray: I think it might help you to have those three or four issues on the ballot with the yes or no vote, because then if you end up with another convention, you would at least know what the most current reading of the people was on those issues, if you didn't have a convention. You might please the people with the opportunity to vote on these issues, and whether they passed and were added to the constitution or didn't pass, and weren't added to it, you might have achieved a little bit more satisfaction from the electorate by having them on there.

505 J. Ray: Comment about Janice's comment about public concern over their ability to trust the government, and my answer to you on that would be that there very well may be some item or items that on their own merit are in the best interest of Alaska needs to be on that ballot at that time as an amendment, but I would not contrive to put issues on there, because I think that the public's distrust is such that it would be seen as a strategy, if you will to, in some way, one way or another, influence that vote on the convention, and so as a strategy in the sense we were talking about a minute ago, I would not do that. If there is a sound independent, fundamental reason to have something up there, debt

ceiling or some particular issues that really must, convention or no convention vote, be on the ballot at that time, well fine, but I think I would argue against a strategy of putting things on there in some way to affect or impact on the convention vote. It ought to be a very clean vote, up or down.

537 Van Doren: OK, let's go ahead now that we have had the vote, and we are going to have the convention. We talked about the preparatory commission, I suppose really, Jim, with your background, things that you were involved with in this type of thing, that I might ask you where do we go from here?

546 J. Ray: You are back in the legislative arena, right, in terms of enabling statutes?

548 Van Doren: I am going to assume that our enabling legislation is going to pass this coming legislation session, at least if not this coming session, maybe in 1982, which will be prior to the election. I think we will get enabling legislation. We have two legislative sessions to get it done before there is an actual vote on a constitutional convention. I think the feeling of the legislators on this committee is to at least get that done and get it over with. The people will know how their delegates are going to be chosen, and they'll know exactly

what to expect if they do vote for having a constitutional convention. That is one of the reasons I am in favor of getting it out in front of the public.

564 J. Ray: The enabling legislation, would that spell out whether there was a preparatory commission, what powers it had, what size it would be, how it was appointed and so on? That's all, once the election takes place, you are saying that is all behind us. We are of course looking at preparing for the convention itself. The polishing, finishing and the further development of information and research in the area from the beginning of the budgetary and physical preparation of the planning for the briefing and orientation and the care and feeding of all the delegates is where you are at that point.

We found the orientation kinds of sessions we had, where we brought in not only our best minds from our state, but also enriched it greatly, from people from all over the country, prior, in our case, prior to the convention and even the preparatory commission.

602 Van Doren: So you brought in people from outside, both during orientation for the preparation commission and also for orientation of the delegates after the election?

605 J. May: I was in charge of what we called the seminar. The vice-chair was one of the main persons of the seminar. It involved everybody; John Bebout, George Braden, Harold Blodget, and Frank Elliott. We had a committee to try to pull everything together and I think we had a day and an evening.

615 Van Doren: This was for the commission? (Yes!)

616 J. May: We also had a kind of thing for the delegates, and we brought in the press. That was the second one, or was that the main one, with the press? We had a press forum, and then we had one for the delegates too, so we had several preparatory sessions.

622 J. Ray: We set an early part of the convention aside for committee by committee expert testimony and briefing from our preparatory commission to the delegates, and that I thought that was really useful.

629 J May: You remember, we had the one for the press. We had other state's conventions represented and they dealt with how they got the message out to the people. But it was the day after we had the delegates there, that is the representatives and senators, and we spoke to a number of delegates.

640 J. Ray: It was a day long session.

644 J. May: I know we had one just for media. Then I remember, very clearly, we had all the representatives and senators at the Joe C. Thompson Center. So that must have been the next day or something. Then we also had the National Municipal League Convention in Dallas, and we had some things there for our representatives and senators, and then the members of the CRC went around to the different communities and one of the functions was to meet with the incoming representatives and senators and we had small meetings with them and exchanged ideas. So there was a definite effort to get these people ready for the convention. I don't know if your commission would do that kind of thing.

664 J. Ray: I can't over-emphasize the value of the National Municipal League in that part of the process. The orientation kind of things. We knew pretty well who our presiding, who our president of the convention was going to be in advance, as I suspect you, particularly if you have a large vote, you may know. We set up with the National Municipal League, meetings in Dallas. We set up our president to be at the convention and our Lt. Governor, in a room in a hotel and we had them meet with officers of the League and individual people like John Bebout, Sam Gove, we walked as many former

convention presidents as we could through that room to talk with and prepare them. We ran former staff directors, university people like Sam Gove through and gave our core leadership there some exposure. Those who had trod the path before them. It was very helpful, I thought.

699 J. May: During the convention, you called in people like Sam Gove too. Expert witnesses, to decide when we should set the election, what the ballot should look like.

705 J. Ray: I know what my transition thought was, the point I was going to make. In this period of time, we are talking about now, after your vote and before you meet, the matter of beginning on the rules, and I am sure from the others that you have talked to, you have gotten a big dose of that. But this orientation process we are talking about was very helpful in that, our leadership to be, could ask the very specific kinds of questions, how can this work out and how can that work out? How should you handle voting in a peculiar problem that requires two-thirds vote? Would you take a two thirds vote all the time.

J. May: We never got two-thirds on anything, did we?

End of tape.

Van Doren: OK, as we finished the other side of the tape by talking about the rules, so go ahead on that.

004 Jim Ray: In this period of time that we are talking about, the development of rules is very important, and I guess, the question was raised, do you have temporary rules and then the convention debates and adopts permanent rules. I am not sure I know exactly how to answer that. I think from what I know of your situation, that would be the logical steps. You have to have some set of rules to even begin, so have something temporary, but to the extent you develop your research on the rules, those used in other conventions and how that fits into the more common parliamentary practices in Alaska that are well known to many people. To the extent that you can lay out some alternatives on certains parts of the rules prior to the time the delegates are elected and then as soon as those delegates are elected, involve them in the process of reviewing the rules, suggesting rules, having someone around who is an expert on the rules of the convention, or who has presided, or have several people talk to the delegates.

023 J. May: You already have the original set of rules, I

mean you could use those rules just to look at, to start from. We didn't have any. Because we didn't have a convention for 100 years, there was no real record of the convention. We had experts but you can't go to the old rules, you are going to have some committee or somebody is going to have to write some rules. You can't spin around, it loses valuable time, because that can get very tricky.

031 J. Ray: I think there is a lot to be said. Janice mentioned your previous rules and in our case we based ours essentially on the rules of the house of representatives, and some indigenous base to me is, at least in our case, had a lot of value. We adapted where we needed to adapt, and left things as they were where they worked and some things we left where they were just because they were comfortable, and everybody felt good about knowing they were there, even though they were not going to impact the process very much at all.

039 Van Doren: Of course you had a unique situation there of having your legislators as your delegates, and they were used to this set of rules. I wonder whether it is good to draw from legislative rules for convention rules.

041 J. May: You can't altogether, because prior convention rules would make more sense.

042 J. Ray: I would not recommend that you draw from your legislative rules.

043 J. May. The process is different. The purpose is different. You have to come out with one document. It is best not to have to go back and forth from committees, and also we limited the reports so that you had a committee report, you didn't have individual suggestions. You had to wait until you got to the floor, and then you could amend the committee report, but you have to sort of ride herd on this process or you can get bogged down. I felt our rules worked fairly well. Of course we did have Jake Wheeler prepare the rules, I think in the rule model for the convention, he did them kind of by the seat of his pants. There are models to follow, but you have to remember it is a different process, not a legislative process. Of course there will be parliamentary rules that will apply universally, but the whole process is set up not for refining endlessly and then having your next legislature amend. This is it. You are getting one document. You only have one house, too. How did you all handle it? Did you just get together into small groups on the rules with the leaders? Staff?

062 J. Ray: That is where we started, and we did have a committee to work on the rules.

063 J. May: Was this part of that joint committee? Nuts and bolts.

065 J. Ray: Yes. Probably where we had preparatory committee of the delegates, if you will, but preconvention planning committee is what we called it, and it dealt with rules, facilities, budget, research.

073 J. Ray: We were most deeply involved in that, but in terms of answering your question, we started with the House of Representatives rules on one hand, and several versions, including one that George Braden did, suggested rules based on experience in Illinois, and the model rules and so forth, and essentially the way it ended up politically working in our exercise, I don't think we spent much time over this, it is so different, was that we inserted into our house rules those things that we felt were critical to the different process for a different product, and as Janice was just talking about, we left in a lot of the things that were strings really, or of very minimum obscured use because our delegates were used to having them there, and felt comfortable about that. To me, in your situation and to make things sure, first of all you need a set of rules, that lead to, as Janice says, to a document, a final single coherent document that is perceived as having some

permanence and not something to be amended next session, and secondly to open up as much participation as you can get on an equal basis among the delegates. I would certainly argue to stay away from house rules or legislative rules because those members of the convention that happen to be legislators would find themselves in an advantageous position vis-a-vis, someone else coming in, you should start everybody reasonably equal. Not in their talent or ability, but their position in their treatment of the rules.

102 K. Ray: Familiarity with the rules, too.

103 Van Dozen: How was, once the convention got underway, how did Texas have their seating arranged?

106 J. May: The physical seating? We had to take out the house seats, and they were put sort of in a semi-circle, and they drew by lot for seats, as I remember. It was to avoid having little cliques here and there.

110 J. Ray: Yes, that is correct, we did not have seating by geographic area, by delegations, by political parties or by other associations, of any type. As I remember, there was some politicking, and some swapping of seats that created a little bit of that anyway, the objective was to avoid all that, delegates were thoroughly mixed up on the floor

to avoid cliques and caucases, and let that take place at other times and places.

118 J. May: In Maryland, they go by alphabet, they wanted to make it as nonpartisan as possible, and now, as I recall, it was by alphabet. We didn't do that.

125 Van Doren: What about staffing now? What type of staffing did you have, for permanent staff more than outside staff?

128 J. Ray: I am trying to place this in the time frame we were talking about, in terms of preparation. I am trying to think about ours in relation of where you would be in your process, for preparing for a convention after the vote, both before and after the delegates are elected, right? What we worked at very hard, and you of course may want to go at it a different way, was to develop during the equivalent period of time, a compliment of good staff people. I don't know how to charactize it, Janice? I think it is not senior people, but not just bring in committee clerks either, by any stretch of the imagination. People in both the administration function, research, and legal functions. The thought was, we tried to develop a cadre of people that participated, and could move right on into the convention. During the same time period in your situation, I would think you would want to develop that kind of cadre of potential staff people.

148 K. May: That was why I said maybe the preparatory commission, or the preparatory body, their primary function would be to staff the convention. That was my thinking from what you said about what or how the process would work there. But maybe I just totally misunderstood.

152 Van Doren: No, I don't think we would be going into the staffing part of it. In other words, the convention would be choosing its own staffing. I would try to avoid dictating anything to them. One of the suggestions was that the preparatory commission marshall a list of potential candidates for staffing.

158 K. Ray: I would think that would be the least you want to do.

159 J. Ray: I know you don't want to dictate, and you can't do that. But you should begin the process of developing people by lists, by expertise, by demonstrated activity, in preparation for the research end or demonstrated involvement in getting ready for the budget or the physical arrangement or whatever, so that you have a good solid core of potential staff people for the convention to draw on, that are ready to act.

K. Ray Otherwise, you couldn't possibly do it in 60 days. And have a knowledgeeble staff. I don't think.

168 J. Ray: What we did is, what we committed ourselves to, first of all, was a core central staff for the convention. The top leadership committed themselves to having that core staff and bringing it across from, in our case, the established institution of the commission. Then we, for the committees of the convention, we did sort of the kind of thing you are talking about, we took applications in advance, once they were organized and the rules were adopted and all, they were given some authority to screen people and make recommendations, but the committee chairmen were completely independent and were not obligated to take any of the recommendations.

181 J. May: That was a function of the legislature, though, because it has been traditional for your chairs to appoint their own people, and I don't think you would have to worry about that at the convention. But see, we were using the legislature, and they were used to having their own staff, so you did get people to stay on some of these committees. The regular legislative staff was appointed as convention staff. Now, in the case of the convention in Texas, we didn't have any expertise, really. And so what the commission staff did was develop expertise in these given areas, and then continue it on throughout the convention. I don't know if you need to do that, it would probably be desirable, but in any case, you can't tell

a convention that they've got to appoint these experts. However, the fact that they are experts or people who have developed a certain specialization might make them awfully appealing, attractive, and then they would be appointed, but in this situation, we had to come to terms with the legislative staff, and you had your legislators. I am sure that there were some people you probably wouldn't have appointed if you had your druthers, but they had to be there. There was no way of getting around it.

198 J. Ray: There were some people that I don't think ever showed up for work. One or two committees.

200 K. Ray. There was a central research staff person, serving on all the committees, on each committee, and the central research staff people were drawn from the revision commission.

203 J. Ray: That was how we accommodated this particular situation of knowing we were going to have chairmen who were legislators, and their own staff, legislative staff, and so we kind of inserted in the committee in some way or another, some of our more seasoned more, we thought, more appropriately selected people, with talents and experience in that process to get a good mixture.

214 J. May: The official parliamentarian for the convention was the house parliamentarian.

217 J. Ray: What we did on our arrangements for paper processing, flow, papers and all that, we used the legislative institutions for that purpose, they were set up for that purpose. In this case, our Secretary of the Senate, who was the secretary of the convention, he oversaw the record flow, the journals of proceedings, the printing of proposed constitutional provisions, printing of committee reports, and all that process and we used the legislative institutions for that. That was a part that really worked super well. It really did. They were computer wise, and they were geared to dealing with long lengthy drafts of legal language, to producing proceedings and journals rather rapidly.

237 J. May: What was George's position? Was he on the staff, or was he a consultant? You will probably need some consultants.

240 K. Ray: He was consultant to syle and drafting.

242 J. Ray: That touches on a specific point that really is important. From the very moment the delegates are elected, they can begin to be educated to the process of the style and drafting committee, and the distinctions between their proposals

and the debate. If they learn the requirement process that the style and drafting committee provides, it will pay its dividends over and over again. The people have to kind of get used to that. To the idea that they are going to make decisions which are then going to be refined and come back to them for approval and if they don't like it, they send it back again, but they don't write provisions by committee, or write them on the floor. That was maybe impressed on me more than anything else.

259 K. May: You would have a real hard time if you did it any other way.

260 J. Ray: We used a style and drafting committee in our preparatory commission, when we used it again in the convention.

262 J. May: Ours was not as efficient, at the convention. We were getting tired and tattered by that time, and were very inexperienced, so I don't think we did a very good job, but I think the convention committee did.

266 K. Ray: The convention committee had that as its primary and only function, and at the CRC, (Constitutional Revision Committee) we were taking CRC members and staff members who were working throughout all the debates in the committee sessions, and everything, and then having to go in after all that, you know at midnight, and work on style and drafting, that was why it didn't work as well.

272 J. Ray: Maybe I have been involved in the wrong organizations or something, but in my experience, in local government and state government, in legislatures, civic organizations that I happen to have been in, it is not the usual way of operating to have a style and drafting committee, so it is something new, and the importance of it needs to be explained, examined and pointed out to the delegates and those who happen to be lawyers are going to be the hardest ones to convince. Our preparatory commission chairman, Judge Calvert, former Chief Justice of our supreme court, said early on in our preparatory commission work "I just don't understand why we need to have this guy George Braden down here at all, he is going to help us with style and drafting?" He said "I have written enough legal langauge, and Jawarski down there in Houston has, and I don't see why we can't just do it ourselves." We finagled and talked and worked on him and finally prevailed. I believe he came out at the end of the process as the strongest supporter of that process and realized the value.

299 J. May: It takes persuading, so I think you ought to get an early start on that.

301 Van Doren: I've heard the Braden story before.

302 K. Ray: They did their amount of bargaining and ended up fast friends.

303 J. Ray: It is so valuable, you know, you can have a proposition of some sort, an amendment to an article, whatever passed on the floor, and the author of it may think it does one thing, and the delegates who vote on it may think it does something slightly different, they usually, when the author prevails, think something is similar. So, when it is carefully dissected by someone as skilled as George Braden, it can have a different, just in the wording, in the punctuation, syntax and all, and when it is finalized, it can mean something different or nothing. Let's see, budgeting, we haven't really talked about that very much.

346 Van Doren: I don't think we need to discuss that. It is up to us, and it differs quite a bit in each state, and I think that's more of a state decision.

350 J. May: Be sure you have an absolute budget.

351 J. Ray: We started on physical arrangements, any particular thing?

351 Van Doren: No, we were talking about alphabetical seating rather than geographical cliques, and that has been

brought up many times, too, because it apparently is important. As far as physical things, unless you have specific things that we ought to definitely do, or we shouldn't do, I think it is fairly general. Your recording, your journals, your paperwork, your printing facilities, your committee rooms, your press rooms, your press offices, whatever, unless you have anything specific that you learned that we either should or shouldn't do, I think the facilities pretty much take care of themselves.

366 K. Ray: We haven't really gone into post convention or post ratification. I don't know if we should discuss that now.

368 Van Doren: We aren't quite there, yet.

370 J. Ray: Only two things that I can think of, that might be in my mind as to what the commission should do. The matter of how you handle the floor debate, and importance of having a hard copy wording of proposed amendments to a committee report either hand distributed or up on the screen in front, depending on how elaborate your process is, where the literal language can be seen by everyone, press included. It is important, and we did work real hard at having the hard cop' out in front. The dicipline of that process of re iring the amendments be put on paper is important. The other th ng we did from some other kinds of experiences that I have had and the important

kinds of permanence of the document, I think, is having the expertise on the floor in terms of your staff or the consultants. The consultants can be there, your legal counsel, and so forth, whoever it is, in the particular situation where it is being debated, they are handy to the floor leader or the presentor or the committee chairman or whatever, I think that is very important. Sometimes that is not the custom in other parliamentary bodies, that is, to have staff that will appear on the floor.

399 Van Doren: That's good, that's something new that I hadn't heard, and that is helpful. Any other things from either of you?

404 J. May: You are going to have a much smaller convention, don't you have 60?

405 Van Doren: 65 would be the number, probably.

406 J. May: You have to have good microphones. If it's hard to hear, there will be problems. We had to have four mics.

409 Van Doren: How many people were involved?

410 J. May: 191. Your physical problems will be less.

Van Doren: OK, I guess, actually we probably can move on to post convention, anything that you have to offer in the way of post convention. I would say both from the point of view of presentation to the people of the product, number 1, and number 2, just basically post convention work that perhaps you feel should be undertaken.

429 J. May: Well, we followed the example of some other states in having the whole constitution mailed to every household. And, I don't know if that was good or bad or not.

433 K. Ray: We had it translated into Spanish.

434 J. May: We had a peculiar thing happen, and I don't know, we had a number of people arguing that the constitution was so easy to understand that that's why people were against it.

439 Van Doren: That's interesting, I don't remember even reading that in the books.

440 J. May: Actually, a lot of the material was already in the constitution, and they were actually voting against both the current and proposed constitution. But, I don't know how serious the problem was, but I remember reading in the Austin newspaper that it was so clear that the people decided they didn't

like what they read, I mean they could understand it, whereas if it were more obscure, legal language, they wouldn't have known what it meant, and they might have voted for other reasons, like when in doubt, vote no!

458 J. May: I don't know, I suppose that is a good idea, to have the whole constitution sent out, or was it worth it?

460 J. Ray: I really don't know how to address that, I honestly don't. I suspect it went in the wastebasket.

462 K. Ray: Do you think that it would have been, would it have helped or would it have been useful to have sent a card to every household, which people could fill out and return, postage free, and order a copy which would also be free, you know, it would mean a double mailing.

470 J. Ray: I hadn't faced up to this until just now, but I guess if I really think about it, I would offer someone to process it like Katherine is suggesting. Or, you know, a summary of some sort, mailed and order forms and access in other places, libraries, schools, and so forth, rather than just mailing one to every household.

480 Van Doren: Although, the only thing, just for discussion, the only thing that I could see, Kathy, is that if people received the order form. . .

I wonder what the ratio of the people getting something and keeping it or throwing it away, vs. people who have to go to the effort of mailing back a card in order to get it, especially in my state I've got to say that we have a real problem. We are only talking about 100,000 some odd voters, but we have a real problem with mail. I mean, sometimes mail is three and four weeks late in the outlying areas. Some mail can't even be delivered.

493 K. Ray: That would argue for going ahead and sending both the constitution and an order card, and argue for going ahead and sending a copy to each household, but I would think that maybe something that might help bridge the gap between the throwaway, and the paying attention might be if, at the front, you included a little brief summary.

500 J. May: We did that too. We had a little pamphlet.

501 Van Doren: I was thinking that too, pamphlet type things, the same as we talked about before the vote, possibly explaining the proposed changes. I also think about media. This is one place you could use the media to say "You will be receiving a copy of the revised constitution, the revisions of the constitution, please look at it carefully before you vote, blah, blah, blah." You could really work that up with a media type of blitz throughout

the state. Another thing, I will throw out for you, I don't know if Texas did it or not, but one of the things I have been discussing and some of the other consultants seemed to think it was a good idea, would be speaking forums. Put together, as speakers, the delegates.

515 J. May: We also had a hotline. To call in.

516 K. May: The hot line was really valuable, I think, at both the CRC and the convention. That was really a valuable tool.

519 J. Ray: It was a very valuable tool. We put it on right after the preparatory commission finished their work on their proposed constitution, and we used one during the convention, and it was very useful. It informed a lot of people and put down some rumors quickly.

527 K. Ray: We kept records of each of the calls made.

527 Van Doren: Very good idea, I haven't heard that, that's a good idea. And you had it all through the convention?

531 J. Ray: Yes, the people could call in. We also, this is something I'm glad you brought up. I hadn't thought of that.

We had that operation set up also where the media in the outlying areas could call in, and we would have our staff do summaries of the activities of the day, and our staff would tape some part of the debate or something and the media could call and just plug right into that, and get a feeding, this was during the convention.

547 K. Ray: I'm trying to think it was the Texas News Network, or the Texas State Network, didn't we plug into that? There was a Texas State Network down in the capitol, and I thought we plugged into that.

551 J. Ray: That network or any other reporter could call and get a news feed about what was going on in the convention that day.

551 K. Ray: We had a separate public information staff, a few people.

556 J. Ray: Sound recordings, they could replay on their stations, some voice telling them either what went on or some cut of the speech before the convention, or whatever. We handled it pretty carefully, you have to have the confidence in the staff and the P.R. people.

564 Van Doren: We have a kind of a unique thing right now, we

have what we call "Capitol whatever." This year it was called Capitol '80. They film both the House and Senate and different committee meetings, stuff like that, and this is played every night over stations throughout the state. The stations actually receive it the same day as the legislative session. It is a half hour program, I think, and it is part of the budget of the legislature. It is contracted out and they do this every day. They hit the highlights of everything. It has been very good in relation to informing people throughout the state who are not in Juneau. It works very well and is very well received. Some years it is very highly watched, and some years, it is not.

586 K. Ray: I was going to say, you might want both, because that would be very good for the people who would be willing to take that half hour and watch that or listen to that, but the other thing we were talking about, the little brief, that the radio networks could just pick up and use in their news broadcast. More people would be apt to hear it I think.

599 J. Ray: We had live radio broadcasts off the floor of the convention at one time, and failed to syncronize that with the mikes at the convention, we had some rather insistent statements made live over radio, because people who were standing

at the mike thought the mike was off as far as the convention was concerned, and they turned to asides and comments on personalities, their language was bad, and it was live. On this post convention period, as Janice mentioned, I think the key thing, one of the key things is that the momentum is kept going and the most valuable people in that time period are going to be delegates. They should be conditioned, and prepared to be sales persons from the early time on.

625 K. Ray: To have that information on the Watts line between the end of the convention and the ratification election, I think, would be really helpful, too. It would be another good way to get the word out, if you could afford to maintain it during that time period, wouldn't you think?

630 J. Ray: You know, I think other personalities and interests and what not, can certainly kill it after that, but it is not going to pass if those delegates don't work. What I am trying to say, is somebody else can't pick it up and pass it, they can kill it if they want to, but those delegates are going to be the ones who should sell their product.

640 J. May: We discussed or at least I was drawn into the public TV stations, we were going to have an advocate kind of program on the constitution, and that fell through, but there were some regularly scheduled programs in which there

was debate, and I don't know, I think you kind of have to watch it a little bit, because if it is controversial at all, it is easy for the "nay-sayers" to appeal to emotion on these very intellectual type things, and you may know that this is wrong, but when you go out on a mass appeal basis, the fellow who can say it is kind of like, you know, you are going to run us over, and steam roll it, and get all of them agog, that is going to outshine the more reasoned approach. You kind of got to watch what goes out to the public.

664 K. Ray: The governor said it was going to cause a state income tax.

665 J. May: Yes, all kinds of things.

666 K. Ray: You can refute these things, through the Watts system and so forth, and maybe you can, by choosing your pro people. It is so hard to understand the issues. In some states, like Virginia, you can have a low key campaign, you just don't ruffle feathers, you don't have a great big ratification campaign and that works, and in other states, it doesn't, so you are going to have to fit it to your situation.

678 J. Ray: All you have to do is create doubt and fear and it's bad.

680 K. Ray: Very bad.

J. Ray: 681: Technique wise, coming back again, the proposal for ratification in Texas, the proposed constitution, we again used the Watts line, and manned it with people who had been involved in this process. Our Lt. Governor, our Speaker of the House, our Attorney General, who were in favor of the ratification and some citizens, we staffed it with people who were knowledgeable about the content of the current constitution and the content of the proposed constitution. They gave good answers to the questions, I thought.

703 J. May: Most were volunteers at least in the off business hours, who manned telephones.

708 J. Ray: I was on the telephone as the polls closed.

710 Van Doren: You got a good response from the public on that Watts line? That's good.

713 J. Ray: Through the media, we used public service announcements to publicize the Watts line. How to call it.

718 J. May: Did we reactivate it our advisory committee? We had advisory committees set up during the constitutional revision, if we hadn't, we should have reactivated these groups, at the time of ratification.

SIDE TWO

000 Van Doren: I don't remember off hand, but how soon after the convention ended, did you have the ratification vote?

003 J. May: July to November.

002 K. Ray: Well, the convention ended and failed to adopt the document. Then the legislature came back with the same proposals but they failed also.

005 Van Doren: That's right, I forgot about that. The first part of November.

007 Van Doren: I would think though, because of your situation, it would have been different if the convention was successful in adopting the ratification. Do you have any time frame that you would propose for the ratification vote, Jim? 30 days?

009 J. Ray: Quickly, a decent period.

010 K. Ray: Especially if you have been informing your public during this whole process, you know, it's not like you met in secret behind locked doors, and then suddenly have to go out and educate the populous about what this is that you have done. The best thing is to educate them as you go along.

013 J. Ray: It should be a decent interval so that opposition can't say "you are ramming it down our throats without time to understand it," and that is very important, but I would say 45 to 60 day range.

017 J. May: Well, my research indicated with amendments, that we have better luck with a general election than a special, but that is peculiar to Texas, I don't know, in our case, we did use a special election didn't we, for the final ratification. I think that you get a different group out in a general election, and you start by using that. You get a larger turnout, and as much as 30% higher. But in Illinois, if they had used a general election, all the nonvoters would have been counted as a nay vote, so they had to use a special election, that was the only thing on the ballot, then it was just yes or no.

027 J. Ray: October, are you starting in October? October, November, December, you really almost have to have a special election.

028 Van Doren: This would be a special election because otherwise you would have too long a time period before the next general election.

030 J. May: Now, Arkansas had a very long wait in '71. I think it was nine months, or something like that.

032 J. May: It would probably have been better if there had been a special election on that one. But you never know, there is no hard fast rule, but I suppose you could say the longer you wait, the worse it is going to be.

035 K. Ray: It gives the opposition more and more time to organize and kill it.

036 J. May: You lose momentum, I mean how can you keep excited about this thing for months.

037 K. Ray: By then, your delegates have gone back to being private citizens.

038 J. Ray: That goes back to your delegates, their commitment going into a time frame which extends beyond the convention, and their roles in the post convention. You can't carry them on too long, they are already sacrificing somewhat. One of the other things, I think, and I guess it is a tail-end part that's been answered before, I guess, and I have to say I don't know the answer, and I know I am biased in wanting to say this, but I really believe every penny we spent in Texas on that constitutional process was well worth it. I think it was well worth it. I think number 1, our present constitution is so much better understood by those who have to interpret it, I think the public understands it better, I don't think we got nearly

as much saturation there as I would have liked to have seen, but those who have to use it and interpret it and argue it, studied it better than ever before.

054 J. May: It is still hard to understand, I'm told.

057 J. Ray: The legislative enactments of various provisions and addressing issues that hadn't been done before, it served to, and I know this is unique to our situation, might or might not in some way apply to yours, but it sort of kind of toned up our legislative staff people and their activities, I think we got an improvement in our bill drafting in our legislature. One fact was that the convention was the Senate and the House members and they had to work together, and Katherine kept hammering at them to do this together, they now have a better rapport. In going through news clippings, a lot of things on the administrative side of our legislature have really been toned up and improved, because, well, in part because of the convention.

071 K. Ray: Really, the House and Senate fought each other more than the Republicans and Democrats. There was more divisions between the House and Senate than Republicans and Democrats.

073 Van Doren: What about one of the things that I left out

while we were talking about it, it doesn't matter where it comes on here, but did you all hold public hearings during the conventions at other locations in the state? (No). You didn't at all?

076 J. May: They had a citizen's league, to which no one much came, but they set aside a day or a week where people could come in and discuss the issues.

078 K. Ray: We held 19 public hearings at the beginning of the revision commission and then again, we went back to those 19 locations at the end of the revision commission, it was immediately preceeding the convention.

081 J. May: And then there was a recess for about a month.

082 Van Doren: There was a recess during the convention?

082 K. Ray: A recess during the convention, which was another disaster that you don't want to do.

083 J. Ray: The answer to your question is no, we did not, the convention did not go out and hold public hearings.

085 J. May: The Illinois convention went out.

086 Van Doren: Well, as a matter of fact, both the Arkansas

convention and the Illinois convention went out. In Alaska, now, we recessed for 15 days so that the delegates could go back to their home communities and hold public hearings, inform the public, and in turn, gain the perception that the public had of them and the proposed constitution. One of the reasons the Alaska constitution was so good was that it hinged a lot on the statehood issue and it was a very popular, a very positive type of exercise at that time.

094 K. Ray: I think public hearings following the convention would be a good thing, and public hearings you know, at the beginning, immediately preceeding the convention, and then maybe following the convention, take the document out, which is what we did at the end of the revision commission, we took the document that the revision commission was recommending to the convention and took it to the 19 locations where we originally held hearings, this is what we did.

100 J. May: Incidentally, we did something you might want to do with the convention, or the commission, have speaker tapes. Which were very popular, explaining bits and pieces of the constitution.

102 Van Doren: I don't know whether we are going to have a

revision commission as such, or just a preparatory commission that's going to be doing the work, certainly there will be issues that have been identified, perhaps with the public hearing process that we talked about earlier, either this year or next year. I have a feeling that, and there may be papers, and there has already been some draft work done, but I have a feeling that they probably will only go into it with the materials and background of the constitution itself, and then decide if there needs to be revision, and if so, where it needs to be. Then I think maybe once those are in a semi-final state, they might go ahead and recess again for 15 days or something like that and hold various hearings, or perhaps the committees could possibly go out, some committees could go out and hold public hearings while the others still meet and continue their work in the convention, I don't know what style they will take of course, and that is going to be up to them. In some of the work I have done already, those are the two options. Most of the states recessed for hearings or committee hearings, and various individual committee hearings during the same period of time. Of course, again, as I mentioned before with our teleconferencing system, in a lot of cases, we don't have to travel, because we can have teleconference hearings in these areas that have teleconferencing on both ends and also video teleconferencing

so the people can actually see who is speaking back and forth. It is a neat system.

126 J. Ray: I really think though, that sometime during the process, you've got to go to the people, whether it is before or during. Certainly you have to go out afterwards, but I am talking about before that, go out. To me, that is a key in how you accomplish something, and I think your assumption if I heard you right, to me the proper position for you or for Alaska to be in is saying that the convention is saying is: "Here is our constitution!" Are there amendments specific that we want to make to it? That is analogous to what we did, and the leadership of our convention started with our proposed commission document and took amendments thereto, because in our case, that represented the cleanest and the best way. In your case, your existing constitution represents in my opinion, my personal opinion, one of the best documents there is. Make the burden of proof on the amendor, the person who wants to carry it forward. The group that carries forward the amendment, and the public may even benefit and be served by that amendment, as opposed to some growing outburst against it. I think that would be disasterous in your case.

152 Van Doren: Yes, but of course, our constitution mandates that it be a totally unlimited convention, too, so anything is up for grabs once they call it.

157 Van Doren: OK the last thing I want to do, and then I'll let you go, and I really appreciate your coming here, is just anything that any of the three of you might be able to think about that we didn't categorize in any special place that again is a goodie or a no-no or a pitfall that should be avoided, or anything at all, any part of it that maybe you could share with us toward the very end.

163 K. Ray: Didn't you have some kind of information on a recess? You made a comment about a recess. Didn't we have information prior to the recess that showed that recesses were like bad omens? You know, if you could show that on paper, that if you took a recess in the midst of a convention, you were less likely to succeed. Those states which took a recess were the states where the document failed.

169 J. Ray: We tried to avoid the recess. We tried to get our work done in 90 days or a little better, and avoid having to have a recess. By the time we get to one, the delegates are so worn down it was necessary to let them get back to their businesses and homes and legislators campaigning in the primaries.

176 J. May: I would just say that overall, you have to pay attention to every single detail that may not seem like much

at the time, but these things have a way of when you look back over it, and you say "Why didn't we do that instead of this or something else?" So pay close attention to detail throughout.

180 Van Doren: That's one of the reasons I've been talking with you as a matter of fact!

END OF TRANSCRIPTION

MEETING IN HOUSTON, TEXAS

with

DR. SAM GOVE
MR. GEORGE BRADEN
GUY A. VAN DOREN

November 16, 1980

The following summary is from the edited transcripts of a meeting between Dr. Sam Gove, Mr. George Campbell and Mr. Guy A. Van Doren, Administrative Assistant to the Joint Interim Committee on the Constitutional Convention, held in Houston, Texas, November 16, 1980.

Mr. George Campbell was a delegate to the 7th Arkansas Constitutional Convention and was Executive Secretary of the Constitutional Revision Study Commission.

Dr. Samuel K. Gove, Director, Institute of Government and Public Affairs, University of Illinois, was a member of the commissions preparing for, and implementing the results of the 6th Illinois Constitutional Convention, and co-authored Revision Success: The Sixth Illinois Constitutional Convention.

GOVE-CAMPBELL

PRE-CONVENTION

1. Produce annotated version of Alaska constitution. Produce citizen's guide to the Alaska constitution. Both are important even if you do not have a convention. They can be used as reference sources for citizens, teachers, legislators and others.
2. Begin thinking as soon as possible about the mechanics of the convention, how and where you are going to have it, the enabling act, election of delegates.
3. You may want to look at anticipated issues and do some background work on them.
4. You may want to solicit citizen papers on constitutional issues.
5. It is not a good idea to have a draft constitution prepared in advance. Allow the delegates the prerogative of developing their own revision issues. If you present either a revision document or issue papers, there should be alternative suggestions on solving the problems - again, so you're not telling the delegates what to do.
6. The preparatory commission in Illinois was chosen by both the legislature and the governor. In Arkansas, the commission was appointed by the Legislature, Governor,

Chief Justice of the Supreme Court and the Arkansas Bar Association.

7. Some staff were hired prior to the convention and after the vote to help set up the convention in Arkansas.
8. Develop temporary rules so you have something for the delegates to work with and from. After they convene, they can adopt their permanent rules. You must be careful to not have the delegates feel you are telling them what to do. The convention is a free agent.
9. Recommends an orientation session prior to convening the convention.

ELECTION OF THE DELEGATES

1. Delegates should not be chosen on a partisan basis. Arkansas did not have a nominating process. In the cases where there was no clear majority on a delegate, there was a runoff election which almost no one turned out for.
2. In Arkansas only one legislator ran for a delegate position.

   An expression was made that legislators are used to focusing on very narrow issues because they are used to legislating and not dealing on the broader aspects of constitutional drafting.
3. In Arkansas, delegates were elected on a one man, one vote concept throughout the state, although not single member districts.

THE CONVENTION

1. In both cases, Illinois and Arkansas, the conventions were held in the state capitol. In Illinois, although the convention began in the legislative chambers, it eventually moved to another location.
2. Materials must be prepared prior to the convention so the delegates can begin work immediately and not be required to wait around for materials and work. There should not be so much it overwhelm the delegates. They may not read it!
3. The preparatory commission should expire shortly after the convening of the convention.
4. Make sure there is adequate funding for the convention.
5. Alaska needs to be totally aware of special interest groups. They have learned they can affect the outcome of constitutional conventions. People have more axes to grind nowadays. There isn't the pure interest of creating a good fundamental document to be used by states. People are involved in special and in many cases, economic interests and all want "their philosphy" to be included in the document.
6. People are also beginning to use the position of delegate as a stepping stone for political office. These people are more susceptable to pressures by lobbyists and special interest groups.

7. Delegates should be seated alphabetically so there are no cliques either politically or geographically.

8. In Illinois, public hearings were held throughout the state by delegates during the convention. It may not have been important as far as information, but it helped in the public relations aspect. People did not feel they were being left out and became well aware of what the delegates were doing and this was important. In Arkansas, public hearings were held by the preparatory commission and the delegates. This helped with public awareness.

9. Public hearings were used not only for informational purposes but for public relations and publicity. It is important to get the delegates out among the people. This also squelches rumors, because the public can ask questions face to face with the delegates and staff.

10. In Arkansas, if the delegates or the commission knew someone would be attending a public meeting with a certain point of view, they tried to find someone with the opposite point of view in order to achieve some sort of balance.

POST CONVENTION

1. Illinois published a newspaper insert which had the new constitution and explanations. They also had a campaign committee which was not publically financed. The delegates as individuals, campaigned for the convention in most cases.

2. Arkansas published the constitution and the changes, but felt their post-convention work was their major basic weakness (the voters turned down the revision). There were no funds available for publicity. They did set up a speakers forum.
3. The comment that hardest part in a well drafted constitution is finding someone who is willing to give enough money to support the campaign.

MISCELLANEOUS

1. Stress on preparatory work and good, devoted, competent staff and consultants.
2. Use of recognized experts helps immensely since there are so few in the United States and a convention is not an everyday occurance.

Meeting with Sam Gove and
George Campbell
November 16, 1980
Houston, Texas

Tape I, Side 1:

004 Van Doren: Introduction of tape materials.

009 Sam Gove: I think if you did something like the Braden-Cohn as it became known, the Illinois annotated constitution, it would be worthwhile, even though you didn't have a constitutional convention, it would be a good reference for lawyers and summarize all the cases that have come down and affected a particular section in the constitution. And some commentary on why that particular section was there and you may want to have a comparative analysis. That was extremely helpful for our delegates and became the Bible. It took an awful lot of work.

Van Doren: In New York I met with George Braden, and we talked quite a bit about it. One of the things I wanted to ask you is, is that book available from a source in Illinois?

024 Gove: Yes, from our institute. I will make as many as you wish available.

025 Van Doren: OK, I think we would probably at least like to have one for the library. We are building up a library on constitution materials. The committee has seven members. Any-

way, when I spoke with George, he suggested the same thing, whether or not we have a constitutional convention, that definitely an annotated work of our constitution and/or a citizen's guide would be helpful and as he said, since our constitution is quite a bit shorter than Illinois', it wouldn't be quite as monumental a task as the Illinois one.

036 Van Doren: In talking with the people I met in New York, with George Braden, John Bebout, Frank Grad, and Bill Cassella, and also with Al Sturm in Blacksburg, Virginia, and Jake Wheeler in Hollins, Virginia. Everybody has stressed the preparatory work, in order to get this off the ground, and I think the legislature has realized and recognized how helpful it would be if we could get started on this. At the outset of the preparatory work, are there any other things that you think that would be useful both for the pre convention vote, and then should the vote be in the affirmative, for preparation toward the convention, from your experience?

050 Gove: I would say that if the vote is affirmative, you've got to start thinking about mechanics of the convention on how and where are you going to have it, do you need an enabling act, how you are going to elect delegates, I don't think that would take so long, so probably you could do that after the vote. We had some preparatory work done on issues we anticipated would come up in the convention. The commission, this was the governor's

research group, which I was the director of, and we came out with a volume called "Con Con" issued to the delegates, and it was paperback, 500 pages, and it was just everthing we thought would come up of any substance, and tried to have someone write a paper and think about it and raise the issues, not to present positions, but the issues. That volume was helpful. There are a lot of issues we didn't anticipate, and I think you can't. Illinois was a strong Dillon's rule state, we didn't anticipate the support for the home rule issue. We hadn't done anything on the home rule. Most of the major issues we did anticipate, and we did have papers prepared for the delegates and they were able to get familiar with the issues. The papers came out during the campaign for the election of delegates well in advance, so I think something like that might be helpful and again would be good library material for the convention.

083 Van Doren: Were these papers prepared by people from all over the U.S. or just within the state?

091 Gove: Instate. I think one of them was on the purpose of a constitution and was done by a law professor in Michigan, and I think the other papers were all by Illinois people, and were a mixture of law professors and political scientists.

091 Van Doren: Do you think that the papers helped the delegates or do you feel that they relied more on their own ideas, or

that they drew from the book and the ideas that were prepared, or do you think that it was kind of a combination of both?

094 Gove: I would say a combination of both. There was nothing in the article on the bill of rights about ERA, and that became an important issue, and people campaigned on it, and subsequently we now have an ERA provision in our constitution, so it's things like that which were natural. Delegates brought up specific things.

103 Van Doren: That "Con Con" book, is that the orange and blue one, very thick one that has Con Con on it? (Yes). OK, I have seen that and would like a copy of that too.

105 Gove: It is out of print. We might be able to get at least one loaned to you. It was published by the University of Illinois Press.

108 Van Doren: Yes, I saw the book and actually went through it, somewhat, and I was curious to see how you felt, I know one state that we were discussing had almost prepared a constitution before the delegates were ever chosen, and people kind of rebelled against that. It was the Texas one.

113 Gove: Some states did, but we carefully did not do that, and in the annotated constitution there was some discussion of issues, but it doesn't come out and say "The delegates shall", this after all, was their prerogative. It was very carefully worded.

119 Van Doren: Did Illinois have a preparatory commission? (Yes) And how was that chosen? Was it chosen by the legislature or the governor, or a combination of both?

124 Gove: It had legislative and public members. There were three commissions, and on the last commission I was a public member. I think I was elected by the legislature. Why, I am unclear, historically in Illinois, there were mixed commissions with gubernatorial and public members, but the legislature was beginning to feel its oats in insisting that a legislative commission would be composed of all legislative appointees, even though they weren't members of the legislature, and I think at that time they had gone on this commission through legislatively appointed public members. It wasn't really a legislative body. The last commission, the commission that argued over, the first commission made the recommendation to vote on a constitutional convention, the second commission started the preparatory work and then the vote came along, and they had to pass the enabling act, and the big issue, there were a lot of issues, but the biggest issue was on whether the delegates were to be chosen on partisan or nonpartisan basis. This commission

recommended nonpartisan and it ultimately prevailed. Then the third commission actually made the arrangements for the convention and arranged an orientation session. I think all this type of detail is in our book that Tom Kitsos and I did for the National Municipal League.

152 Van Doren: On the, OK, so the third commission did all the preparatory work. They are the ones who commissioned these papers and also the preparatory work for the actual mechanics of the convention?

156 Gove: The second commission commissioned the Braden-Cohn volume. They decided not to get into any issues and consequently the governor filled the void by creating the constitutional research group, with private funding, and I also got in on that as director, so I was wearing one hat as, I was staff member of the second commission, and a member of the third commission, and also at the same time turning out these papers, theoretically for the governor.

165 Van Doren: Did the commission stay in existence after the beginning of the convention or did they work right up to the convening of the convention and then were they finished?

171 Gove: I think it, in essence, ended when the convention,

began, we held an orientation and such, and then the convention itself, a couple of days before the convention we had an orientation, so I think the commission just went out of existence. I am very vague on this, the statute said the commission would go out of existence, I think it did.

182 Van Doren: One of the reasons I had asked that question is last year the legislature for the State of Alaska passed an enabling bill to call a constitutional convention, mainly because they wanted the advance work done, so that it would be on the books with no appropriations or anything, but just setting up the mechanics of it, and one of the things that was put in the bill was that a preparatory commission would be established, the appointments and all of that, and then I believe it would continue until approximately 15 days if I remember correctly after the start of the convention so that it would still be around to assist with anything, that comes up, but basically it dissolved at that time. The bill passed both houses of the legislature and was subsequently vetoed by the governor for several reasons. There is really no need to go into that now, but one of the things that they will probably do this next legislative session, is again try to get enabling legislation through so that it is there and there will be a mechanism for calling a convention. Our constitution states now that as much as practical, the convention will be held in the same way that it was in 1955. Well, it's not practical at all,

and there's a lot of changes that need to be made.

204 Van Doren: George Campbell just came in, and I've asked him some of the basic questions that I asked Sam Gove.

209 Campbell: Arkansas has a constitution which is similar to many southern states in that it is a basic reconstruction period document. Written in 1874, and amended now more than 60 times. The first modern impetus for constitutional revision came about in 1966 when Rockefeller was elected as the first Republican governor since the reconstruction time. One of the things he wanted to do was have a modern constitution for Arkansas. The legislature was dominated by the Democratic forces and did not intend to cooperate with him and did not cooperate with him. They did not support him as governor. The compromise that was reached in his effort to have that legislature, which seems to be the only way, since our constitution is silent as to how to have a convention, everyone seemed to feel that the legislature had by law to say there will be a convention and provide for the election of delegates. Since that historically was the way it has been done in Arkansas and there seemed to be at least some judicial as well as historical precedent that that was the way the people had to speak, that is through the legislature submitting the question on election of delegates. In the 1967 session of the legislature, where Rockefeller attempted to get a call

of the convention, he failed, but a compromise was reached and there was created the Arkansas constitutional revision study commission, composed of thirty people appointed by various elected officers and the governor had authority to appoint the majority of the commission.

234 Van Doren: Did the legislature appoint it?

235 Campbell: The legislature, the president pro-tem in the senate, the speaker of the house, each appointed five persons. Five were appointed by the chief justice, five by the president of the Arkansas Bar Association, and whatever that leaves, among the appointed groups. I think the governor had ten, and should add up to a total of thirty. I served as the executive secretary, a non-voting, salaried member. I'm a lawyer in private practice in Little Rock, my specialty through the years has been in municipal finance which brings me into contact with a good part of the constitutional provisions that relate to local government, limitations of debts and the organization of municipal governments. And, to some extent, the state legislative process, too. The work product of the study commission was in part an effort to justify the holding of the convention. A number of people who were appointed were individuals, not necessarily associated with the governor, but individuals who had been interested for a period of more than 10 years in having a good consitution. What we were dealing

with was not something just in a vacuum, but the political situation was that a number of people, democratic, republican, non-office holders, non-political types, had recognized for a long time that we needed to modernize our constitution. So, ultimately, a majority of our study commission voted to recommend to the legislature that a convention be called, because the total substantive volume of changes that needed to be made was such that it really couldn't be handled with the existing amendment process. Our legislature is permitted to submit only three amendments in each general election, each two years. Any other amendments have to come to the initiative process. We have an initiative and referendum provision roughly patterned on Oregon's in the early 1900's. It's not particularly difficult, but expensive, bothersome, it's hard to organize and all that stuff, except for very narrow special interest types of proposals, where the money or the people can be found for very narrow economically related amendments. The product of the study commission was a draft document. We were careful to style that draft document as simply a study document, and in many of the articles and sections we presented alternative solutions to what our commissioners conceived as problems. The study commission was presided over by the former dean of our law school at Arkansas, a respected scholar and a rather apolitical figure. He is not closely associated with any candidates or party affiliations, although he is commonly a Democrat, but it was not a partisan study commission, even

though it started out, its origin was that way, it didn't emerge as a partisan group. It had pretty good press coverage and we had among the people who at least were interested at all, we had a pretty good feeling about the work of the study commisison. The biggest argument we had was whether to submit the question of holding a convention to a special election or a general election, presumably because the people who were in favor of it would more likely turn out at a special election than those who were opposed to it would stay home or not care anything about it. The contrary feeling is that you turn out more people at a general election and many of those are uninformed about issues such as that, and therefore tend to vote against things they don't understand or never heard of. The legislature did decide to put the question of holding the convention in 1968 on the general election ballot, and surprisingly, most of the legislators who didn't think anybody cared about a constitutional convention, the issue passed. So we had called then in 1968, our convention. Curiously, in order to save money, we had people running for delegate positions in 1968, on the same ballot that the question of the holding of the convention was being submitted, and many of us who ran, and I didn't run for delegate position, did not know whether there was going to be a convention or not. The campaign was rather quiet, there was not a lot of money spent by delegates, and for the most part, they were, in broad categories what I would call good government type people, that is, they were not the people who had great political ambitions Otherwise, there

was only one legislator out of a body of 100.

310 Van Doren: That was my next question. Was it a partisan election or bipartisan, and I was going to ask whether any legislators were on there, too.

313 Campbell: It was a nonpartisan election. There was no nomination process. It was required that you got a majority of votes in order to win the position, so in some cases, there was a run-off election two weeks after the general election, which almost nobody turned out for. The unusual measure, to my knowledge in modern times, was this was the first time there had ever been a run-off following a general election. Arkansas is predominately a two party, I mean a one party state, the Democratic party, the minority party candidates almost never run, and if anyone else ran it was certainly not more than one other party. The legislators were not excluded. We thought a long time in drafting the legislation for the convention and submitted it to the legislature, to put in an office holder exclusion. It is probably a good idea, but it was not considered politically smart to sort of flaunt that in the face of the legislators, whom we were asking to put the question on the ballot and to appropriate money, ultimately, for the operation of the convention. So we did not, since there had been no historical experience in recent times, there was no reason that legislators should or should not serve. We have a constitutional provision which

makes it a separation of powers argument which makes it pretty hard for a legislator to hold a public position in any other kind of goverment, except for having a school position, school superintendent, or a school board members. So, while we seriously debated, we did not exclude legislators. As I say, only one ran, he had served as a member of the study commission, I worked with him closely. He and I were totally opposed in almost every major position that we held, but he was the kind of person who was genuinely interested in what he was doing and provided a sort of focus for conservative impact, a focus for the conservative interest in the convention, and led them in a fairly reasoned way, so his presence was not political in the sense that you would think. Many times, state legislators focus on very narrow issues or the things that by and large makes it undesirable for them to serve because they are used to legislating and not dealing on the broader aspects of constitutional draftmanship. Now, our convention was called. It was funded adequately by the legislature. Not generously, but adequately. We met over the course, on and off, over the course of about a year, proposed a document and submitted it in the 1970 general election. It was not a radical reformation, but it was a fairly progressive reformation, and it was defeated by a vote of somewhere between 55 and 60 percent in the negative. It is probably not as much interest to the people in Alaska about the particular issues that we had, although I would be glad to go

into the particular things that we had that were problems. Most of them had to do with limitation or the removal of limitations on the property tax. There were a few very crazy things that we need to be careful about in drafting a constitution, for example in one preparatory phrase, the one word "God" was ommitted just because we were moving from sort of Victorian English into the 20th Century English, and it didn't seem to be terribly important to most of us, but there were some fringe groups out there somewhere, fundamentalist ministers and other people, who said we had written a Godless constitution. Now, this wasn't a major point, but that was the kind of thing you pick up when you start changing old language which never meant anything for 100 years. It was never judicially interpreted, didn't mean a thing. You pick up people who want to argue about those things. A few other odds and ends like the constitutional provision which legalizes horse racing in one particular county in the state, these things all have historical basis and local political situations change from time to time, but you probably don't have in the relatively short life of your constitution, as many changes that have crept into it, in terms of local vested economic or political issues of that sort. If you don't have, that's very good, because then you can deal with what a constitution really ought to be about anyway, and that's the fundamentals of the operation of the system government and fine tuning of those,

after several years experience where something has not worked or it is not working as well. Unfortunately, older states, and particularly one which is slow to move on constitutional reorganization have to deal with a lot of minor unimportant things in terms of fundamentals of government, which are local issues with small groups of people. Now, the effort in 1970 failed, but from that convention came a number of things which could be dealt with legislatively or almost as well legislatively as they could have been in the constitution. I think some of the fundamental mistakes we made in some areas was where we were trying to legislate in our document when we weren't there to legislate, and we probably invited a few enemies, for example, we've had a fixed price structure on liquor prices in our state for a long time. Our constitution wanted to outlaw the so called fair trade prices for liquor. That was not a constitutional matter, but it was something that the legislature, because of the perceived domination by wholesale and retail liquor interests had never bothered to change. We thought we would get some support from the constitution and some of the people at large, if we took out the fair trade liquor prices. Well, what it ultimately turned out to be was that most of the people didn't understand the issue and didn't give a damn, but the wholesale and retail liquor people put up a lot of money to fight the new constitution because of the economic disadvantage. At any rate, in the process of the next three sessions of the legislature, a number of concepts which we proposed, reorganization of the executive

branch, and indeed in 1976 the legislature proposed itself, as a constitutional amendment, almost verbatum, the legislative article which was in the 1970 constitution. So we provided a focus and created a little stir of interest in a number of areas.

Now, all during this period of the last two years after the failure of the '70 convention, there was a lot of head shaking around, and people saying, "You know we really ought to have passed that constitution." Now in 1976, a young man named David Pryre was elected as the Democratic governor. No. David Pryre was elected in 1974. David Pryre, as a young legislator, had been one of those very outspoken in the early 1960's before the Rockefeller administration, had been outspoken in favor a constitutional convention. He had served in Congress here and there, and later came back as governor, elected in 1974. In 1975, his first term, he proposed that the legislature call and establish, not submit to the people, but simply just call a constitutional convention. Which it did. And it was one of his principal pieces of legislation, and the convention was to be limited in scope, that is there were certain areas of the 1874 constitution, with which it was not permitted to deal, and the delegates were to be appointed, rather than elected. His idea was to do it, do it quick, get that group in, and there was to be some balance

in the appointment, he wasn't going to appoint them all, although he was going to appoint a majority. But to get the group in, give it the 1970 document, let it tinker around with it, and deal with those things which had been perceived to be its weaknesses, and turn out a new document very quickly so that it could be voted on at the next general election. Our supreme court held that the legislature did not have the power to call a limited convention, that is to limit the scope of discussion, without having submitted that question to the people. This was essentially a case of first impression as far as Arkansas law is concerned. The general theme of the decision was that the inherent right of the people being represented in this convention to change their form of government should not be limited by the legislature by saying that the people in the convention cannot deal with certain areas, and if the people want to vote for a convention with that limited structure on it, that's fine, but you have got to submit the question to the people. Well, by the time that it had gone through the court and been decided, it was an issue then that the governor no longer wanted to push and he and other things that were of more interest to him, and he did not particularly push it. However, in the next session of the legislature, a bill was put through to be voted on in 1978, on the question of holding a convention. So, there was another convention held, there was another body of 100

delegates elected from throughout the state, in the manner that our house of representatives is, not exaclty single member districts, but it was the one man one vote concept applied all over the state. Now, this convention reasonably completed its work, it being much in the same manner and being with almost the same rules and almost the same committee structure as the 1970 convention. Its product was submitted at the last general election and failed by about the same margin as it did in 1970. I served on the preparatory commission, which the governor appointed for this new convention. There were five persons, and four of those five were people who had come out of the 1970 convention. And essentially, what we did was housekeeping sorts of things. Set up proposed rules, we took care of mailing of initial information to delegates, we took care of acquiring of the fundamental library that they would need, we drew up some projected budgets based on what we perceived to be needed, set up an employee structure, we did not employ any staff persons, although we sort of indicated the qualifications that those people ought to have. What we did was carry them to the organizational day and met with them on the day they were organized, saw them through a two day organizational session, where they elected their own officers, and began to develop their own rules. The preparatory commission disappeared. Now, at that point, however, we had employed somebody who had at least functions to carry over for a couple of weeks, the basic functions.

Again, I'm not sure that how much is applicable to your situation, but I think there was a definite contrast between the structure of the delegate body between the 1970 and 1980 conventions. In 1970, as I indicated, those of us who ran for delegate, did not know whether there would be a convention or not. I haven't described it exactly, but in '79-'80 period, there was definitely determined that there would be a convention, because of the way that the two votes were held, and it was known by the persons who ran for the delegate positions that they would indeed to go the convention. Also, during this 10 year period, I think there was a focus of a good many special interest groups. The special interest groups had in time, become aware of the fact that there was certain things in the state constitution, and in some cases, they impacted on them. There were other things that had been going on in the past 10 years of course, that were represented by special interest. The problems in the cities had not gone away, they multiplied, and this convention, for example came out with an article that was amost verbatum to the one that I helped draft on local government, which moved the key words around here and there and so forth, but they didn't come out with any better situation than we had done. So, economic conditions had changed, focus of inflation, the concern over taxation, some of our problems in structured county government had been changed as a result of constitutional amendment. Problems from 1874 and the old amendments

were still there, and the convention didn't do, in my judgment, it didn't do quite as good a job from the technical drafting point of view, because there were far more compromises required to be reached.

Tape Two:

004 Campbell: I have a slightly prejudiced point of view with respect to special interest groups, and I should share them with other people who would say that the convention did a wonderful job, but among the things that I think, just count this for whatever you want, but I think the purity of heart or whatever you might want to call it of the delegate body in comparison with the 1970 and 1980. There were more people who were less focused on specific economic issues in 1970 and were more interested in doing what they thought was participating in a historical event, for the first time in 100 years, that they agreed to rework the document. In 1980, the idea of a convention was not absolutely new. In 1970, the lobby, the traditional lobby groups, did not know how to work with the delegates, because fundamentally, we weren't lobbyist material. We didn't have any political ambitions. Now, that is not to say that there were not some people who emerged from the convention to later hold political office. For example, there were a couple of people, and I

didn't even know they were interested, who ran for political office, and a man who became the state's attorney general, and later served in Congress and ran unsuccessfully two years ago for the senate. But for the most part, they were professional people, probably too many lawyers, which is always and has been the case, you know, lawyers have an extremely different view points, there is no uniformity on view points, among lawyers, and they traditionally represent different economic interest, and have different ideas about things. They just simply like to disagree, so if you have to limit anybody, besides limiting legislators, you might limit lawyers. (Laughter). From the federal constitutional standpoint, we simply didn't have as many axes to grind in 1970. In 1980, as I have indicated in the tax decision by the Arkansas Supreme Court, other concerns of that sort, minority groups were better organized, and better focused, and indeed we had a better minority representation, and by that, primarily I mean the Blacks, in the 1980 convention, than we did in 1970. One of the delegates in the Black caucus, served in both conventions. The political forces and the political ladder-climbers saw the convention as a way to get involved in government and people who wanted to run for other offices, which created some problems with the legislature, because they saw people running for delegate positions, and they then thought they would see, two years later, those people running against them for their particular seats. Somebody will have

to do a scientific study and sort out the special interst groups. I don't have names or numbers with respect to that, except it is clear that there were people who were more susceptible both through the efforts of lobbyists who were more representative of narrower segments of communities in terms of economic interest, and employee groups. As a consequence, their discussions tend to be more focused on those lines than our discussion in the 1970's, which I brought. Perhaps not approaching the constitutional convention of 1787, or whatever, but at least feeling more fundamantally with the philosophy of structure. I am not saying necessarily that that is wrong, but I think it is something that you should be aware of that in a situation where you know there is going to be a convention and where there are particular interests which have been identified as being affected by the constitution or likely to be affected by the constitution, it is not unreasonable to expect that there will be effort to load up the delegate body with pressure with one point of view or another on any question. The labor experience in Illinois, it is probably better than in some states, which has better organization, let's say stronger organization. Labor never has been a force which could elect very many delegates in Arkansas. Labor had better representation in 1970 than they had in 1980. Indeed, between 1970 and 1980, labor had attempted to repeal the right to work provision in the Arkansas constitution, and it has failed by a vote of three or four to one. So the 1980 delegates didn't give

labor the time of day. The people had spoken recently on that issue, and therefore, they didn't see any reason to waste their time. The banks were much more evident and created strong lobby effort on trying to deal with the 10 percent limitation, and indeed that was one of the forces that caused great difficulty with the document and the submission of the document because it was identified by many groups as being a pro-banker's constitution. The raised interest rate, which would require the poor man to pay more. With respect to the technical organization of the 1980 convention, as I say, they built on and used for the most part what we used in 1970. They didn't attract quite as strong a staff because the idea of a convention wasn't as new and it wasn't as different. It was somewhat more politicized and some of the people that I thought were really first rate staffers that we had in 1970, you know it was ten years later and they had other career interests. There was some better support on the legal side, because some of the things that were coming before the convention had been in the court, property structure things, the attorney general had been trying to wrestle with that. The governor's office had been trying to wrestle with it, and some other groups had. We had done not extraordinarily good staff work in terms of papers, we didn't publish anything like the nine foot shelves of material that New York did or anything like that. We didn't spend a million dollars doing that. Most of

the background work had been preserved from our 1970 work and some of it was available. We were, because the university now has a law school in Little Rock, able to call on the faculty people from the law school, it was really a large help. It was something that we didn't have in 1970. Really I guess that is the end of the monologue in terms of trying to discover the ground of what has happened in 12 to 14 years. We have talked about more specific things.

101 Van Doren: Some of the states have done it and some haven't, and in both of your cases, did the preparatory commission work on temporary rules for the convention prior to the convention meeting?

105 Campbell: Yes, we did in both cases. In both Arkansas cases, the study commission did develop. I have forgotten one job I had, in 1967, after we made our report to the legislature to the special session of the legislature which convened in 1968, the one which called for the submission of the question. Assuming that there was to be a favorable vote between the submission of our work product in March 1968, and the placing of the issue on the general election ballot to be voted on in November 1968, we had a little surplus left over in our appropriation for the study commission and the governor created a preparatory commission composed of

myself and two other people. The two people who had been the chairman and the vice chairman of the study commission. I had forgotten that we had had that little interim preparatory commission for six or seven months in 1968. What we did, largely, I carried over my principal research person. We carried over the principal staff person that we had on a modest salary because we really wanted him to be available to head the research staff if there was a convention in 1968, and his primary task was to assemble a proposed set of rules for the convention, both temporary and permanent rules. I am not sure where we borrowed those rules. We kind of patched together a set of rules from New York, some from Michigan, I can't remember where Illinois was at that point in time. Maryland was a very good model for us in many respects, and indeed now that I think about it, we may have borrowed more from Maryland than almost anyplace else, in terms of structure. Some of our drafting techniques we borrowed from Alaska and Hawaii because these had been the two most recently drafted new constitutions, and when we were looking for fundamental structures of things and how to really simplify things that didn't have a whole lot of history built into them. We looked at some of those, but now that I remember, Maryland was running just about a year ahead of us, in terms of the time table. Maryland did not have that much of a difference in history than Arkansas had in terms

of the age of the document and while it was considerably more urban, it also had the rural influences, and things like what to do with justices of the peace, you now actually no longer need anybody to provide the judicial structure of the township. The township has ceased to be in our case, and never was a significant form of government. So, we found a number of parallels in Maryland, but yes, we did have a small, in fact a one man staff preparatory commission drawing rules for us. Now, when we came to the '80 convention, the other preparatory commission, we had all the 1970 staff there, and it was a question of looking at it again and saying, well that didn't work quite right. I guess our biggest concern on the new preparatory commission was not wanting to appear to be telling the 1980 group that well, here is the way we did it in 1970 and that was perfect. That's the way we ought to do it now. We wanted at all costs to avoid saying well, fellows, here is the way we did it and this is the way you ought to do it. We probably were less effective in a couple of cases because we were always saying, well you do whatever you want to do, and by the way, here's what we did in 1970. It worked out well in transition. They changed a few things in the rules, but on the whole, they didn't change very much. We were not dictatorial, we were not saying there was only one way to do it, and I think we had a good transition in that respect, and the fact that most of us had done the '70 convention, there was no particu-

lar impediment to them. I testified a number of times before the finance and taxation committee and the judicial committee, and tried to help some of their people in drafting. I know other people who were in the '70 convention also made comments and appeared before some of the committees particularly early in the work of the '80 convention, in order to describe the problem as it was perceived in 1970, in order to explain the drafting that we had done in 1970, and to say in retrospect, I wouldn't do it that way now. Or you don't have the same problem we had. It was an effort to try and work with them, and as a result of it, I haven't done any scientific comparison, but I would say 85 to 90 percent of the 1980 document was, all of it, was structurally the same as the 1970 document. That is, the way the articles were laid out, the way the transitional provisions were put together. Now the 90 percent of it was almost perfect, a few words that seemed to have been changed only because somebody thought well, we ought not to have exactly the same words, we ought to have a few words of our own in the drafting process, somebody said, well, I don't know why they said it that way, but let's do it this way.
Now, that doesn't prove anything, except that the second convention had the benefit of part of the hard work that the public never sees, and that is somebody has got to put something down on paper and work with it, and as long as you can have a transitional group or a preparatory group, that does not appear to be, and indeed is not sort of hidden agenda from the legislature or the governor or some other

group. As long as you have a group which is perceived to be an aid to simply get material together and giving people at least a way or a perhaps an alternative way to look at solutions, delegates will receive that material well, and indeed, when they get there the first few days, if someone hasn't done that work, they are going to be mad as hell, and say why did you get all of us down here, I'm away from home, I'm not being paid enough to be here, and you hand me a book that says it is a constitution of 1874 and you don't tell me anything. One other comparison I would make between the '70 and the '80 group, and again, it relates to lawyers, and the kind of people who ran. The '80 group was probably a less informed, or that is a less well-educated group on the whole, with respect to both political issues and certainly with respect to constitutional issues. This sounds unfair, I don't mean for it to sound that way, but in '70, we had I would say, a superior group representative of the lawyers, that is people who were mature and established in a profession and people who were not special interest oriented, as such, in terms of lawyers as a group. In terms of the lay persons who were there, they were clearly more of the community leader type. They were bankers, retailers, or whatever they might happen to be. This is true of men and women. In the 1980 convention, I would say that we probably had a somewhat younger group of people, less well established in the traditional terms of leadership in business or profession.

I don't mean to say they were any less intelligent, but they were not perceived to be of quite the same status of community leadership in their various fields. And, as far as the lawyers group was concerned, it did not have as many people who were from the so-called established firms, or were from elements of leadership in the bar association structure, and so forth. Now, I don't know if that was purely just coincidental, or whether it was not a crusade, and you didn't get some busy bank executive to agree to run in 1980 because it would seem to be more of a political job and less of an event that it was in 1970. I didn't run, simply because I was, number one, I thought I had done all I could do, and I didn't feel that going out there and going through it again was worth the effort, personally, from everything that I had a solution to, the problem was already written down, in either one of two documents. Secondly, my professional work, the maturity and level of the responsibility that I had in my firm and the opportunity to make money was greater in 1980 than it was in 1970. I simply wasn't able to make that move. I do not regret it now. I enjoyed the days that I went out there to testify and sit around and tell everybody how they ought to do things, but I didn't enjoy, didn't miss, those endless hours of somebody droning on every day about something that they didn't know anything about or that they disagreed with.

249 Van Doren: Sam, what about Illinois, about rules preparatory rules?

250 Gove: The commission did prepare rules. The commission also acted as a repository for job requests for the staff of the convention, and particularly the job of accepting applications, and so forth, some members of the convention were furious that we were pre-empting their activities, and we shouldn't have even done that. There was some unhappiness on the rules that we were telling the convention how to operate. There is the sensitivity that the convention is a free agent, and they should not be, frankly, told how to do this or that, and with all the preparatory business, you must be very careful to make suggestions, but put it in such a way that you try to be helpful, not telling them how to run their business.

266 Campbell: If I may say there, I think if at all possible, of course it depends on the timing of the election and the meeting of the convention, and other things like that, but if you are going to put out a lot of paper work, even though people probably won't read it very carefully before the day before they go down, or when they get there that night, it helps, I believe, to dispell this suspicion if you get that stuff out to them as far in advance beforehand as

you can, with the most self effacing cover letter you can think of, that you are not trying to tell them how to do anything, but here is what has been done before, and you can study it and change it, and one of the first orders of business on the convention session will be to create a rules committee or to do something about rules. Our temporary rules were two sh[illegible]s of paper, or something like that. It is pretty obvious that nobody was stacking anything in terms of the temporary rules. They were very insignificant and in our structure the Secretary of State, who had no other provision and no other function except to certify the results of the election, was the convening officer. The governor was not the convening officer, it was not politicized in that respect. The Secretary of State called everybody to order and made sure that the delegates had been properly certified as having been elected and sworn in and immediately after that, they proceeded to the election of their officers. Approximately in that sequence.

292 Gove: Just for the record, I should say our convention also used the Maryland convention pretty much as a model for rules. One of the important decisions we made in the rules was that the seating of delegates shall be alphabetical and that really made a difference in how the convention operated. If we had allowed people to be by districts, that would have meant that the Chicago people sat right next to each other. Things which don't seem terribly important can make a difference.

301 Van Doren: Sam, where was the Illinois convention held?

302 Gove: It convened in the House of Representatives, but then the convention moved to the old state house, where Mr. Lincoln was always in presence and · ted in the house divided. Here again, the theme set a tone. Things like this can make a difference.

309 Van Doren: George, how about . . .?

309 Campbell: Both conventions met almost exclusively in the House Chamber of the present capitol. On a couple of cerimonial ocassions, we did meet in our old state house. We have an 1836 structure which is fairly well preserved, although it doesn't have enough desks and seats, and was never designed for a legislature of the size of our current legislature. From the stand point of the economy, facilities, telephone, all of the housekeeping things that you need, we felt there was only one place that we could meet. It would have been terribly expensive to rent on a long term basis, a hall somewhere. We could meet in the house chambers, when the legislature was out of session, we have a sixty day limitation on our legislative sessions, with some exceptions that it generally runs a little bit longer, but 90 days is about the longest they ever meet. So, the chamber was available in late spring and summer, when our convention was really working.

326 Van Doren: In either case, were there public hearings held any other place in the state rather than at the meeting place? Either one of you, Sam?

329 Gove: Yes, our committees or subcommittees held hearings throughout the state. I don't know how important they were in getting information into the mill, but they were good P.R., and it helped some of the delegates get around and see some parts of the state. Illinois is a very sharply divided state, a lot of Chicago people have no feel for the rest of the state, so this was quite helpful to get them around the state, and to just to hear different people talk with different accents, Southern Illinois is quite different from Chicago.

342 Campbell: I would say our differences between the various sections of the state are perhaps not as pronounced in Illinois, between the people who live in Little Rock or other parts of the state, but most of us came from smaller communities in the state. There is in the small communities, a very definite sort of paranoia about that the people in Little Rock are dominating the scene, real or unreal, mostly unreal. So both, and we started this in the study commission and it carried over in the '70 convention and I believe, although I am not as familiar with the '80's one. I believe the convention did it as much as they could. In the study commission, we were trying to create, quite honestly, a

public awareness. Hearings held out in the other places in the state, were as much propaganda as they were interest in hearing from people. I don't mean to say we didn't want to hear from people. We used primarily state college facilities. Almost all of the colleges were happy, and being that one of the members of the study commission, was a college president, they were happy to have us on campus. It gave some publicity, it gave something to the students to see and hear. We had a state college president and we had the largest private college president as a member of the study commission. We moved around in different parts of the state getting input from county officials, and municipal officials. One of the most memorable hearings we had was down in the southern part of the state, where we invited people to come and talk about game and fish problems. We have a constitutionally established game and fish commission which is almost an independent department of government. A lot of folks were out talking about fox hunting and other things like that, which may or may not be significant in your state. It strikes me that that sort of thing is important, or extremely important in your state, but again, in a state such as yours, and indeed ours, where transportation is not all that convenient, it was important to get the delegates and the commissioners out with the people and to encourage the people to come. We had to do a lot of pushing. That is we had to get on the telephone and get people to come and make presentations.

We made the agenda ourselves to some extent, at all of these county and state sessions. We didn't have trouble getting people, but we tried to present some sort of balance. If there was somebody who was very definite and would speak very stongly on something, we tried to think of who had the opposite point of view. We tried to give an opportunity to have a balanced presentation if at all possible. And, with the convention then, in '70, instead of taking the whole commission as we did, with 30 people you can move out and you won't have quite all 30 people there, but you can get accomodations in your budget as such, particularly if you work with colleges, you can stretch your budget now, and don't have to pay for facilities, and a little travel and some meals and that sort of thing, but in the convention structure, we took the committees to different parts of the state, finance and taxation committee would hold four or five hearings in different corners of the state, and that sort of thing. That was helpful in terms of getting publicity in the local newspapers, and we tried to pick towns that had a TV station if possible, but certainly a good daily newspaper, so that there would be pictures and coverage of the testimony to make the people aware that there was something going on and that their community had had a part in what was going on, which made it look less like the word was coming down from the capitol or the legislature.

414 Van Doren: What about, in both cases, post convention work, as far as getting publicity out and informing the public just what you had done and that type of thing?

418 Gove: We published a message to the people which, as I remember, every voter got a copy of the newspaper which had the new constitution and explanations. There was a campaign committee which was not publicly financed, that pushed the new constitution, and the delegates as individuals campaigned for the convention, in most cases. There were a few who were in opposition. We had our main constitution and four side issues. And the side issues got a lot of attention and there was a campaign committee for merit selection of judges and magistrates, and there was a campaign committee for single member districts vs. our two thirds voting system. We have if you are interested, have you see our series, published by the University of Illinois Press? One of them just came out, regarding campaigning for the new constitution tactics.

444 Van Doren: Is that a new one? I may not have seen that one.

445 Gove: By Joanna Watson, published by the University of Illinois Press. There is another new one, a summary of the whole thing by Elmer Gertson and Joseph Shody, that is just out in hardback, but our activity for the convention process is well documented.

452 Campbell: I would say the basic weakness in the whole process in Arkansas both in the '70 and '80, was in the post convention effort. We went through the things that could be accepted and funded by public funds and in each case, the convention produced and addressed to the people was the text of the constitution followed by explanatory paragraphs, but unfortunately, of course, you don't have much room in something like that to sell something, in many cases you are restricted by simply saying this substantially incorporates the provisions of article so and so, section so and so of the 1874 constitution, which most people didn't know what that said either, in terms of the general public. In other cases, you are reduced to a fairly short summary of what the change is, so that it is, at best, a semi-scholarly explanation in the case of it being understood but not recognized as fully, that people don't, for the most part, have a recognition of constitutional issues to begin with, except for the very limited economic issues and, of course, they are concerned about that. So there was no question of anyone who was interested in getting a copy. Ours was distributed this way: Each newspaper in each county was provided a newsprint tabloid and the publication requirements. The statutory requirements was that this was to be provided to each legal newspaper, that is a regularly published newspaper in the state, free of charge, and then they received a payment of something less than the regular legal rate of publication for inserting this stuff, one time, in their newspaper and dis-

tributing it throughout the state, so that everybody who got a newspaper, which was not necessarily every household, and certainly not every voter, but everybody who got a newspaper throughout the state, got a copy of the document, plus the Secretary of the State maintained a file of these and mailed them out to the courthouses and to a number of people on their public officials mailing list, so there was a fairly wide distribution and good deal of publicity. Additional copies could be obtained from the Secretary of the State, and that sort of thing. In 1970, there was no public funding available for any promotion campaign. In 1980 there was some budget allowed for P.R. committee, and there was a P.R. committee composed of delegates, but its purpose was essentially to try to coordinate delegate's speeches and try to coordinate delegate's and try to respond to requests to luncheon clubs and professional groups of one kind or another, trade associations and other things like that, to respond to requests, and in some cases to try to generate requests for talks. There was no money spent on advertising in the sense of TV commercials or newspaper ads. There was a private group formed to solicit money and bought TV time, and some newspaper time. That effort was a little bit better in '80 than it was in '70, but it was not dramatic in the sense of Michigan or maybe in the sense of Illinois, and so forth. There was no really big campaign, and unfortunately, a well drafted constitution is pretty hard to explain. The hardest part in a well drafted constitution is finding somebody

who is willing to give enough money to support the campaign. Some narrow special interest groups may be willing to do it to some extent, but that is one of the hardest things there is, and somebody must have done it right. We have not done it right in Arkansas the past two times.

534 Van Dorer: Well, I think probably we are going to have to stop the meeting. The only other thing, there are other things I would like to touch on and I don't know if we will have a chance to get together or not, but one other thing I would really like to explore. if there is any possible chance to get together. I am going to meet with the people from Texas probably tonight or tomorrow, and go through this same kind of thing. I don't know if you are available, I could have a meeting with the whole committee. Just maybe some ideas on some of the pitfalls to avoid. I know you have explained some of them, and Sam has explained some of them too. We are trying to learn from other people's mistakes, and it is one thing that I think is pretty important about this, although the things that you have given me this morning have really been helpful. I have learned lots just from this morning. But I really think we should probably go. The meeting is supposed to start at 10:30. You might be thinking about that, and if there is a time. One other possibility that Bill Cassella had talked about was maybe getting together tomorrow morning, just at breakfast

rather than like this, and maybe just sit around and talk, and that will give you time to gather your thoughts a little bit, too. If it is possible, let me know. I appreciate the time you two have taken now, and I know this is a busy time, but this was one way to see people that I wasn't able to see in New York other places.

565 Gove: I wish we had a patented formula for success. One of the things we did and I think this may sound egotistical, but we studied our procedures and literature, and we did some good preparatory work.

576 Van Doren: You certainly did. As you said, Illinois is certainly well documented. I think it is probably the . . .

578 Campbell: If the money is available anywhere, that sort of good background material is very helpful, because what happened so often is that you rush in to get a staff, and you wind up picking up people who are anxious to work, but they have no real depth in the area. You can't get those people who got to that area overnight, and they can't get the material together fast enough and you come out with poorly informed answers, I don't mean to say young people don't know anything, that is not what I am trying to say, but to get somebody who knows the issues only from the limited sort of text book source or just a very fragmentated sort of thing. They don't

often get their resources developed and really inform a committee on what the substantive issues are.

599 Van Doren: Well, I think we will finish this off, since we are going to that other meeting.

END OF GOVE/CAMPBELL MEETING.

SCOMM

#23:12

SPECIAL COMMITTEE #27 ([redacted])

INTERIM COMMITTEE ON THE CONSTITUTIONAL CONVENTION 1979-1980

11 audio-cassettes

TAPE NO.	DATE	SIGNIFICANT INFORMATION....
1	9/24/80	ConCon meeting
2-4	11/7/80	Meeting in New York
5-6	11/16/80 ?	Charles Campbell, Sam Gove Jim Ray, Kathy Ray, Janice May
7	?	Ray, Ray, May - Texas
8	11/12/80	John Wheeler, Hollins, Va.
9	12/9/80	Committee meeting
10	1/10/81	Committee meeting
11	?	Guy Van Doren dictating on convention

KHS 10/83

SCOMM

#27:13

THE CONSTITUTIONAL CONVENTION

YES or **NO**

A QUESTION

ON THE GENERAL ELECTION BALLOT

NOVEMBER 2, 1976

A brochure prepared by the
OFFICE OF THE LEGISLATIVE REFERENCE BUREAU
pursuant to House Resolution No 336
adopted by the House of Representatives of
the Eighth State Legislature
Regular Session of 1976

On November 2, the general election day, you and the rest of Hawaii's registered voters will be asked, "Shall there be a convention to propose a revision of or amendments to the Constitution?" This pamphlet is meant to assist you in reaching your decision by reviewing a few of the possible constitutional issues discussed and resolved in a convention. For your further information, brief general background information about constitutions and constitutional conventions is included.

What is a constitution?

A constitution is a statement outlining the basic principles of a formal organization. It allocates the powers and functions of government among its permanent institutions, such as the executive, legislative, and judicial branches. It also sets out the structures and purposes of the organization and defines the method of selection, the terms, and powers of public officers. In modern democracies, a constitution establishes the basic legal foundation for government and the limitations of its powers.

Why is a constitution necessary?

Every group of people— from a family to a nation—has rules of conduct to govern the lives of its members. The rules encourage, require, or forbid certain kinds of behavior. The institution by which a group establishes and enforces such rules is called government.

All countries have governments to make and enforce rules to govern citizen behavior. These rules usually correspond to the values, beliefs, customs, and traditions of that society in some degree. The method and limits of power which are made are contained in the fundamental law of government—the constitution.

What does Hawaii's Constitution cover?

Hawaii's Constitution covers general subjects in sixteen Articles. Three of the longest Articles discuss the legislative procedure, the monetary process, and the legislative districts. The Bill of Rights, the state flag, and other subjects are also covered.

What is a constitutional convention?

Nearly every state constitution provides for the calling and holding of constitutional conventions.

A constitutional convention is one way of amending or proposing a new constitution. Voters elect delegates to represent them especially for the purpose. Most delegates are elected from state legislative or congressional districts; some are chosen on an at-large basis. The delegates elected to the constitutional convention meet as one body and elect their own officers and make their own rules. A constitutional convention usually forms and uses committees so that detailed consideration can be given to particular subject areas.

What is the purpose of a constitutional convention?

Most states have some method to change their constitutions without having a convention such as asking the people to vote on proposed constitutional amendments. Sometimes, however, it is felt that the changes that are possible through amendments presented one or a few at a time are too limited in scope. Major revisions of a constitution, if necessary, are difficult, costly, and time-consuming when done in a piecemeal fashion. A constitutional convention (con-con), on the other hand, allows a general review and major revision of the constitution. Although proposed changes generally result from a constitutional convention, a convention could recommend that no change be made. Consideration of various provisions could result in choosing to retain existing provisions.

How did Hawaii get its Constitution?

In 1949, the people of the Territory of Hawaii called for a constitutional convention to demonstrate their strong desire for statehood. Sixty-three con-con delegates met in 1950 to draft a constitution which was subsequently adopted by the people that year. That constitution became official and operational when Hawaii became a state in 1959.

When was the latest Hawaii constitutional convention held?

In 1968. The legislature in 1966 asked the voters whether or not to have a constitutional convention. The voters approved the calling of a con-con, and in 1967, the legislature authorized the June, 1968 election of eighty-two convention delegates. Sixty-three delegates represented Oahu and nineteen represented the neighbor islands.

The convention began on July 15, 1968 and lasted fifty-eight days. The 1968 convention cost a total of $1,205,000, which, adjusted to present day costs, would equal $1,875,400* for an identical convention. Nearly all constitutional amendments proposed by that convention were adopted by the voters at the general election in November of 1968.

Why is a question about a constitutional convention going to be on the ballot in November?

Our present Constitution says that the question, "Shall there be a convention to propose a revision of or amendments to the constitution?", must be presented to the voters every ten years. Although the ten-year period, since the question last appeared on the ballot, has not quite passed, the legislature enacted a law requiring the question to be placed on the 1976 general election ballot. The Constitution allows the question to be presented to the voters more frequently.

What will happen if the voters reject the calling of a constitutional convention?

There will be no convention but changes to the Constitution may still be proposed by the legislature and presented to the voters. The legislature can also present the constitutional convention question to the voters again in the future; or, if ten years pass without such action, the question will automatically be placed before the voters.

What will happen if the voters approve the calling of a constitutional convention?

The legislature will pass a law providing for the election of delegates at a special election, the date the convention will start, the powers of the convention, the salaries of delegates, and other necessary matters.

When will the constitutional convention, if approved by the voters, be held?

Since the election of delegates and the date of the convention are set by law, the law setting up the convention must be passed by the legislature and approved by the governor. The required law could be passed in 1977. The election of delegates and the constitutional convention would be held after the law is passed and approved.

What kinds of subjects can the constitutional convention consider?

The 1968 Constitutional Convention was not limited in what it could consider. That convention proposed changes that covered many areas, including the county debt limit and the eighteen-year old vote. Some possible subjects which could be considered by a constitutional convention are discussed below. Discussion is presented generally in the order that the subject matter falls within the Article groupings of the Hawaii Constitution.

THE ELECTORAL PROCESS

1. Whether there should be initiative.

Initiative is a method by which voters, by petition, are able to propose amendments to statutes (statutory initiative) or to the Constitution (constitutional initiative). An initiative is proposed by a petition with signatures of a required number of voters. If the petition meets all requirements, it can be handled by either direct or indirect initiative. Direct initiative does not involve the legislature and the people vote on the measure themselves.

Indirect initiative requires the measure be sent to the legislature, which either approves or amends it.

It is argued that if there is initiative, there will be fewer voter fears of a legislature becoming too strong or unresponsive. Fewer constitutional restrictions on the legislature may result, which would enable the legislature to be more progressive while the people would also have the right to legislate directly. The initiative process when used by the people may serve to inform their representatives of voter wishes and concerns. The initiative can also be a device of the people to counteract special interest group legislation.

States not having the initiative process feel it is neither necessary nor responsible for substantial reform. In some states the initiative has been used more frequently for constitutional amendments than statutory amendments to prevent possible legislative changes later, allowing the people to have the overriding position. This practice reduced flexibility since the constitution is harder to amend than a statute. The initiative process may not be suited for a particular state, because of the time and money which are necessary to pass an initiative. Some claim, also, that the initiative is not necessary as a tool to discover wishes and concerns of the people, saying that survey polls and talking to the people would be equally or more appropriate.

2. Whether there should be referendum.

Referendum is a process by which the people can approve or disapprove a statutory or constitutional amendment proposed by the legislature. For a referendum, petitions are signed by a certain number of voters who wish to have the measure subjected to a vote of the people, and the measure is placed on the ballot for vote in the next election.

States allowing referendum feel that when properly used, referendum leads to progressive government, serves as a control on government, and acts as a protection for the people. Legislatures may tend to avoid passing a bill which many, though perhaps not a majority of the people oppose. Party politics are not necessarily involved since the people vote on the measure itself, without connection with any particular legislator or political party. Supporters of referendum also feel that it educates the public because the measures voted on are widely publicized and discussed. Thus, voters are more knowledgeable when voting on any issue before them.

States without referendum believe that too much may be expected from the voter as legislative measures are often numerous and difficult to understand and can be better handled by representatives chosen by the voters. Elections are held often enough to ensure voter control of the legislature by enabling the people to choose legislators who are more responsive. The use of the referendum, some claim, may slow down and disrupt state progress and quick handling of problems.

3. Whether there should be recall of elected officials by voters.

Recall of an elected official is a method for voters to determine whether the official should be removed from office. A recall election is held on a petition signed by a required number of voters, stating the reasons for recalling the official.

There are three basic methods for recall: indirect recall, recall with a successor chosen, and simple recall.

Indirect recall is an election to fill the office of the person removed. The official being removed is made a candidate and runs against others for the office. The winner holds office for the rest of the term.

Recall with a successor chosen requires that a voter first decide whether the person should be removed from office, and if so, who the successor should be.

In simple recall, voters only decide whether a person should be removed from office. If the vote is to remove the person, a successor is chosen according to law, either by appointment or by another election.

People favoring recall state that recall makes public officials act with greater responsibility. Because recall can be a check on how long someone stays in office, the voters need not wait until a person's term expires before removing him from office. A recall provision may also

*Calculated by using data from the *Survey of Current Business*, a U.S. Department of Commerce publication. The cost is adjusted using data from the 1st quarter of 1976. The buying power of $1 in 1968 was roughly equal to $1.556 by that quarter in 1976.

able to vote them out of office as well.

People against recall say that removal of elected officials can always be done through the courts, the legislature, or sometimes, gubernatorial action. Officials are also removed from office when voters do not reelect them. In addition, the expense of a special election may be too high to justify recall. Opponents of recall point out that it may be abused by well-organized groups for political purposes, for it can provide a constant and legal means for special interest groups to threaten elected officials.

PUBLIC OFFICIALS

4. Whether there should be a limit on the number of terms elected officials may serve.

Twenty-three states, including Hawaii, do not limit the numbers of terms any of its elected officials may serve; twenty-seven states limit in some way the number of terms their governor may serve.

States not limiting the terms of public officials feel that the voters have the right to retain an official they believe the most qualified and able to do the best job. Limiting terms of office, it is claimed, may deny the people the service and experience of an able public servant and limit the right to elect their first choice. It is pointed out that a limitation on the number of terms results in heavy turnover in office and the loss of knowledgeable elected officials.

States limiting the terms of elected officials believe that unlimited terms provide elected officials with an opportunity to build political machines, which are used to continue their reelection even though there are others better qualified. Providing limitation on the number of terms of an elected official also makes possible the election of new people with new ideas.

5. Whether elected officials should resign before seeking another elective office.

Currently, elected officials are not required to resign before seeking another elective office.

Some people say that elected officials should be required to resign if they want to run for another office. They believe a person should devote his entire energy and time doing the job he was elected to do, and that a person who takes time to seek another office is unfair to the voters who elected him for another purpose. Proponents also believe that political strength would be equalized among the candidates running for an office.

Others feel that to require resignation would discourage public officials from seeking offices with greater responsibilities. An experienced elected official is often qualified to serve in other offices, and to force officials to resign from office would as a practical matter discourage many qualified persons willing to undertake the other office. Opponents also point to federal offices, in which U.S. Senators, for instance, can run for President without resigning from the Senate.

6. Whether elected officials should be prohibited from serving as delegates to the constitutional convention.

Presently elected officials are allowed to serve as delegates to a constitutional convention (con-con).

Some people believe that elected officials who serve as delegates may prevent some of the changes which may be considered because they are comfortable and familiar with the way things are. They also point out that the voter's intent in electing an individual to office is that the individual devote his term of office to perform his duties, which he may not be able to do while serving as a con-con delegate.

Other persons argue that prohibiting an elected official from running for con-con would exclude many knowledgeable persons from the convention. Elective officials contribute much to a con-con since they are knowledgeable concerning, and experienced in, government. Further, if a broad cross-section of the citizenry is to be represented in the con-con, then elective officials are representative of that part of the citizenry.

Increasing overlapping of public and private lives of elected officials has led to great concerns over conflicts of interest in government. Hawaii in 1967 enacted a code of ethics, establishing an ethics commission and setting standards of conduct for legislators and all other officers and employees of the state, except for judges.

Hawaii's present Constitution instructs the legislature to adopt a code of ethics; a constitutional convention, however, may consider including a code of ethics in the Constitution.

Since most legislators are part-time officials who earn a major portion of their incomes from other occupations, they may be placed in situations where voters expect legislators to help when the voter has dealings with the state. Thus, those persons in favor of a code of ethics in the Constitution believe that some protection for legislators and other elected officials against conflict of interest situations will result if a code of ethics were put into the Constitution.

Other persons argue that the Constitution is not the proper place for a code of ethics, as a constitutional provision that can be handled by statute might be too rigid to meet the changing problems of the state. The code, opponents say, may have to be amended constantly to take care of new situations and values, and generally the Constitution is not easily or swiftly amended.

8. Whether there should be an express provision on salaries, compensation, and benefits of elected and appointed officials.

Hawaii's Constitution provides legislators with a $12,000 a year salary and by law they also receive an additional $1,500 for expenses connected with legislative duties. The legislature is given the power to increase its own salaries and to set salaries for all other appointed public and elected state officials.

Some persons argue that limits on pay and benefits should be spelled out in the State Constitution. They question the wisdom of allowing the legislators to set their own salaries or that of other public officials, because of the possibility of abuse. A constitutional restriction would protect against this possibility.

Other people believe that because the cost of living and value of the dollar fluctuates, the legislature should have the responsibility of setting appropriate pay and benefits. In addition, the responsibilities of elected and appointed officials may change as the functions and scope of government change so that pay and benefit adjustments may be needed to attract the most qualified people to these elective and appointive offices.

LEGISLATURE

9. Whether the legislature should be other than bicameral.

Hawaii's Constitution requires a bicameral legislature composed of a fifty-one member House of Representatives and a twenty-five member Senate.

A central issue concerning legislative structure is whether the legislature should remain bicameral, that is, have two chambers—a Senate and a House. A unicameral legislature, on the other hand, has only one house. Unicameralism and bicameralism are both means to the same end—to conduct the legislative business of the state in an orderly manner.

Persons favoring unicameralism believe a one-house structure demands greater accountability of legislators to the people of the state, since there is no "other house" to blame for poor legislation or lack of action. Legislators would be required to pay more attention to their legislation, promoting decision-making likely to result in quality legislation. Duplication of work may be minimized by introducing bills in a single house only, as well as reducing the repetitive aspect of considering bills in two houses.

These persons feel unicameralism is simpler, and that the public will be better able to monitor the legislative process. In turn, the legislature can better monitor the execution of legislative policy. The one-house structure avoids the necessity of conference committees to resolve

duplication of effort, streamlined watchdog function within the legislature. They feel it is necessary for each house to monitor the work, processes, and products of the other house, eliminating the possibility of one house being able to do mischief with the laws, since each house subjects the legislation of the other to critical examination and review.

Duplication in both the voting and committee procedure is a positive feature of the legislative process. This positive duplication affords the public a greater opportunity to be heard, requires that legislative action be informed rather than hasty, and insures that support is substantial and long-lasting rather than temporary.

Finally, they feel a two-house legislature is less vulnerable to domination by any interest group faction.

A form of government which has not received as much attention as the bicameral or unicameral legislature is the parliamentary form.

Parliamentary government, or cabinet government, consolidates both the executive and legislative functions into one governing body which selects an executive head (governor) from its own ranks to serve at its pleasure.

The executive head governs only so long as he has the support of the parliament (legislature). The executive chooses the heads of government departments, from the majority political party of the parliament. They hold ministerial (departmental) office only as long as they have majority support in an elected house. A defeat fur the executive through an adverse legislative vote, on an important issue, indicates a lack of confidence requiring the executive either to resign or to attempt, by means of a general election, to secure a new majority in the parliament.

Persons in favor of the parliamentary form of government believe that stalemates between an executive of one party and a legislature of another, as occurs with the American system of separated powers, is impossible in the parliamentary system. Further, this form of government prevents "passing the buck" between branches of government.

Those against the parliamentary form of government point out that instability of executive authority results in numerous expensive elections. They also feel that it is foreign to the traditional form of government in the United States and the familiar separation of powers structure. Further, it increases the possibility of a dominating political machine.

10. Whether there should be single-member or multi-member legislative districts.

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires that each member of an elected body represent, as far as practicable, voters equal in number to the number of voters represented by every other member. Thus, each citizen's vote is equal in weight to the vote of any other citizen.

A "single-member district" is one in which the voters elect one legislator to represent a district. A "multi-member district" is one in which the voters elect more than one legislator to represent their district. Presently, Hawaii has single and multi-member districts in both the Senate and the House. The Senate has twenty-five senators divided among eight senatorial districts, while the House has fifty-one representatives divided among twenty-seven representative districts.

Persons believing in single-member districts point out that such districts are relatively small in area and population, and allow greater personal identification between the voter and the legislator. Smaller districts, some claim, reduce campaign expenses, encouraging individuals who otherwise may not run because of the costs and hardships of a campaign in a large district.

On the other hand, persons believing in multi-member districts argue that single-member districts represent only a very small portion of the state, and may lead legislators from the small districts to be primarily concerned with highly localized issues and to ignore the broader issues facing the state. Further, group representation from a larger geographic area leads in many cases to team representation of the district and increases the large district's strength and cohesive-

Before the 1968 Constitutional Convention, the terms of senators were staggered and in each election year, approximately one-half of the Senate seats were up for election. Under the present Constitution, members of the House of Representatives are elected for a two-year term while those of the Senate are all elected for a four-year term without being staggered.

Persons against staggered terms believe that if all members serve for the same period it will allow committee chairmen to become more knowledgeable about their subject matter and, without the election pressures every two years like their House counterparts, senators can provide a more deliberate approach to examining legislation. Furthermore, the voters of the state are able to assess the work of the entire legislature every four years and have an opportunity to elect an entirely new legislature or to reelect some members while electing a large number of new members both in the House and the Senate simultaneously.

Those persons in favor of the staggered term concept argue that staggered terms allow the voter to assess the performance of the Senate every two years, although not all of the Senate is up for election every two years. They also point out that without staggered terms the House is forced to be the only legislative chamber accountable for legislation enacted by Senate in off-election years. Further, staggering Senate terms will mean that it would be impossible to have a completely inexperienced legislature.

12. Whether there should be a change in legislative sessions, e.g. split sessions or longer sessions.

Hawaii's Constitution provides that the legislature shall be a continuous body for two-year periods beginning when newly elected House members take office. The legislature meets once a year in regular session for not more than sixty legislative days. The legislature may also be convened in special session by the governor or at the request of a majority of the legislators. The governor may also convene both houses or the Senate alone in special session.

There are two related constitutional issues in the discussion of legislative sessions, these go to frequency and duration. The issue of frequency concerns annual or biennial sessions, and the issue of duration concerns the length of each legislative session.

FREQUENCY

Biennial Sessions. Biennial sessions require the legislature to meet once in a two-year period. Persons in favor of biennial sessions feel the quality of legislators may be better because some of the state's best citizens, who may be too busy to meet the time demands of legislative service each year, might be willing to give time every two years. The biennial system, it is said, allows legislators time to meet with the voting public. In addition, the time between biennial sessions allows better performance of between-session studies and other interim work.

Annual Sessions. Persons in favor of annual sessions believe the balance of power of the governor and the legislature may be threatened, because the legislature would not be a continuous body and it would be more dependent on the executive branch of government. Annual sessions tend to overcome this imbalance. Annual sessions allow the budgeting and legislative process to more responsibly react to changes because of inflation, population shifts, the expansion of government functions, and unforeseen emergencies, which can occur every year.

DURATION

Split Session During Annual Sessions. A split session divides a session, for example, into three parts, using a recess between a short preliminary session in which bills are introduced and a long session in which the bills are debated, passed, or rejected.

Those in favor of a split session argue that it provides legislators and the people with an opportunity to study pending legislation. Split

Limited Sessions. Those in favor of limited sessions, such as the 60-day session Hawaii uses, argue that unlimited sessions may make it impossible for many people to serve as legislators. They point out that unlimited sessions may end Hawaii's tradition of a citizen or part-time legislator and may create a professional or full-time legislator. It is also felt that unlimited sessions are expensive and may lead to unnecessary legislation. During a short legislative session or a less frequent session, it is easier for the public and the press to keep track of legislative activity.

Unlimited Legislative Sessions. Persons in favor of unlimited sessions believe that just because the length of a session is unlimited does not mean it will continue indefinitely. Unlimited sessions allow the legislature to be the judge of how much time it needs to give adequate consideration to proposed laws. Although some feel that legislators may not work as hard if there are no limits on sessions, persons in favor of unlimited sessions point out that fixed annual salaries encourage legislators to finish their work as soon as possible, since they have no reason to work indefinitely. Short and compact sessions tend to make it easier for bills to be overlooked according to unlimited session proponents.

EXECUTIVE

13. Whether any executive (department) officer should be elected.

The governor is the head of the executive branch of Hawaii's government and appoints all department heads, except the Department of Education which is headed by an elective board.

In some other states, however, one or more department heads are elected, as well as the governor and the lieutenant governor. These elected department heads often are the attorney general and the comptroller.

The attorney general is the legal adviser of the state and also appears in court to represent the state, its officers, and agencies. The comptroller (head of the department of accounting and general services in Hawaii) determines and carries out the state's accounting system, controls various fiscal operations, and gives voucher approval.

Where these officers are elected, it is felt that voter control of government is best achieved through election. Supporters of elected officials believe that public interest and participation in government increases, and responsibility is more clearly fixed. Further, the elected officials have more independence than appointed officials.

States favoring appointed officials believe that a department must carry out state policy, so the departmental heads must be directly responsible to the governor. Appointed department heads mean, also, that responsibility and accountability are clearly placed in the governor. This, proponents of appointed officials believe, allows the voters to decide more clearly whether or not to keep the governor at the next election.

JUDICIARY

14. Whether there should be a change in the manner of selecting judges.

It is generally felt that the Constitution should provide for a strong and independent judiciary, because the courts are so important in keeping order and resolving disputes. The independence of the courts allows fair decisions to be made by judges without fear or favor. There is also general agreement that judges must somehow be accountable to the people.

Hawaii's judges are appointed. The governor appoints the judges to the supreme court and the circuit courts, and the chief justice of the supreme court appoints district court judges.

Judges are appointed in thirteen states by either their governors or

judges to nominate candidates, from which the governor appoints the judges. After a judge serves a short term, for example, one year, the voters are asked if the judge should be kept in office a longer term based upon his performance.

Opponents to appointment of judges say it increases the political considerations in selecting a judge, whereas the election method insures direct responsibility of judges to the people.

People favoring appointed judges say the election method forces judges to be politicians, making their judgments based on politics or public opinion, and not on fairness and law. Further, although politics may enter into the appointment, the judge is independent once in office.

TAXATION AND FINANCE

15. Whether counties should have the authority for taxation.

In Hawaii the authority to tax is in the state, except where delegated to the counties. To date, however, no major delegation of taxing authority has been made to the counties.

Those in favor of allowing the counties to tax contend that taxes could be made in relation to specific local conditions and requirements, with each county bearing the full responsibility for the taxes it levies. Responsibility of the individual counties for fiscal planning and administration are to be promoted in this way. Pressure on the state and federal governments to solve local problems and to provide increased services is reduced, according to proponents of county taxing power.

People against giving taxing powers to the counties say that the state has the ultimate responsibility for the financial solvency of the counties, which requires the full authority to determine which taxes are to be levied by which level of government. It is claimed that general state interests would not progress if the state government's authority to make taxation policy is left to the counties. Furthermore, the imbalance of resources among the counties presents a danger of inconsistent and inequitable use of local taxing powers among the counties of the state.

16. Whether the debt limit should be abolished or changed (e.g., some bonds, such as revenue bonds, do not count in the debt limit).

The Hawaii Constitution allows the state to borrow money, but balances this power with certain restrictions, including a "debt limit", which limits the amount of state debts. This of course means that the legislature cannot authorize borrowing money beyond that limit. Any change in the debt limit, therefore, involves two basic alternatives, either no debt limit with unrestricted legislative power, or a more restrictive debt limit.

Those who argue for fewer restrictions believe the state is still growing, and that construction of facilities, financed by borrowing, must continue. Since land and construction costs may rise in the future, delays forced by a restrictive debt limit could be costly. Borrowing, now, could save money in the long run.

It is also argued that any debt limit is ineffective, and makes borrowing more difficult and expensive. Other states have evaded rigid debt provisions through the use of revenue bonds and other forms of more expensive, non-guaranteed borrowing methods.

Those people favoring restricting the state's power to incur debt say that as the state's total debt increases, repayment becomes less certain, and higher interest rates must be paid to attract lenders. Restricting the total debt, therefore, holds down state interest costs on new debt.

Further, an accurate debt limit shows lenders that their money is secure, and the state's credit is good. Future taxpayers, it is argued, are, therefore, not heavily overburdened with debts incurred today.

EDUCATION

17. Whether there should be a change in the manner of selecting the Board of Education.

In 1964, the Hawaii voters approved a constitutional amendment changing the method of selecting the Board of Education from one appointed by the governor to one elected by the voters. Proposals to change back to an appointed board keep surfacing.

Those who favor an appointed board feel it may attract more qualified individuals who would serve if they did not have to run for office. It is also felt that under the appointive system, there are clearer lines of responsibility; for example, if the school board does a poor job of administering the Department of Education, the governor is responsible. An appointive board also avoids the problems of the one man, one vote rule which applies to elected bodies.

People wanting an elected board believe elected members will be directly accountable and responsive to the voters. An elected board may also create greater citizen interest, support, and participation in school affairs since voters have a direct line to the elected board to express their views on school policies. Proponents of an elected board also point out that Hawaii's citizens have shown that they want a more direct voice in school decision-making by voting for the elected school board against later amendments to change back to an appointive board.

18. Whether the powers, functions, or duties of the Board of Education should be changed.

The responsibilities for education in Hawaii are shared by the legislature, the governor, and the Board of Education. The Department of Education provides the staff to carry out the day-to-day operations of public education. The legislature appropriates money and makes laws for education. The governor sees that all laws are carried out, and may also reduce the amount of money available to the Department of Education. The Board of Education makes policy for and controls the public school system through the superintendent of education, whom the board appoints.

Some persons suggest that the present system is in need of clarification. For example, the governor and the board both supervise the Department of Education; however, the governor can disapprove a rule adopted by the board. Also, both the legislature and the governor may delete, reduce, add, or expand educational programs.

Some suggesting clarification of the responsibility for making policy for education feel that the Board of Education is the expert in the area and should have full control. They point out that the board was elected by the people specifically for this purpose, while the legislature and the governor were not.

However, even under the present system, not all state educational policy is decided by the legislature or the governor. Supporters of the present system point to the broad discretionary power the board is given over public education.

They further feel the existing three-way input by the board, the governor, and the legislature is a proper balance of power. The governor, it is claimed, should control board rules and budget because the governor represents all the people and must balance the total needs of the state. The legislature should also retain its present role, some claim, as legislators are closer to the voters (i.e., each legislator represents fewer people than a board member), are better known than the board members, and have the power to appropriate money and pass laws. Like the governor, the legislature also sees the total needs of the state and must provide for all of those needs.

CONSERVATION

19. Whether the responsibilities of the state in land use matters should be specified, e.g., preservation of lands specifically identified and the manner in which land, public and private, in the state should be used.

Natural resources are generally thought to consist of usable material like coal, running water, and other sources of energy. Hawaii has few of these resources, but does have resources such as land, climate, and the natural beauty of the islands. Thus, when speaking of conserving Hawaii's natural resources, people usually focus on the land and how it is used.

Presently, the Constitution generally requires the legislature to promote the conservation, development, and utilization of natural resources, and places the power in the state.

Some people believe that broad statements about conservation do not protect natural resources well. They feel that the Constitution should specifically identify conservation areas to be protected, such as in the "forever wild" forest reserve section in one state's constitution, requiring the forest lands of that state to be kept forever, not to be sold or destroyed.

Some state constitutions have brief statements about conservation similar to Hawaii's which state conservation policy and allow the legislature to decide the use of the resources. These states feel that it is better to allow the legislature to develop a comprehensive program that can easily take into account the changing values and needs of the people as well as scientific developments in resource management.

ORGANIZATION AND COLLECTIVE BARGAINING

20. Whether the right to strike of public employees should be limited.

Hawaii's Constitution permits state and county public employees the right to organize for the purposes of collective bargaining, and statutes give details of public employee rights, including provisions for bargaining procedures, settlement of disputes, and rights and prohibitions of going on strike.

Hawaii has no restrictions and permits all public employees to strike, but that right is not unlimited. Certain steps, such as mediation, fact-finding and arbitration, must be taken before employees can strike.

Some persons argue that public employees should not have the right to strike since there are differences between private industry where strikes should be allowed and in government where strikes should not be allowed. For example, the profit motive which influences the private employer's willingness to grant wage increases or fringe benefits and the threat of a firm going out of business or going bankrupt are factors to be taken into account by unions. These factors do not apply to a government. Private employee demands cannot be too excessive or the private employer seeks alternatives not open to a government. For example, if labor costs are too high, the private employer can relocate or close down, but government cannot do this. Private industry has direct control over expenses as some money may be saved by reducing, stopping, or selling some part of the business. Most services provided by the government, however, cannot be reduced or stopped.

Other people say there is no difference between private industry and government for purposes of the right to strike. They point out that all employees have the same problems at work, such as rising prices, job security, promotions, and lay-offs, whether in government or private industry. The right to strike is a bargaining tool for better wages, conditions, and benefits and is necessary to balance the power of the employer no matter who the employer is. Since government may be able to contract for services when employees are on strike, some claim it can keep on providing essential public services.

A third view is represented by those states prohibiting only certain employees, such as policemen and firemen, from striking. These states feel that while public employees have a right to strike, certain services requiring special training must be provided because there is no way to contract for such services. These states believe that these services are crucial for the health and safety of the people, and so must be treated as a separate category.

CONSTITUTIONAL



CONVENTION

CON-CON - SATURDAY,
ELECTION MAY 20, 1978

Prepared by:
Office of the Lieutenant Governor
and
Association of Clerks and Election
Officers of Hawaii
(ACEOH)

HAWAII'S CONSTITUTIONAL CONVENTION

WHAT IS A CONSTITUTION?

IT IS A DOCUMENT THAT:

- Outlines the basic principles of a formal government.
- Guarantees certain rights of the people against infringement.
- Assigns the powers and functions of government.
- Defines the method of selection of our leaders.
- Establishes the basic legal foundation for government and the limitation of its powers.

* * *

WHAT IS A CONSTITUTIONAL CONVENTION?

- A way of reviewing and changing a constitution.
- Composed of delegates usually elected from representative districts or a combination of election precincts, or on an at-large basis.
- Changes proposed by the delegates are voted upon by the people before becoming official.

* * *

HAWAII'S PAST CONSTITUTIONAL CONVENTIONS

CON-CON 1950

- Called for through Act 334, 1949, by Territory Legislature to demonstrate Hawaii's desire for statehood.
- Sixty-three delegates met in 1950 to draft a State Constitution.
- Voted For adoption by the people in 1950.
- Became operational in 1959 when Hawaii became a State.

CON-CON 1968

- In 1966, the Legislature asked voters whether or not to have a Con-Con.
- Voted for by the people in 1966.
- In 1967, the Legislature authorized a convention to be held in 1968.
- Eighty-two delegates were elected in June, 1968.
- Convention began July 15, 1968 and lasted 58 days.
- Convention cost a total of $1,205,000.
- All changes proposed by the convention, except one, were adopted by the people in the General Election of 1968.

* * *

1978 CONSTITUTIONAL CONVENTION

- Voted for by the people in the 1976 General Election.
- Convention convenes July 5, 1978 in Honolulu with no time limit.
- Election to be held May 20, 1978.
- Election will be nonpartisan with candidates names listed alphabetically on ballot.
- Proposals to be submitted to the voters at the General Election of November 1978, unless the convention determines otherwise.

* * *

VOTER REGISTRATION FOR CON-CON

IF YOU ARE NOT ALREADY A VOTER OF HAWAII, YOU MAY REGISTER FOR THE CON-CON AND ALL OTHER ELECTIONS IF:

- you are a citizen of the United States.
- you will be 18 years old on the day of the election.
- you are a legal resident of the State of Hawaii.

* * *

IT'S EASY TO REGISTER

Just appear in person to register at any County Clerk's Office or other designated locations throughout the State. Refer to back page for registration locations.

* * *

RE-REGISTER

Sometimes you have to register again, even though you have done so before. Re-registration is required if:

- you did not vote in both the 1976 primary and general elections, or
- you have changed your name or address since the 1976 elections.

* * *

REGISTRATION DEADLINE

Registration for the Constitutional Convention will be closed at 4:30 p.m. on April 20, 1978.

* * *

ABSENTEE VOTING

You may request an absentee ballot from the Clerk's Office if:

- you are registered to vote in the 1978 Con-Con.
- you will be out of the state, county or district on election day.
- you are confined at a hospital or institution on election day.
- you are ill or disabled at home on election day.
- you are prevented from voting at your polling place by religious beliefs.
- you live ten miles or more from your polling place.

* * *

CON-CON ABSENTEE

Absentee requests will be accepted during the following dates:

- Out of State - March 21, 1978 to May 13, 1978
- Confinees - up to 6:00 p.m. on May 20, 1978

Absentee voting in person at the Clerk's Office will begin ten days before election day from:

- May 10, 1978 to May 19, 1978

For hours of operation, please contact your County Clerk.

* * *

CANDIDATES FOR CON-CON

QUALIFICATIONS

- U.S. Citizen.
- Legal Resident of the State of Hawaii.
- Qualified Elector of the District seeking election.

* * *

NOMINATION PAPERS

Nomination papers for a candidate for a Con-Con seat may be picked up and filed at the Lt. Governor's Office. Neighbor Island candidates may pick up nomination papers at their respective county clerk's office.

Nomination papers must be signed by not less than 15 qualified electors of the Con-Con district.

Deadline for filing - 4:30 p.m. on April 20, 1978.

* * *

FILING FEES

$25.00 at the time of filing.

* * *

DELEGATE'S SALARY

Delegates to the convention will receive a salary of $1,000 a month, but not more than $4,000 for the convention, plus an allowance of $10 per diem for Oahu delegates and $30 per diem for neighbor island delegates.

* * *

CAMPAIGN EXPENSES

All candidates for Con-Con must file reports with the Campaign Spending Commission. For more information call or contact:

Campaign Spending Commission
State Capitol, Room 436
Phone: 548-5411

Neighbor Islands:
For information only
Call Operator, ask for
Enterprise 5406

* * *

CONSTITUTIONAL CONVENTION DISTRICTS

CON-CON DISTRICT	COMBINED ELECTION PRECINCTS	AT-LARGE DELEGATES	DISTRICT DELEGATES
HAWAII COUNTY			
1st	All	2	
2nd	1-6 & 12		2
	7-11, 13 & 14		2
3rd	All	2	
4th	All	2	
MAUI COUNTY			
5th	1-8		2
	9-15		2
6th	1-6, 10-13		2
	7-9, 14-16		2
CITY AND COUNTY OF HONOLULU			
7th	1-4		2
	5-8		2
8th	1-3		2
	4-7		2
9th	1, 3, 7 & 8		2
	2, 4-6		2
10th	1-3		2
	4-7		2
11th	1, 2 & 4		2
	3, 5 & 6		2
12th	1, 3 & 5		2
	2, 4, 6 & 7		2
13th	1-3		2
	4, 5 & 9		2
	6-8		2
14th	1-3 & 6		2
	4, 5 & 7		2
15th	1-4		2
	5-8		2
16th	1, 6-8		2
	2-5		2
17th	1-3		2
	4-8		2
18th	1-3 & 5		2
	4, 6-8		2
19th	1-3		2
	4-6		2
20th	1-4		2
	5-8		2
21st	1-3		2
	4-6		2
22nd	1-4		2
	5-8		2
23rd	All	2	
24th	1-3		2
	4-6		2
25th	1-3		2
	4-7		2
26th	All	2	
KAUAI COUNTY			
27th	1, 10-13		2
	8 & 9		2
	2-7		2
27 Districts	234 Precincts	10	92

TOTAL **102 DELEGATES**

REGISTRATION LOCATIONS STATEWIDE*

CITY AND COUNTY OF HONOLULU

Office of the City Clerk
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813
Phone: 523-4293

Beretania Neighborhood
Community Center
Phone: 521-6664

Ewa Beach Satellite City Hall
Phone: 689-7914

Hauula Satellite City Hall
Phone: 293-8551

Hawaii Kai Satellite City Hall
Phone: 395-4418

Kailua Satellite City Hall
Phone: 261-8575

Kalihi Satellite City Hall
Phone: 847-4688

Kaneohe Satellite City Hall
Phone: 235-4571

Wahiawa Satellite City Hall
Phone: 621-0791

Waianae Satellite City Hall
Phone: 696-6371

Waipahu Satellite City Hall
Phone: 671-5638

COUNTY OF HAWAII

Office of the County Clerk
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720
Phone: 961-8277

Kailua Fire Station
Phone: 329-1590

Captain Cook Fire Station
Phone: 323-3636

Finance Factors Building
Kealakekua, Kona
Phone: 322-2747

Bell, Book and Candle
Kona Coast Shopping Center
Phone: 329-1441

Sandal Basket
Kailua, Kona
Phone: 329-1969

Honokaa Police Station
Phone: 775-7228

Kohala Police Station
Phone: 889-6225

Naalehu Police Station
Phone: 929-7331

Waimea Police Station
Phone: 885-7334

Waimea Fire Station
Phone: 885-4282

Laupahoehoe Police Station
Phone: 962-6211

Keaau Fire Station
Phone: 966-9395

COUNTY OF KAUAI

Office of the County Clerk
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766
Phone: 245-4785

COUNTY OF MAUI

Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawaii 96793
Phone: 244-7825

Molokai District Court
Phone: 553-5451

Lanai District Court
Phone: 565-5285

STATE OF HAWAII

Office of the Lt. Governor
State Capitol, 5th Floor
Honolulu, Hawaii 96813
Phone: 548-2517

*Permanent Locations only. Call your County Clerk or the Lt. Governor's Office for temporary registration locations.



THE PEOPLE ARE THE SOURCE OF THE LAW
A project of the League of Women Voters of Hawaii Education Fund, Inc.

ERRATA

THE LEAGUE OF WOMEN VOTERS EDUCATION FUND KA PO'E PROJECT REGRETS THAT IT IS NECESSARY TO CORRECT TWO SERIOUS ERRORS WHICH OCCURRED IN THE PRINTING OF THESE BROCHURES.

ON PAGE FIVE, THE SECOND AND THIRD SENTENCES SHOULD READ: THE LEGISLATURE PROVIDED FOR A CONSTITUTIONAL CONVENTION OF 102 DELEGATES FROM 27 DISTRICTS. THEY WILL BE ELECTED ON MAY 20, 1978, AND START MEETING ON JULY 5, 1978.

WE ASK THAT PEOPLE MAKE THESE CORRECTIONS IN THEIR COPIES TO AVOID THE SPREADING OF MISINFORMATION.

IT IS OUR HOPE THAT YOU FIND THE BROCHURE USEFUL AND ENJOYABLE.

1441 Kapiolani Blvd., Suite 1310, Honolulu, Hawaii 96814, (808) 947-3741 Contributions are tax deductible



CONstitutional CONvention '78

Facts for you prepared by the League of Women Voters of Hawaii Education Fund, Inc., and illustrated by Corky Trinidad.

'O KA PO 'E KE KUMU O KE KANAWAI

The People are the Source of the Law

SUPPLEMENT TO STAR-BULLETIN · HONOLULU ADVERTISER



YOU, the People, are the

WHAT is a CONSTITUTION?

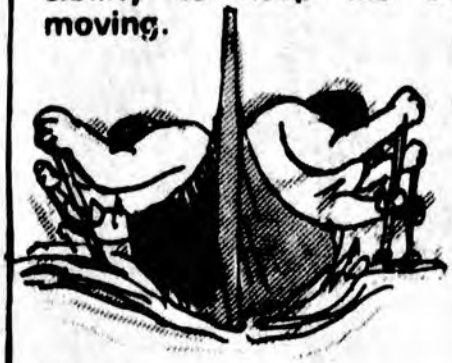
A constitution is the basic legal document of a state. It proclaims the powers and responsibilities given to a state government by its people.



Constitution making is like a hukilau, where everybody shares the work of bringing in the catch, and has equal rights to the catch.

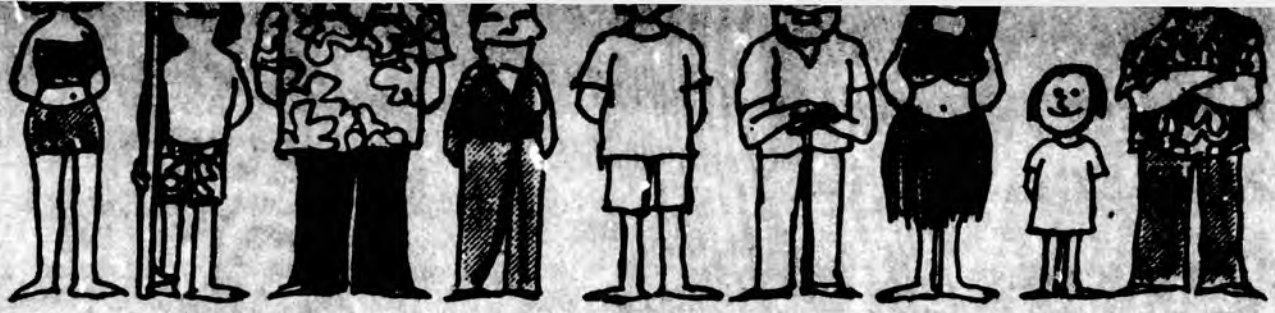


Constitution making is like paddling a canoe, where everyone has equal responsibility to keep the boat moving.





Just as the framework outlines the basic construction of a house and determines what it will look like, so does the Constitution state the basic powers and responsibilities of government, guarantee our rights and set the course for our future.



Source of the Law

A CONSTITUTION CAN BE REMODELED

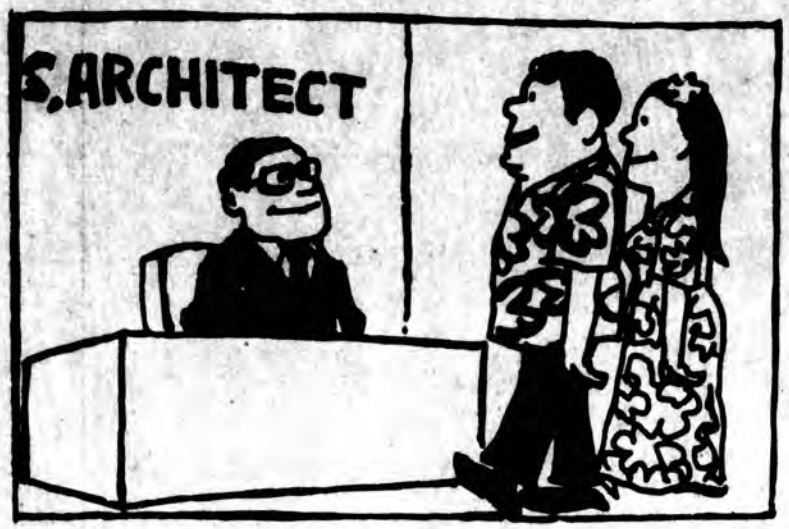
We live in a house for a while and our needs change as our family grows.

We want to remodel our house to suit our new outlook on life. The Constitution can also be altered to reflect our changing ideas on how we want to govern ourselves.



A CONSTITUTIONAL CONVENTION IS..

We can elect representatives to meet, discuss ideas, and change the Constitution, a meeting called a *Constitutional Convention*.



A representative can be anyone who is at least 18 years old, a U.S. citizen, and a legal resident of Hawaii.

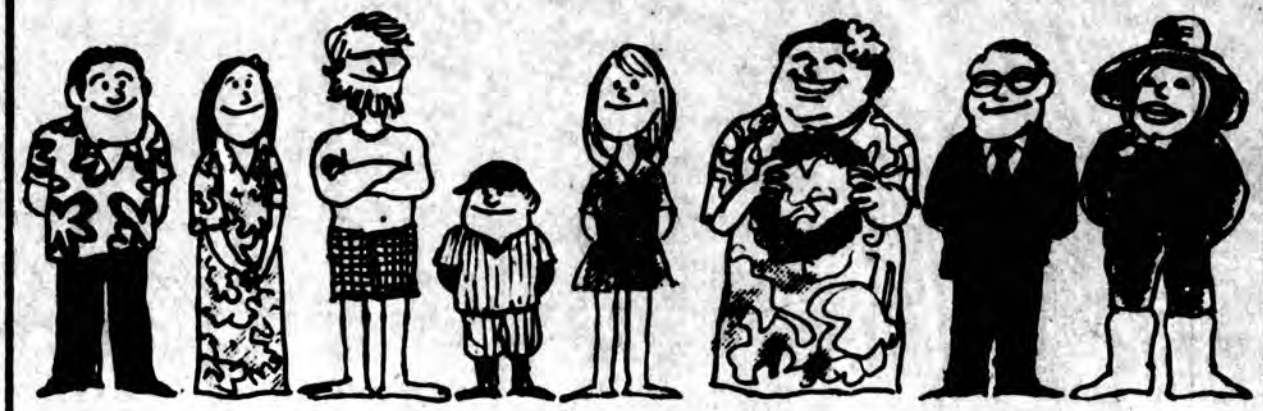


The suggestions for change that the representatives decide upon are then presented to the people, who vote on whether or not to accept the changes.

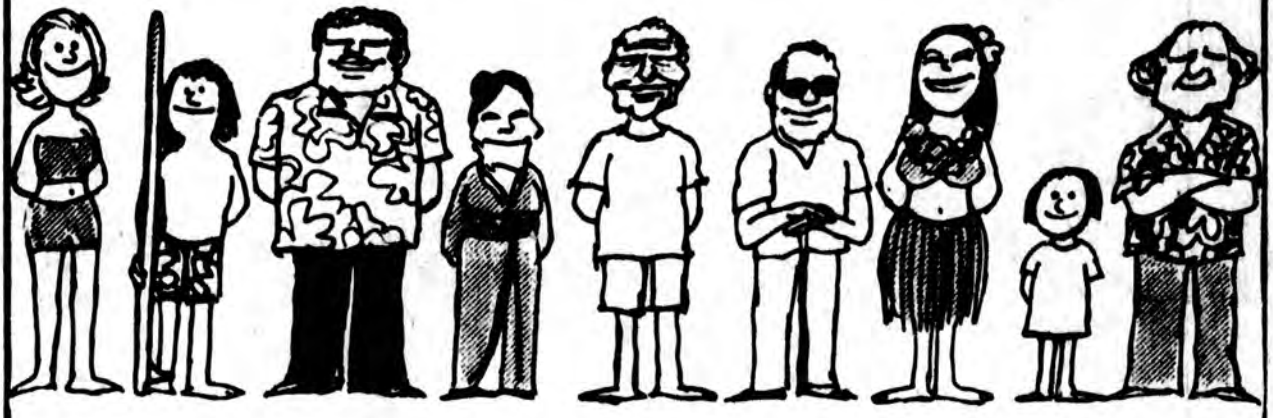




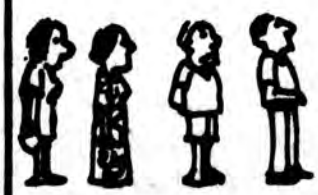
THE 1978 CONSTITUTIONAL CONVENTION



In 1976 the people of Hawaii voted three to one to have another look at their Constitution. The statature provided for a Constitutional Convention of 103 delegates from 27 districts. They will be elected on May 20, 1978 and start meeting June 5, 1978. Each delegate will be paid $4,000 for serving in the Convention.



The revised Constitution will be presented to voters at a time selected by the Convention. (It is possible that the Convention will present the proposed changes to the voters in time for the 1978 election.)





OUR BILL OF RIGHTS

Article One of the Hawaii State Constitution, called the *Bill of Rights*, lists 20 rights of the people.



These include the freedom of religion, speech, press, and the right of people peaceably to assemble and to petition the government to correct what they think is wrong.



Legal rights, such as the right to a trial by jury, to a speedy and public trial, and to habeas corpus (a safeguard against illegal detention or imprisonment) are listed in the Bill of Rights.



The Constitutional Convention might consider adding to or changing some of those rights, such as changing the grand jury's role, strengthening the right to privacy, adding the right to a healthful environment.







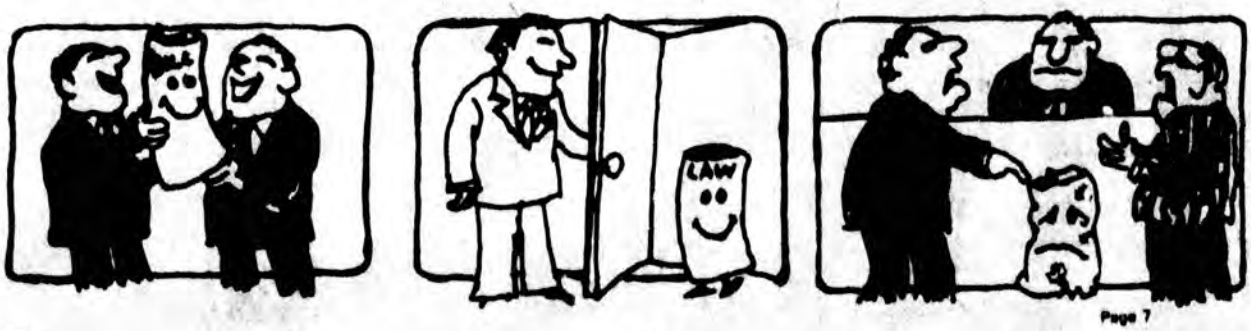
THE HAWAII STATE GOVERNMENT



The Hawaii State Government is divided into three parts, or branches. The *legislative branch*, consisting of the *Senate* and the *House of Representatives*, meets every year for 60 working days and makes the laws. For example, the legislature recently passed a law stating the meetings of government agencies must be open to the public.

The *executive branch*, headed by the *Governor* and his *departments*, is responsible for carrying out the laws. In the example, it is the responsibility of all state and county agencies to assure that their business meetings are open public meetings, with advance public notice.

The *judicial branch*, consisting of one *state supreme court*, *circuit courts* and *district courts*, rules in disputes involving the law. Therefore, in the example, any citizen who feels he or she has been denied admittance to a meeting of a government agency can take his case to court.

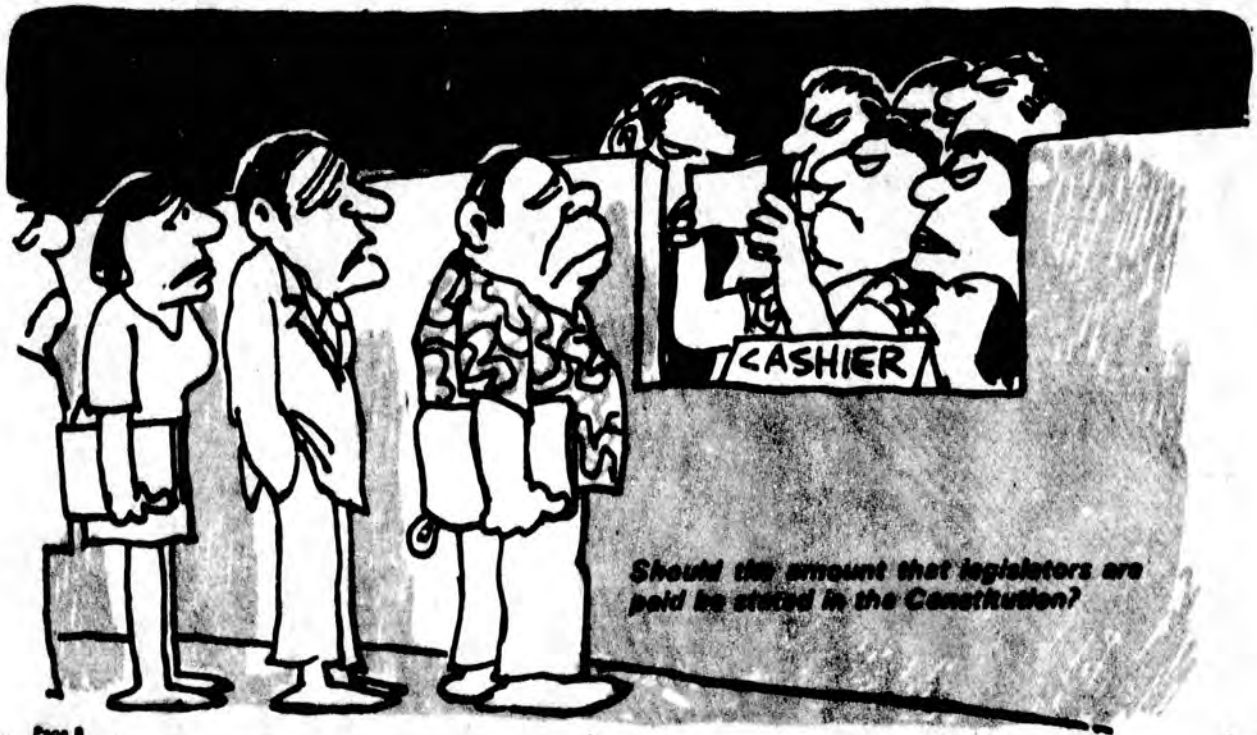


THE GOVERNMENT WE WANT

The kind of legislature we want depends upon the powers and responsibilities we spell out in the Constitution. Our ideas are reflected in such issues as *nonpartisan elections, regulation of legislative salaries,* etc., which may be considered at the Constitutional Convention.



Should legislators be required to run for office without any party labels?



Should the amount that legislators are paid be stated in the Constitution?

DEPENDS UPON US

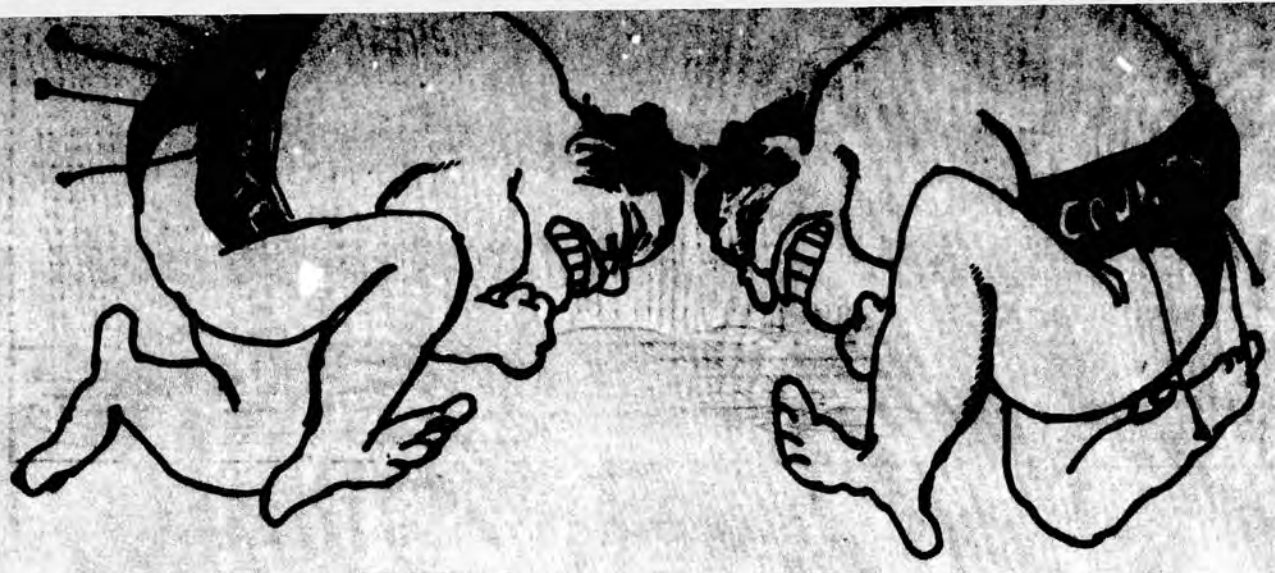
Our present Constitution gives broad powers to the Governor and his departments. Possible changes include *limiting the Governor's right to withhold appropriated funds, electing the Attorney General, requiring the Governor to submit a balanced budget to the legislature,* and others which may be considered at the Constitutional Convention.



Many possibilities for change have been raised concerning the judicial branch of the government. These include *merit selection and election of judges, creation of an appeals court, changing the present 10 year appointment for judges.*



Should judges be selected by a citizen panel and elected by the voters, or should they continue to be appointed by the Governor, subject to confirmation by the Senate?



STATE-COUNTY RELATIONS

The counties are created by the state. In order to provide for state-county cooperation, the Constitutional Convention may consider such issues as



merging overlapping state-county responsibilities,



giving the counties more taxing power, or even abolishing the counties!





HOW WE USE OUR LAND

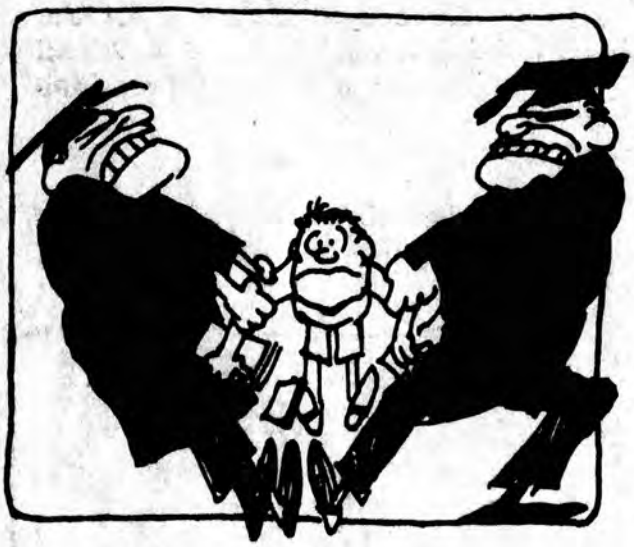
The delicate balance between land use and population growth is a very real problem in our state of Hawaii. Should we try to limit population growth? Should certain land use changes be made only by popular vote? Should the Constitution include our ideas on energy conservation? These and other issues may be discussed at the Constitutional Convention.



EDUCATION



How can we best prepare our children for adulthood and social responsibility?







Is our present statewide educational system the best way, or should the counties have more power over schools? Do we still want to elect our Board of Education? What powers should the Board of Education and the University Board of Regents have? Should the Governor appoint the entire Board of Regents? These Constitutional issues may be discussed at the Convention.



CONTRACTS FOR GOVERNMENT WORKERS

The present Constitution permits public employees to organize for the purpose of collective bargaining. This bargaining is usually done in closed sessions, between administration and employee representatives. Questions the Constitutional Convention may consider include:

Should certain types of public employee bargaining sessions be required to be open?



Should the right of government workers to strike be limited?



considered at the Constitutional Convention.



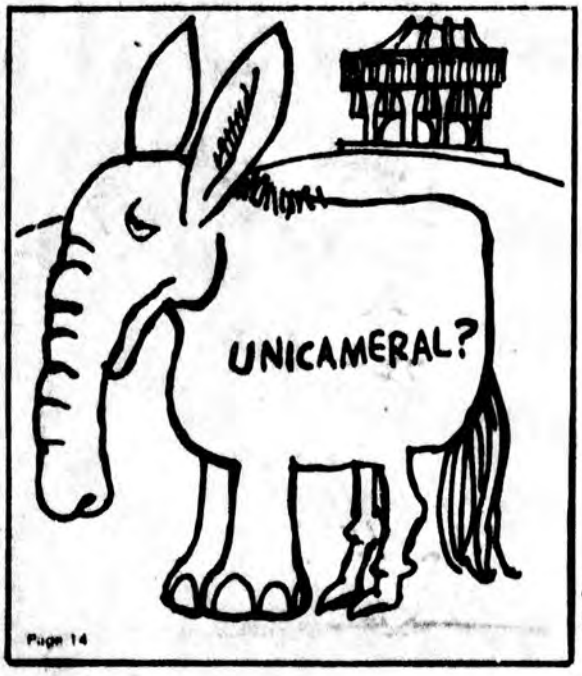
Should there be more control of government spending?

Should the government be subjected to stricter debt limits?



Should the public be given the right to initiate and vote on legislation?

Should the public be given the right to vote on certain laws passed by the legislature?

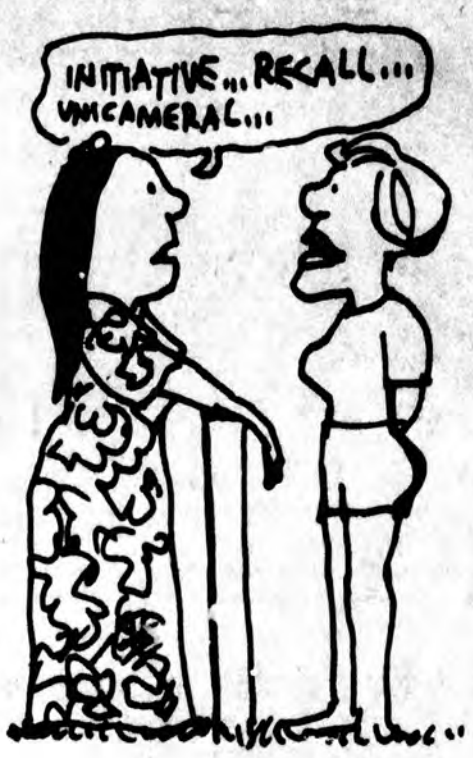


Should there be a one-house legislature, or should we continue to have two houses?

HOW TO GET INVOLVED IN CONCON



LEARN **about issues now being discussed.**
SUGGEST **new topics of concern for CONCON.**



TALK **to your neighbors and friends about CONCON issues.**
BECOME **a candidate for delegate to CONCON.**
KNOW **how the candidates for delegates to CONCON stand on issues.**







For Further Information:

CITIZENS FOR CONCON
2172 Kanealii Ave.
Honolulu Hawaii 96813
538-1306

Holds informational meetings on CONCON issues.

CONSTITUTIONAL NETWORK
1458 Halekoa Drive
Honolulu, Hawaii 96821
737-9585

Conducts and publishes results of surveys on important CONCON issues

COUNTY CLERKS

For information on registering and voting.

Honolulu: Eileen Lota
Honolulu Hale
530 So. King St.
Honolulu, HI. 96813
523-4291

Hawaii: Rudy Legasti
25 Apuni Street
Hilo, Hi. 96720
961-8271

Maui: James S. Ushijima
200 So. High St.
Wailuku, Maui, 96793
244-7825

Kauai: Tad Miura
4396 Rice Street
Lihue, Hawaii, 96766
245-4785

'O KA PO'E KE KUMO O KE KANAWAI
(The People are the Source of the Law)
1441 Kapiolani Blvd., Suite 1310
Honolulu, Hawaii 96813
947-3741

Sponsors meetings throughout the state to gather your ideas on what should be CONCON issues.

OFFICE OF
THE LIEUTENANT GOVERNOR
State Capitol
Honolulu, Hawaii 96813
548-2517

For information on how to register and run for delegate to CONCON, what is your district, who are the candidates. Maintains a calendar of ConCon related activities.

The League of Women Voters of Hawaii Education Fund is a nonprofit organization that sponsors educational projects. Contributions are tax deductible.

'O Ka Po'e Ke Kumu O Ke Kanawai (The People are the Source of the Law) is the CONCON project of the League of Women Voters of Hawaii Educaton Fund.

Draft of address by: William N. Cassella, Jr.
Executive Director
National Municipal League

KA PO'E PROJECT-CONSTITUTIONAL CONVENTION DELEGATES WORKSHOP

Honolulu, Hawaii
June 13, 1978

During 1976 in the course of my travels around the United States, I tried to visit as many of the bicentennial year exhibits as I possibly could. Of all the displays of memorabilia, artifacts, maps, publications, prints and documents, the one that made the most lasting impression on me was appropriately enough in Philadelphia, but it wasn't directly associated with the Continental Congress or the Declaration of Independence. A part of a vastly larger exhibit entitled, "A Rising People," it displayed printed copies of the first constitutions of the original thirteen states as they were distributed to the public in the years of the American Revolution. These written constitutions establishing governmental structure and powers superior to statutory law embraced a new concept. The word constitution had assumed a new meaning very different and far more specific than the vague accumulation of basic rights, operating practices and legislative enactments known as the English Constitution and with a philosophical basis very different from Cromwell's short-lived Instrument of Government, which was England's only written constitution. For the new states their constitutions were seen as their protections against future tyranny, by governors, legislatures or courts. John Jay said that citizens of American states were the "first people heaven has favored with an

opportunity of deliberation on and choosing the forms of government under which they should live."

Part of the display I saw in Philadelphia was evidence of the immediate impact of the written American state constitutions on European intellectuals. From Benjamin Franklin's personal library were copies of two of the first published compilations of state constitutions both in the French language. One published in 1778 was dedicated to Franklin, printed in Philadelphia for distribution by a Paris book dealer. Five years later Franklin sponsored another French translation published in Paris with an edition including copies printed in quarto and handsomely bound in morocco for distribution as presentation pieces to the monarchs and statesmen of Europe.

It is important to remember that development of the "free and independent" governments of the original states as Jefferson pointed out was the whole object of the Revolution and was well underway when he wrote the Declaration and included in it the following: "That to secure these rights (life, liberty and the pursuit of happiness) Governments are instituted among Men, deriving their just powers from the consent of the governed That whenever any Form of Government becomes destructive of these ends, it is the right of the people to alter and abolish it, and to institute new Government, laying foundations on such principles and organizing its powers in such form as to them shall seem most likely to effect their Safety and Happiness."

The dual philosophical base of these new governments--the doctrines of popular sovereignty and the supremacy of law over men--had enormous

importance as to both the substance of state constitutions and the process by which they were adopted. Within some of the states pressures came from groups whose discontent was almost as strong against the new governments as it had been against royal authority. Extra legal revolutionary organizations--conventions and committees were regulating almost all aspects of life. These organized citizens felt that new constitutions drawn up by legislative assemblies lacked the legitimacy required for basic law superior to ordinary statutes. It wasn't enough to solicit from the voters authority for the assembly to draft a constitution. How were the people to exercise their superior constituent power? The answer came in adapting the device of the extra-legal, irregular convention to a regularized institution for the expression of popular sovereignty. Out of the acrimonious politics of Pennsylvania came the first constitutional convention in 1776. Chosen by irregular local committees it drafted a constitution which became a symbol of democracy, but the method had been one of political expediency somewhat arbitrary to say the least.

By contrast in Massachusetts an orderly process was set in motion--a special constitutional convention was elected by the adult freemen of the state. Influenced greatly by John Adams it drafted a constitution which was adopted by a two-thirds majority in a popular referendum in 1780. Thus a method was developed whereby the people could exercise their constituent power--i.e., "a convention of delegates chosen by the people for that express purpose and no other could establish or alter a constitution" which in turn would be submitted to the electorate for

approval. Distinguished legal historians have said, "It was an extraordinary invention, the most distinctive institutional contribution...the American Revolution made to Western politics."
(Wood, p. 342. Also Palmer, V.I p. 214)

Thus the 1978 Hawaii Constitutional Convention will be operating as part of a continuing process which began two centuries ago and by which citizens perform in a very special role as the architects and builders of the structure of the government which serves them. It is necessary constantly to remind ourselves that the reason American state constitutions are particularly important parts of the corpus of the law is that they are different from regular statutory law and the extent to which this difference is blurred the special importance of the constitution is diminished.

Fortunately, constitution making in Hawaii has operated much as it did when the earliest state constitutions were drafted late in the 18th century. It has been spared the verbal excesses of the late 19th century when constitutional conventions in the South were reacting to the trauma of the civil war and its aftermath and in many other states to scandals which undermined confidence in government, particularly the legislature. It is to be hoped that a trend evident in virtually all constitutions drafted since World War II will continue. So far the constitutional conventions meeting in mid-20th century and later have recognized that the brevity of the U. S. Constitution sets a standard for a basic law with the flexibility to meet the governmental needs of

changing times and circumstances. They agree with Gladstone's famous tribute that the U. S. Constitution is "the most wonderful work ever struck off at a given time by the brain and purpose of man." It is often asserted that constitutions should be limited to fundamentals, but what is meant by "fundamentals?" The eminent political scientist, William Bennett Munro, said:

> A state constitution should confine itself to fundamentals. This of course begs the question as to what one means by "fundamentals." True enough, it is hard to define, but everybody knows what it means. Or, if any one does not, he need only read the Constitution of the United States to acquaint himself with an organic document which comes measurably near fulfilling the requirement. (Munro, An Ideal State Constitution, 181 Annals 1 (1935).

In using the U. S. Constitution as a model it must be remembered that our national government is one of delegated powers and under American federalism, as the 10th amendment says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Thus ultimate sovereignty is with the people who impose limits upon government exercise of power. Therefore, a constitution is a strategic instrument through which the people exercise their sovereign will.

Upon state government certain limitations have been imposed by the adoption of the U. S. Constitution and the amendments to it. There are the specific prohibitions--"no state shall enter into any treaty or alliance...coin money...pass any bill of attainder, ex post facto law or law impairing obligation of contracts or grant any title of nobility... lay an impost or duties...engage in war..." etc. (Art. I, Sec. 10).

George Washington as president of the Constitutional Convention of 1787 in the letter transmitting the Constitution to Congress said: "Individuals entering into society must give up a share of liberty to preserve the rest.... The magnitude of the sacrifice must depend a well on situation and ci-cumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved...." Later some of the protected rights were stated in the Bill of Rights but this was not the complete enumeration as is so stated in the 9th Amendment--"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." Indeed a similar enumeration and a statement of rights retained by the people is part of most state constitutions including that of Hawaii. All levels of government are thus intended to be limited. We continue to hold certain rights, enumerated or not, as "self-evident."

In our state constitutions as in our national constitution we as the sovereign people not only place limitations on government but also specify the institutions which are to govern us. In his monograph, Shape of the Document, Robert Dishman says, "State constitutions...serve the same basic function as their national counterpart, that of organizing and delineating the powers of government whether by limitation, delegation or command."

In one of the best exhortations on what a constitution should contain, Brook Graves told the preparatory committee for the 1947 New Jersey Constitutional Convention:

> A constitution is a body of fundamental law. It is established for the purpose of providing a set of governmental machinery, on the one hand, and of protecting the citizen from an unfair or improper use of governmental authority, on the other. When we say that the provisions of a constitution are fundamental, we imply that they are relatively more permanent, more stable, and less subject to the need for frequent change, than are the provisions of statutory law. Statutory law, on the other hand, is regarded as being more or less transitory in character, as being more concerned with current policies and practices, and less with those "eternal verities" of government which have been handed down generation after generation, from the past. A constitution is supposed to represent an attempt at stating the accumulated wisdom of the ages, on the subject of government, while statutes are a contemporary effort to deal with problems of a current nature.

As Frank Grad says in The State Constitution: Its Function and Form for Our Times, "the significance of treating a subject in the state constitution rather than leaving it to be dealt with as ordinary law... is simply this: (1) it places the matter included in the constitution beyond change by normal law-making processes, and (2) it places it at the highest level of legal authority in the state."

Clearly in every constitution there is core material. We have already mentioned a Bill of Rights. Add ot it provisions on the qualifications for the right of suffrage. A well established principle of American government is the separation of powers among three separate and distinct branches--legislative, executive and judicial. Thus in the constitution it is necessary to establish the framework of government and to state in general terms the powers of each branch. For the legislative branch it must be specified whether there is one house or two--the number, election, term and qualifications of members. Also there must be a provision for the executive, again with qualifications, manner of election, and term

of office. And there is provision for a system of courts. As Graves says: "If the constitution is to endure, and remain satisfactory over a long period of time, these provisions should be brief. If they are brief, they will be flexible and elastic, susceptible of adaptation to the changing needs of the people in a rapidly changing society; if they are too long, and cluttered up with a great mass of detail, they will be inflexible and unelastic, and will cause it to be difficult, if not impossible, to make desired changes."

Finally there must be provision for amendment and revision of the constitution. The members of no constitutional convention, not even "The Great Convention of 1787" can foresee the problems which future conditions will bring about. Again from Graves' exhortations to members of a constitutional convention:

> ...They should not seek to impose their will and their judgment, based upon existing conditions, upon generations yet to come--generations which may find themselves living under conditions that are wholly different. These generations will of right demand the same privilege of changing their fundamental law that their forefathers exercised, and in all probability, they will be quite competent to handle the problems confronting them.

The Hawaii constitution is one of the few state constitutions which is confined in the main to fundamentals. Indeed it has been hailed by legal scholars as one of the best in the nation. Well over half of it is clearly what can be called core provisions and relatively few sections are strictly statutory. There is no question that the constitution as amended continues to pass the test of brevity. Unlike the constitutions of most of the older states it is not overstuffed with disabling "thou

shall nots" or detailed prescriptions. Why then is this third Hawaiian Constitutional Convention being held? In comparison to most older states the need for revision is certainly not great. Indeed it may be that the Third Hawaii Con Con will be like the Second and make relatively few changes. While making some modifications it may once again confirm the basic soundness of the Hawaiian constitution. Of course, ten years ago it was necessary to write a new legislative apportionment provision to bring the legislative article into conformity with the U. S. Constitution. No such problem exists this time.

There is always value for the citizens of a state to appraise how well present institutions are performing, how well they are meeting changing needs and circumstances. If needs are not being met it is important to determine why that is so. The convention will certainly ask why there have been failures and if they can be traced to the constitution. It will also point to some failures of the institutions to perform as they could have under the present constitution. We know that there has been a pervasive public disillusionment with governmental and other established institutions, but we may well find that the cause of this disillusionment has little to do with the fundamental law. In many cases it may be a failure of people not institutions. Also it must be asked when dissatisfaction is felt, how general is the dissatisfaction or is it the expression of a narrow special interest? Again is the dissatisfaction a concern of the moment or a matter with long-range implications? First and foremost -- is the problem one which can and should be addressed by the

legislature? If that is the case is there anything in the constitution which impedes legislative consideration? Should anything be added to the constitution to facilitate action by the legislature?

It must be remembered that the convention is not the legislature. A Constitutional Convention cannot enact laws designed to solve the problems of crime, poverty, the environment, etc. It can simply propose mechanisms for dealing with problems and protections against infringements upon the rights of citizens. When it considers a proposal to add something to the constitution or to make a change in a fundamental provision, it has a responsibility very different from that of a legislature enacting a statute. Remember anything the convention does must be ratified by the electorate before it becomes law. Assuming the people will approve the recommended change, by adding something to the constitution it is being placed "beyond change by normal law-making processes." Thus each new constitutional provision must be considered in both short and long-run terms. Many provisions have found their way into constitutions which have been beneficial in the short run but harmful in the long run. Grad points out, "The enduring quality of a provision of the state constitution may protect a desirable policy from frivolous changes by the legislature, or it may delay or prevent the change to a new and better policy from one embedded in the constitution which is no longer responsive to current needs.... Inflexibility in the face of changed circumstances results in constitutional obsolescence and diminished power to act responsibly on the part of government organs. These factors in turn breed constitutional instability as a consequence of the need

for frequent amendment. In the light of these various possible consequences, the decision as to inclusion or exclusion of particular subjects in the constitution becomes a matter of weighing the advantages against the potential costs of inclusion."

There will always be pressure to include matters in the constitution but constitution makers must look behind the pressures to ascertain whether or not the proposal is sufficiently enduring and important in character. All too often the pressures of determined reformers on behalf of good causes have led to the inclusion of provisions which soon are shown to be totally inappropriate. A good example occurred in a midwestern state when the "good roads" movement was at its height. The 'good roads' proponents were able to get a constitutional amendment passed which wrote into the constitution a detailed description of the routes of the state's highway system. It made it impossible to change any route no matter how great the need without going to the people for another amendment to the constitution. This illustrates one of the traps into which some of our state constitutions have fallen. A mistrust of the legislature leads to rigid constitutional provisions and the more rigid the constitution the greater the need to amend it further, and amendments breed further amendment resulting in a vicious cycle. The classic case was the Louisiana constitution which in the course of 50 years was amended almost 500 times bringing it to a length of more than a quarter million words. Finally, the voters had had enough with as many as 50 amendments on the ballot in a single election. Simplification was demanded and as a result of a convention

a new constitution only a little more than one-tenth the length of the old one was adopted in 1975. The bulk of the detailed material was converted into statutes where it should have been all along.

A pet device which has limited the power of the legislature is the earmarking of certain revenues for a particular purpose. Then there is the negative implication of a positive provision, often the result of putting too much detail in the constitution, e.g., the Oklahoma provision conferring upon the State Corporation Commission the power to regulate "transportation and transmission" companies, but the draftsmen not satisfied with general language listed railroads, steam boat lines, express companies and all means of transport known at the time. Subsequently, it was ruled that since air transportation was not included in the list the commission had no power to regulate airlines even though there had been no airlines at the time the provision was adopted.

I have read with great interest the results of the Con Con poll. They certainly highlight problems which are of deep concern to the citizens of Hawaii and indicate areas in which state government should take action. Likewise they focus on some institutional changes which may be proposed for consideration by the convention. It is hoped that the citizens of the state will not be misled to thinking that the 1978 convention will be able to provide the ultimate solutions to any of the problems or to bring perfection to its government.

It is not my role to evaluate the policy proposals on the various

modifications in the basic governmental institutions which are being advocated--e.g., change to a unicameral legislature, limitation on the terms public officers may serve, the method of selecting the attorney general and the judges, home rule for local government, and the initiative and referendum. On all these matters the National Municipal League, which I serve as executive director, has specific recommendations in its Model State Constitution. (I will be pleased to discuss any of them with delegates while I am here.) It is most appropriate that proposals for basic changes be debated by the convention. Some may be included in the convention's recommendations to the people, but the central issue in the debate should be whether each proposed change will increase the responsiveness and effectiveness of your state government.

There will be much discussion of how issues are met in other states and how they are organized and function. Be sure to seek both the positive and the negative appraisals of experience elsewhere. In many areas we on the mainland have much more to learn from you than you from us. I remember my first contact some 22 years ago with Hawaiian citizens dealing with governmental structure. The chairman of the Honolulu City-County Charter Commission asked for comments on the question of "whether it is better to preserve only one unit of local government for this island, or to permit the creation of a number of municipalities." It was noted that some citizens pointed to the mainland experience of large cities bordered by incorporated suburbs as "sound and desirable." In our reply, after pointing to the complexities and problems of the central city-suburban pattern in most mainland metropolitan areas, we

urged that Honolulu not take on "the multiple vexations which inevitably flow from a complicated system of local jurisdictions."

May I commend the League of Women Voters of Hawaii Education Fund and the other organizations which are making the holding of the 1978 Constitutional Convention a profound educational experience for the people of the state--private citizens and public officials alike. We have all too few opportunities to focus systematically on the institutions of state government and how they operate. The debates of the Convention and all of the forums, workshops and other discussions which are taking place will be a great plus for your state.

It is my belief that this total effort in civic education will be as important as what the Convention includes in its formal recommendations. In the first place citizen understanding of the recommendations is necessary if the recommendations are to be approved. In so many referenda we have seen confirmed the adage, "If you don't know, vote No." Beyond that, the energy generated by these debates and discussions can have a most salutary effect on the legislature. It will certainly better understand its responsibilities. Perhaps the convention in the report to the people accompanying its recommendations should also report on matters which the convention did not consider appropriate for inclusion in the constitution but upon which there was a clear consensus that action should be taken by the legislature and that under the present constitution the legislature has ample authority to act.

As the convention proceeds, as the media report on its work, and as individual citizens and organized groups make their wishes and

expectations known, all must constantly be reminded that the convention has a distinctive long-range mission--that as a vehicle for constitution-making it must heed the words of the late Justice Benjamin Cardozo: "A constitution states, or ought to state, not rules for the passing hour, but principles for an expanding future."

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1978

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MIRIAM KAHALEKAI, ET AL., PLAINTIFFS, V.
NELSON DOI, LIEUTENANT GOVERNOR, STATE OF HAWAII,
ET AL., DEFENDANTS.

NO. 7216

and

THIRTY-FOUR VOTERS OF THE COUNTY OF MAUI,
PLAINTIFFS, V. NELSON DOI, LIEUTENANT GOVERNOR,
STATE OF HAWAII, ET AL., DEFENDANTS.

NO. 7218

ORIGINAL PROCEEDING

FEBRUARY 1, 1979

RICHARDSON, C.J., OGATA, MENOR AND
KIDWELL, JJ., AND RETIRED JUSTICE
KOBAYASHI FOR THE VACANCY.

FILED
FEB -1 1979
Clerk, Supreme Court
CLERK, SUPREME COURT

Constitutional Law - judicial powers and functions - adoption of constitution and amendments.

The supreme court is vested with jurisdiction to ascertain and to determine the validity of the manner of submission and the ratification of changes in the state constitution.

Same - same - same - presumption of validity - standard of review.

Constitutional amendments ratified by the electorate are presumed to be valid and the amendments as adopted will be upheld unless they can be shown to be invalid beyond a reasonable doubt.

Same - same - same - challenges to validity - burden of proof.

The party challenging the results of the election bears the burden of showing, beyond a reasonable doubt, the invalidity of a constitutional amendment which the people have adopted at a general election.

Same - adoption of constitution and amendments - elections - official ballots - form and contents.

Where the ballot used in a constitutional ratification election is in a form which produces a knowing and deliberate expression of voter choice, the vote satisfies the requirement of electoral approval.

Same - same - same - same - same - particular defects or irregularities.

A ballot is not defective merely because it is mechanically easier for the voter to vote for rather than against any given proposition, so long as the ballot language is not misleading or deceptive.

Same - same - same - same - same - scope of judicial review.

A determination of what inducements motivated voters in the adoption of a proposed amendment is outside the scope of any judicial examination where the language and meaning of a constitutional amendment are clear and the ballot is neither misleading nor deceptive.

Same - same - same - same - same - duplicity.

An amendment proposed by a constitutional convention may embrace more than one subject or purpose where the constitution authorizes the convention, in its discretion, to provide for the manner of its submission.

Same - same - same - same - same - limitation on discretion of constitutional convention.

The authority of a constitutional convention to determine the manner in which proposed amendments are to be submitted to the vote of the electorate is subject only to the limitation that the ballot must enable the voters to express their choice on the amendments presented and be in a form and language which will not mislead or deceive the voter.

Same - same - submission to popular vote - nature of convention's duty to inform.

Where there is no express publication requirement in the constitution, a constitutional convention is nevertheless under a duty to adequately inform the electorate of the contents and effect of the proposed amendments.

Same - same - same - duty of electorate to be informed.

The electorate bears a corresponding burden of educating and familiarizing themselves with the contents and effect of the amendments prior to going to the polls to cast their ballots.

Same - same - same - presumption of informed electorate.

Where the information disseminated to the public is neither deceptive nor misleading, and the public is given sufficient time within which to familiarize themselves with the contents and effect of the proposed amendments, they will be presumed to have cast informed ballots.

Same - same - same - duty of convention to inform.

Where the electorate is not sufficiently informed of the substantive nature and effect of a proposed amendment, such amendment will be deemed to have failed of ratification.

Same - same - same - same - stylistic changes.

Failure by the convention to inform the public specifically and in detail of the stylistic and purely technical changes, embodied in a proposed amendment, will not prevent ratification of the proposal, so long as these changes do not alter the sense, meaning or effect of constitutional provisions.

Same - same - reserved powers.

The power to determine whether and to what extent the organic law is to be amended or revised is reserved to the people by the constitution.

OPINION OF THE COURT BY MENOR, J.

This is an original action seeking to invalidate the results of the November 7, 1978 general election dealing with amendments to the State Constitution presented to the electorate for its approval by the 1978 Constitutional Convention.[1/] The lieutenant governor's Computer-Final Report on the results of the election shows that all of the proposed amendments passed by the necessary constitutional margin.[2/] At issue, however, is whether the proposed amendments were submitted to the voters in the form and manner required by law.

Following its deliberations, the Convention adopted as the definitive expression of its conclusions a document entitled, "The Constitution of the State of Hawaii With the Amendments Proposed by the Constitutional Convention of 1978." This document was referred to the Convention Committee on Submission and Information. That committee proposed a form of resolution, which was adopted by the Convention (Resolution No. 30), in which it was provided

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1/ The 1978 Constitutional Convention was mandated by the voters in 1976, when the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" was placed on the general election ballot. Hawaii's first constitutional convention was held in 1950 when 63 delegates met to draft a document, which became official and operational when Hawaii became a state in 1959. Another convention was held in 1968 when 82 delegates met and proposed 23 amendments to the voters. The 1978 convention was attended by 102 delegates and the number of amendments offered to the electorate totalled 34.

2/ Article XV, §2, in pertinent part, provides that "[t]he revision or amendments shall be effective only if approved at a general election by a majority of all the votes tallied upon the question, this majority constituting at least thirty-five percent of the total vote cast at the election." Most were approved by the electorate by substantial popular vote margins.

that the proposed amendments be submitted for ratification at the November 7, 1978 general election, in the form of the ballot attached to the resolution. The attachments to the resolution consisted of the texts of the punch-card ballot and the informational booklet which were subsequently used in the general election.

The punch-card ballot listed 34 proposed amendments by short title. The ballot was divided into Parts A and B. Part A provided for a blanket "yes" or "no" vote on all proposed amendments. Part B provided for a "no" vote on each of the 34 proposed amendments, the listing of which was preceded by a caption: "I VOTE YES ON EACH OF THE PROPOSED AMENDMENTS AS LISTED BELOW EXCEPT THAT I VOTE NO ON THE FOLLOWING:." Neither the effect of the proposed amendments nor the numbers of the amended articles and sections were set forth in the punch-card ballot. However, the ballot contained, preceding Parts A & B, the following:

> "Please read instructions and information in the booklet which is part of this ballot. The full text of the proposed amendments on the ballot numbered 1-34, inclusive, is available for inspection in your voting unit." (Emphasis added)

The informational booklet attached to the resolution set forth, under the same numbers and short titles used in the punch-card ballot, brief descriptive material under the words "If adopted, this amendment provides:." With the exception of proposed amendments 24, 25 and 34, article and section numbers were set forth in parenthesis after each short title. For example, the descriptive material with respect to the first proposed amendment was headed:

1. 12 MEMBER JURY: CIVIL; CASE AMOUNT (Article I, Section 13 and 14)

The forms of the ballot and informational booklet, as printed and used in the election,[3/] conformed to those attached to the resolution, except that article and section numbers were added, in the informational booklet, after the short titles of proposed amendments 24 and 25. No article or section numbers appeared beside the short title of proposed amendment 34, in either instance.

Copies of the full text of the revised Constitution were distributed to state and municipal officers, including all county clerks, on September 21, 1978. They were also distributed to the main and branch libraries of the state library system at least two weeks before the election. The availability of the library copies for examination could have been ascertained by a phone call to the Convention office at a phone number made generally known by newspaper advertisements. No information was distributed to the general public with respect to the availability of the text of the revised Constitution at public libraries; however, a "Con-Con Summary" mailed by the Convention to the household of every registered voter in the State did advise voters that they could obtain exact wording of the amendments from the voter information center located at Convention headquarters in Honolulu.

Having completed its work on the proposed amendments, the Convention recessed on September 21, 1978. Between that date and the November 7, 1978 general election, the Convention, through its Committee on Submission and Information, implemented its plan for the education of the electorate concerning the proposed amendments.

3/ See Appendices "A" and "B" attached to this opinion. They follow essentially the same format as those used in the 1968 election.

It mailed to the household of every registered voter in the State a "Con-Con Summary" containing a digest of the proposed amendments. On October 29, 1978, it caused to be published an advertising supplement to the Sunday Star-Bulletin and Advertiser, as well as to the Hawaii Tribune Herald, The Maui News, and the Garden Island. Each of the sections of the revised Constitution which was identified by article and section number in the informational booklet used in the election was printed in full text in this supplement. Other amendments adopted by the Convention and reflected in the revised Constitution which was referred to the Committee on Submission and Information were not printed in the newspaper supplement. This supplement was followed by the publication of the summaries of proposed amendments 1-10 on October 30, 1978, summaries of proposed amendments 11-21 on November 1, 1978, and summaries of proposed amendments 22-34 on November 2, 1978. These summaries were published in the Honolulu Advertiser and the Honolulu Star-Bulletin, both of which are newspapers of general circulation within the State. These summaries were combined and republished in these newspapers on November 5, 1978, as a two-page advertisement. This combined summary was also distributed to the Sun Press on Oahu, the Maui News, the Hawaii Tribune Herald, and the Garden Island for dissemination to their readers. These summaries contained relevant information on some of the amendments which were not reflected in the informational booklet or in the supplement.

Additionally, the Convention during this period provided for the publication of newspaper advertisements and of radio and television announcements referring interested persons to the Convention information center and its telephone

number for answers to questions; for the establishment of a speakers bureau to make convention delegates available to interested organizations for talks explaining convention amendments; and for radio and television programs in which convention delegates discussed the proposed amendments. The office of the lieutenant governor also conducted a statewide voter education program designed to familiarize the electorate with the ballot and voting procedures. The Convention's final report on advertising expenditures shows that it expended a total of $140,627.43 to educate the public on the amendments prior to the general election.

I

The initial issue raised by the pleadings is whether this court has jurisdiction to entertain the proceedings. We hold that we do. HRS Chapter 11, Part XI, vests in this court jurisdiction over the subject matter of this action. Moreover, this court is empowered "to make and award such judgments, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it." HRS § 602-5(7).

> "The power to ascertain the validity of changes in the constitution resides in the courts, and they have, with practical uniformity, exercised the authority to determine the validity of proposal, submission, or ratification of change in the organic law. The question of the validity of the adoption of an amendment to the constitution is a judicial and not a political question." 16 Am.Jur.2d, Constitutional Law, §43.

II.

In considering the merits of the issues raised by the plaintiffs, we are to be guided by the cardinal principle of judicial review that constitutional amendments ratified by the electorate will be upheld unless they can be shown to be invalid beyond a reasonable doubt. Keenan v. Price, 68 Idaho 423, 195 P.2d 662 (1948); City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967). The burden of showing this invalidity is upon the party challenging the results of the election. And "[e]very reasonable presumption is to be indulged in favor of a constitutional amendment which the people have adopted at a general election." City of Glendale v. Buchanan, 578 P.2d 221, 224 (Colo. 1978). In Keenan the court, quoting from State v. Cooney, 70 Mont. 355, 225 P. 1007, 1009 (1924), said:

> "[H]ere as always we enter upon a consideration of the validity of a constitutional amendment after its adoption by the people with every presumption in its favor: The question is not whether it is possible to condemn the amendment, but whether it is possible to uphold it, and we shall not condemn it unless in our judgment its nullity is manifest beyond a reasonable doubt." 195 P.2d at 667.

A corollary to the foregoing principle is the oft-stated proposition that "[t]he people are presumed to know what they want, to have understood the proposition submitted to them in all of its implications, and by their approval vote to have determined that [the] amendment is for the public good and expresses the free opinion of a sovereign people." Larkin v. Gronna, 69 N.D. 234, 285 N.W. 59, 63 (1939).

III

The basic thrust of the plaintiffs' arguments in this case is that the constitutional amendments in question were not submitted to the electorate in the form and manner provided by law. More specifically, the plaintiffs contend in their initial argument that the form of the ballot was so irregular as to require the invalidation of the election. We disagree.

The Convention was authorized by the Constitution to determine the form of the ballot. Article XV, §2. In its Standing Committee Report No. 99, it explained its reasons for adopting the ballot used in the election:

> "Your Committee considered submitting each of the proposed amendments as separate questions with a YES or NO vote. This would result in submitting to the people for ratification not less than 34 questions. Since a major problem to overcome is voter apathy, your Committee was concerned that many voters will not take the time to mark their YES votes but will mark only the question or questions that they are opposed to. For this reason your Committee has agreed that a way should be provided to the voter, if he or she wishes, to approve or reject each of the questions by one vote [Part A] or, if he or she wishes, to vote against one or more of the questions and to approve the balance [Part B]."

The irregularity charged by the plaintiffs is that the ballot contained an inherent bias towards a "yes" vote by making it more difficult to vote "no" than "yes," which in effect diluted the vote and denied the electorate their constitutional rights. They suggest that with this ballot, voter inertia would cause voters who were only slightly opposed to an amendment to permit their vote to be recorded in favor rather than to take the trouble to record a negative vote; and this, they argue, introduced into the election a

subtle form of bias which was impermissible.[4/]

Where the ballot is in a form which produces a knowing and deliberate expression of voter choice, the vote satisfies the requirement of electoral approval. Kohler v. Tugwell, 292 F.Supp. 978 (D.La. 1968), affirmed, 393 U.S. 531. The voter here was given the choice of voting "yes" or "no" on any or all of the proposed amendments. He was clearly informed that he could vote for or against all amendments under Part A of the ballot, or he could divide his vote under Part B. If he chose to vote "no" on a question under Part B, he did so intending that his vote be divided and knowing how it would be counted. The significance of a negative vote on any proposition upon the remaining unanswered questions was obvious on the face of the ballot. At the beginning of Part B of the ballot, the following clearly appeared: "I VOTE YES ON EACH OF THE PROPOSED AMENDMENTS AS LISTED BELOW EXCEPT THAT I VOTE NO ON THE FOLLOWING:..."

In no sense can it reasonably be said that the voter was likely to be misled by the ballot language. Cf. Wright v. Board of Trustees of Tatum Ind. Sch. Dist., 520 S.W.2d 787 (Texas 1975). The essential requirement is that the ballot not be misleading. Young v. Byrne, 144 N.J.Super. 10, 364 A.2d 47 (1976). The fact that mechanically, as to

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4/ Almost any ballot can be said to have some bias. But this fact alone will not suffice to invalidate an election. The arrangement of names in alphabetical order on an election ballot, for example, must somewhat favor some candidates over others. Such a listing is not impermissible. See HRS § 11-115. The order in which amendments were listed on the ballot in this case could arguably have had a bias effect. But to require that a ballot must be wholly unbiased would result in the imposition of an impractical standard of perfection.

Part B, it was easier for him to ratify rather than to reject any given proposition did not have the effect of rendering the ballot defective.

The contention that a ballot is defective because the form makes it easier for a voter to cast his vote for, rather than against, a particular proposition or candidate has been rejected by many courts. It is apparent from the cases that the historical progression in the development of election procedures by the various states has been from the voice vote to the secret casting of votes by the use only of official ballots, with the secret casting of unofficial ballots as an intermediate step. The term "party ticket" appears to have referred originally to a privately printed ballot containing only the names of the candidates put forward by a particular political party, which the voter dropped into the ballot box to record his vote. Cases arising around the end of the last century reveal a disposition on the part of state legislatures, in providing for the use only of official ballots, to continue to facilitate the voting of straight party tickets by enabling the voter to do so by a single mark beside the name of the party. On the other hand, in order for him to divide his vote, he was required to mark the ballot in other ways which involved more time and trouble to the voter. Challenges to such ballots as treating candidates or voters unequally were rejected in Todd v. Board of Election Commissioners, 64 N.W. 496 (Mich. 1895); Ritchie v. Richards, 47 P. 670 (Utah 1896); State ex rel. Runge v. Anderson, 76 N.W. 482 (Wisc. 1898); Morris v. Board of Canvassers, 38 S.E. 500 (W. Va. 1901); Oughton v. Black, 61 A. 346 (Pa. 1905). More

recently, a challenge to the use of a "master lever" on a voting machine to enable a voter to vote a party ticket by a single operation was rejected in Morrison v. La Marre, 65 A.2d 217 (R.I. 1949).

Parallel with these cases are those which deal with ballots which, similarly to that now before us, enabled the voter to vote his party's ticket on proposed constitutional amendments, as well as on candidates, by a single mark beside the name of the party while requiring him otherwise to vote separately on the amendments. Such ballots were upheld in State v. Winnett, 110 N.E. 1113 (Neb. 1910) and State ex rel. Sheets v. Laylin, 68 N.E. 574 (Ohio 1903).

A form of "scratch ballot" was in early use for obtaining electorate approval of proposed constitutional amendments. Such ballots presented the proposed amendment affirmatively. To cast a vote in favor of the amendment, the voter deposited the ballot unmarked. To vote against the amendment, the voter was required to erase or strike out the words proposing the amendment before depositing the ballot. It was argued that the deposit of an unmarked ballot did not affirmatively express approval of the amendment under state constitutions which required the expression of voter approval. Such challenges were rejected in May & Thomas Hardware Co. v. Mayor, etc. of Birmingham, 26 So. 537 (Ala. 1899), and Atwater v. Hassett, 111 P. 802 (Okla. 1910).

This body of authority rests, we believe, upon the principle that the motives of voters may not be inquired into where their will has been expressed. If avoidance of the effort of casting a negative vote was sufficient reason for any number of voters to cast an affirmative vote, we

cannot deny effect to their vote simply because we regard that reason as inadequate, misguided, or otherwise defective.[5/] "Where the language and meaning of a constitutional amendment are clear, a determination of what inducements motivated voters in the adoption of the amendment [is] outside the scope of any judicial examination." Carpenter v. State, 179 Neb. 628, 139 N.W.2d 541, 545 (1966). See also Detroit United Railway v. Detroit, 255 U.S. 171, 178 (1921). We are not here concerned with a ballot which presented the proposition in such a manner as to mislead or improperly influence the decision of the voter on its merits, as in the cases cited by the plaintiffs. See, e.g., Boucher v. Bornhoff, 495 P.2d 77 (Alaska 1972); Conley v. Hardwick, 141 Ky. 136, 132 S.W. 140 (1910); City of Newport v. Gugel, 342 S.W.2d 517 (Ky. 1961).

In Boucher the state constitution provided for the submission to the people, at certain stated intervals, the question, "Shall there be a Constitutional Convention?" Pursuant to this mandate, the lieutenant governor of the state prepared a ballot which posed the question as follows:

> "As required by the Constitution of the State of Alaska... Shall there be a constitutional convention?" (Emphasis added)

5/ The amicus brief of the Hawaii State Bar Association contends that the ballot failed to comply with Rule 2.3 E5 of the Rules and Regulations Governing Elections adopted by the Lieutenant Governor pursuant to HRS § 11-4. Authority to determine the form of the ballot by which the proposed amendments were submitted to the electorate for approval was conferred on the Convention by Article XV, Section 2, of the Hawaii Constitution and is not subject to the control of the legislature. Since we hold that the form of the ballot was not defective, we are not faced with the question of the effect to be given to a vote recorded by a defective ballot. Evidence offered by the plaintiffs with respect to the effect on voter motivation of the form of the ballot is accordingly irrelevant.

The court found the prefatory language inherently misleading, in that it implied that a constitutional convention was required to be held by the Alaska Constitution.

In Conley the Kentucky court invalidated a referendum election in which the issue was to permit or not permit the sale of intoxicants. The "Dry" column on the ballot was headed by a representation of the Bible and the "Wet" column by a drawing of a whiskey bottle with a snake protruding from its mouth. The court said:

> "The ballot is a means devised by law to secure a fair expression of the will of the people, and it should never contain devices that give to one side an undue advantage over the other. It was highly improper to use any devices at all, and absolutely inexcusable to use the devices referred to, or either of them." 132 S.W. at 141.

In City of Newport the election challenge concerned a ballot wherein the proposition to be voted was titled "Fair Pay Petition." The court found this to be in violation of the statutory mode for submitting such proposals and further said:

> "While the words 'fair pay petition' are mild and not calculated to arouse violent prejudices, nevertheless it is plain that they were put on the ballots and voting machine labels for propaganda purposes and with the thought that they would in fact influence the voters...
>
> * * * *
>
> "...It is our opinion that the use of the words 'fair pay petition' on the ballots and voting machine labels was such an impropriety as to invalidate the election." 342 S.W.2d at 519.

In each of these cases, the proposition was placed on the ballot in a form which implied a recommendation as to the vote. This was held to be an improper attempt to influence the election result and to invalidate the election. We do not find this to be the situation here.

IV

Intimately related to the ballot bias issue is the question of duplicity. The plaintiffs argue, for example, that Question No. 1 on the ballot (12 Member Jury; Civil Case Amount) ought to have been presented as two separate propositions instead of one, inasmuch as the question as presented contained two different subject matters: (1) a proposal to raise the minimum amount for jury trials in civil cases, and (2) a proposal to guarantee an accused, charged with a serious criminal offense, a jury of twelve persons. They contend that in this and in other similar respects, the ballot violated the prohibition against the incorporation of different subjects into a single ballot proposition. We disagree.

Unless otherwise provided in the Constitution,[6/]

6/ The cases cited by the plaintiffs on the issue of duplicity were decided on the basis of express constitutional provisions proscribing the inclusion of multiple subjects in a single ballot proposition. In Kerby v. Luhrs, 44 Ariz. 208, 36 P.2d 549 (1934), for example, the Arizona constitution expressly provided that "[i]f more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately." The modern test for duplicity is whether or not the propositions contained in the amendment are all germane to a common object and purpose. Idaho Water Resource Board v. Kramer, 97 Idaho 535, 548 P.2d 35, 52 (1976); Keenan v. Price, supra. An example of the application of this rule is to be found in Barnhart v. Herseth, 88 S D. 503, 222 N.W.2d 131 (1974). There it was held that a constitutional amendment which made several changes in the executive branch of state government including, inter alia, extending the term of the governor, reducing the number of governmental departments, authorizing the governor to reorganize departments of government, and deleting the office of state superintendent of public instruction, contained matters all rationally related to the overall plan of making the executive branch of state government more efficient and responsible, and thus was properly submitted to the voters as one amendment.

there is no limitation on the number of subjects that may be included in a proposed constitutional amendment. State v. Brown, 10 Ohio St.2d 139, 226 N.E.2d 116 (1967); Opinion of the Justices, 335 So.2d 373 (Ala. 1976); People v. Sours, 31 Colo. 369, 74 P. 167 (1903). See also City and County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960). There is nothing in the Hawaii Constitution that will support a reasonable conclusion that a single amendment to the constitution proposed by a constitutional convention can contain no more than one subject, purpose or object. And while Article III, §15, of the Hawaii Constitution, expressly prohibits the enactment of legislation embracing more than one subject, such a proscription is not applicable to constitutional amendments. State v. Brown, supra; State v. Lyons, 40 Del. 77, 5 A.2d 495 (1939); Cooney v. Foote, 142 Ga. 647, 83 S.E. 537 (1914); Bonds v. State Department of Revenue, 254 Ala. 553, 49 So.2d 280 (1950). Article XV, §2, expressly authorizes the Convention to determine, in its discretion, the manner in which proposed amendments shall be submitted to a vote of the electorate. This particular provision has been in effect, unamended, since the adoption by the people of the original Constitution.

This broad authority vested in the Convention, however, is subject to the limitation that the ballot must enable the voters to express their choice on the amendments presented and be in such form and language as not to deceive or mislead the public.[7/] State v. Brown, supra; Kohler v.

7/ The ballot need not contain the full text of a proposed amendment. Tipton v. Smith, 229 S.C. 471, 93 S.E.2d 640 (1956). But in such case the ballot should contain "a description of the proposition submitted in such language as to constitute a fair portrayal of the chief features of the proposition, in words of plain meaning, so that it can be understood by persons entitled to vote.... [I]t is sufficient if enough is printed on the ballot to identify the matter and show its character and purpose." Wright v. Board of Trustees of Tatum Ind. Sch. Dist., supra, at 792.

Tugwell, supra; Wright v. Board of Trustees of Tatum Ind. Sch. Dist., supra; Boucher v. Bornhoff, supra; Conley v. Hardwick, supra; City of Newport v. Gugel, supra. By this standard, we are satisfied that with respect to the amendments which were properly submitted for voter approval, as determined in Part V of this opinion, the form and language of the ballot, which included the informational booklet, was in compliance with existing law. The form of the ballot in this case lay within the range of the possible choices which the Convention might have made in the exercise of authority granted to it by Article XV, §2, of the Constitution. The fact that the electorate was presented with an array of complex amendments, to which they were asked to address themselves, does not create a presumption that the form of the ballot was misleading or defective and does not open the door to judicial inquiry into the state of mind of the voters. See Kohler v. Tugwell, supra; Carpenter v. State, supra.

V

The plaintiffs further assert, however, that the electorate was deprived of necessary information concerning the proposed amendments. This, as it now appears, is the determinative issue in this case. Stated more broadly, the question is whether the results of the election can be said to have been the mandate of an informed electorate.

Article XV, §3, of the present Constitution, requires that legislatively initiated proposals be published "once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district wherein such newspaper is published, within the two months'

period immediately preceding the next general election.[8] There is no such requirement imposed for convention initiated amendments. The Convention, however, was required to inform the public of the contents and effect of the proposed amendments. Cf. Kohler v. Tugwell, supra; City of Glendale v. Buchanan, supra.

The burden upon the Convention of informing the electorate was especially heavy, but required, by reason of the number and complexity of the amendments proposed by it. Correlatively, however, it was incumbent upon members of the public to educate and familiarize themselves with the contents and effect of the proposed amendments before expressing themselves at the polls. Kohler v. Tugwell, supra; Young v. Byrne, 144 N.J.Super. 10, 364 A.2d 47 (1976). This was a non-delegable responsibility which was magnified, rather than diminished, by the number of complex amendments presented to them for their consideration. Thus, where information placed before the electorate is neither deceptive nor misleading, and they are given sufficient time within which to familiarize themselves with the contents and effect of the proposed amendments, they will be deemed to have cast informed ballots. See Kohler v. Tugwell, supra; McLennan v. Aldredge, 223 Ga. 879, 159 S.E.2d 682 (1968); City of Glendale v. Buchanan, supra; Barnhart v. Herseth, supra.

The amendments in this case were given extensive coverage before the election. They were the subject of widespread publicity in the newspapers, and on radio and

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8/ It has been held that in such circumstances, a conclusive presumption that the electorate was aware of the terms of the amendment was thereby created. Opinion of the Justices, supra.

television. Summaries of the amendments were published in the newspapers, as well as in a "Con-Con Summary" which was mailed by the Convention to the residence of every registered voter in the State.[9/] An advertising supplement which purported to contain the full text of the amendments was distributed through the newspapers in every county. The daily proceedings of the Convention were covered and regularly reported upon by the news media. Informational sessions regarding the ballot and voting procedures were conducted by the office of lieutenant governor for the benefit of the public. By these means and sources, the voter could have reasonably educated and familiarized himself with the significance and substance of the bulk of the proposed amendments before going to the polls. Further, the newspaper supplement was available at the polls for the voter's examination. The informational booklet which was made a part of the ballot also contained a digest of the amendments.

There were flaws in this procedure, however, which we have found fatal to certain of these amendments. We refer specifically to amendatory deletions and additions of a substantive nature which were not mentioned in both the informational booklet and the newspaper supplement. The vital significance of these omissions stems from the express representation of the Convention in its advertisements that the full text of the amendments would be made available to the public for its examination. To accomplish this objective,

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9/ We think the "Con-Con Summary" was an excellent method of informing the voter of the proposed amendments. The Convention, however, could have devoted more space than it did to a comparative analysis of the substantive effect of the proposed amendments.

it caused to be published the newspaper supplement which, in bold type, informed the reader: "THE COMPLETE TEXT OF THE CONSTITUTIONAL AMENDMENTS IS CONTAINED IN THIS SUPPLEMENT." It did not in fact contain the full text of all of the proposed amendments. The public, however, was entitled to rely upon these Convention-inspired representations. It had the right to expect that the supplement which received statewide dissemination would contain, at the very least, the material substances of all of the proposed amendments. Thus, to the extent that the ballot (which included the informational booklet) and the supplement failed to reveal the substantive nature and effect of a proposed amendment, the voter will be deemed to have been uninformed with respect to that particular amendment. Cf. Kohler v. Tugwell, supra.

The omissions to which we address ourselves are those which have been called to our attention by the agreed statement of facts of the parties. In reviewing these omissions, we are confined to a consideration of whether the election resulted in a valid expression of the will of the electorate. The meaning and effect to be given to that expression are not among the issues presented to us. This limitation excludes from our consideration any interpretation of the constitutional amendments which we find to have been submitted to and approved by the electorate. We have determined that some of these omissions are fatal to certain of the proposed amendments. What significance such omissions may have in determining the meaning and effect of the amendments which were submitted and approved is outside the

issues in this case, and upon such questions we express no opinion.[10/]

A major omission of a substantive nature concerns the deletion, from the present Constitution, of Article X, §5, which provides:

"FARM AND HOME OWNERSHIP

> "Section 5. The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law." (Emphasis added)

This deletion, particularly with respect to the phrase "and home ownership," represents a fundamental change in constitutional philosophy regarding the use of public lands. To a home-starved populace which may fairly characterize the people of Hawaii, this change in emphasis is a substantive matter to which they were entitled to address themselves at the polls. They were not given the opportunity to do so. Accordingly, we hold that the amendment adopted by the Convention deleting present Article X, §5, in its entirety was not validly ratified.

Another major omission of a substantive nature concerns New Article XII, §7, which provides:

> "The term 'Hawaiian' means any descendant of the races inhabiting the Hawaiian Islands, previous to 1778.
>
> The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of races inhabiting the Hawaiian Islands previous to 1778 as defined by the Hawaiian Homes Commission Act, 1920, as amended or may be amended."

10/ We do not, for example, inquire into whether as a result of their adoption, other substantive changes in the Constitution have been effected by necessary implication. See People v. Sours, supra; McLennan v. Aldredge, supra; Keenan v. Price, supra. Neither are we here concerned with the effects of partial invalidation. See Carpenter v. State, supra.

This proposed amendment to present Article XI (New Article XII) was not properly presented to the public for its consideration under Question No. 28 (Office of Hawaiian Affairs) and was, therefore, not validly ratified.

Several other relatively minor amendments of a substantive nature have also failed of ratification for the same reason. These concern the proposed amendments to Article III, §2 and §3;[11/] the addition to New Article IV, §5, of a new paragraph numbered 9;[12/] the proposed amendment to Article XVI, §1 (New Article XVIII, §1);[13/] and the deletion of that portion of Article III, §4, entitled "Minimum

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11/ The proposed amendments to Article III, §2 and §3 are as follows [new material underlined and deleted material in brackets]:

> "Section 2. The senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. [Until the next reapportionment the] The senatorial districts and the number of senators to be elected from each shall be as set forth in the [Schedule.] reapportionment plan as established by the reapportionment commission."

> "Section 3. The house of representatives shall be composed of fifty-one members, who shall be elected by the qualified voters of the respective representative districts. [Until the next reapportionment, the] The representative districts and the number of representatives to be elected from each shall be as set forth in the [Schedule.] reapportionment plan as established by the reapportionment commission."

12/ Proposed New Article IV, §5, par. 9, provides:

> "No consideration shall be given to holdover senators in effecting redistricting."

13/ Proposed New Article XVIII, §1, provides:

> "Until the next reapportionment the senatorial districts and the number of senators to be elected from each shall be as set forth in the 1973 reapportionment plan. Until the next reapportionment the representative districts and the number of representatives to be elected from each shall be as set forth in the 1973 reapportionment plan."

Representation for Basic Island Units."[14/]

On the other hand, we find the proposed amendment to Article III, §10 (presently Article III, §11), which was presented to the public under Question No. 7 (Legislative Terms, Functions and Procedures; etc.), to have been validly ratified. While the full text of the amendment was not contained in the supplement, the summaries of the proposal in both the informational booklet and the supplement fairly and sufficiently advised the voter of the substance and effect of the proposed amendment. See Kohler v. Tugwell, supra. New Article III, § 10, as thus amended, reads as follows:

> "Each regular session shall be recessed for not less than five days at some period between the twentieth and fortieth days of the regular session. The legislature shall determine the dates of the mandatory recess by concurrent resolution. Any session may be recessed by concurrent resolution adopted by a majority of the members to which each house is entitled. Saturdays, Sundays, holidays, the days in mandatory recess and any days in recess pursuant to a concurrent resolution shall be excluded in computing the number of days of any session."

14/ The following is the proposed deletion from Article III, §4:

> "MINIMUM REPRESENTATION FOR BASIC ISLAND UNITS
>
> The representation of any basic island unit initially allocated less than a minimum of two senators and three representatives shall be augmented by allocating thereto the number of senators or representatives necessary to attain such minimums which number, notwithstanding the provisions of Sections 2 and 3 of this article shall be added to the membership of the appropriate body until the next reapportionment. The senators or representatives of any basic island unit so augmented shall exercise a fractional vote wherein the numerator is the number initially allocated and the denominator is the minimum above specified."

We also find the purely stylistic and technical changes embodied in Question No. 34 (Technical & Style Changes), to have been validly ratified.[15] These changes consist of the substitution of words of similar meaning for those appearing in the existing Constitution. For example, "as provided by law" appears instead of "in accordance with law," "prescribed" instead of "provided," "shall serve as chairperson" instead of "shall chair," "provided for" instead of "made," and the like. In addition, words such as "the person's" are substituted for "his," "oneself" for "himself," "the accused" for "him," and the like. Numerous changes are made in punctuation and grammar. To require the publication of these non-substantive amendments in full would have been superflous and would have required the publication of the entire Constitution. It would appear from a reading of the Convention's standing committee report that only the "PREAMBLE" and "FEDERAL CONSTITUTION ADOPTED" portions of the present Constitution were left untouched by the committee's stylistic surgery.[16]

15/ The obvious purpose of the amendment is comparable, on a constitutional level, to the duty of the state's revisor of statutes under HRS §§ 2-6 and 2-10 to ensure, where possible, consistency throughout the statutory scheme in manner and style. However, the revisor may not, in making such revisions, alter the sense, meaning or effect of any act. Id.

16/ In moving for the adoption of Standing Committee Report No. 104, Delegate Hamilton informed the Convention:

> "...Finally, we really were engaged--the Committee on Style--with two functions. The first was the fairly traditional one which had been true in previous conventions, and this involved style, phraseology, consistency, capitalization, punctuation and so on. We also, of course, were responsible for and had arranged the various articles in what seemed proper and logical order. The Committee on Style this time had two new functions given to it by the Convention. One was to rid the Constitution of discriminatory pronouns, adjectives and any other terms, and that has been done.
>
> "The second thing was to restyle the entire Constitution, which had not been done since 1950. That, too, has been done. Thus the entire document is consistent in terms of punctuation, capitalization and so forth. Mr. President, I would recommend its adoption."

There appears to be, however, other amendments of a substantive nature which are not readily apparent from the committee report. In Question No. 34, the electorate was asked to approve certain unspecified "changes [in] the Constitution where the subject may now be unconstitutional or unnecessary under the Constitution of the United States." This was too broad and vague a request, especially since it involved changes in the fundamental law. However valid the Convention's reasons might have been, it was for the people, based upon adequate information, to determine whether and to what extent the organic law of the State ought to undergo revision.

The question of whether any amendment submitted for approval by Question No. 34 was in fact approved thus depends on its effect upon substantive law. If the amendment is purely stylistic and technical in nature, and does not alter the sense, meaning or effect of any provision of the Constitution, it was approved by the electorate and has become a part of the revised Constitution. On the other hand, if the amendment alters the sense, meaning or effect of any provision of the Constitution, it was not ratified and is not effective to change the language of the Constitution. Obviously, we are not now in a position to make these line by line determinations. Neither are we presently concerned with the meaning and effect of any of the amendments proposed by the Convention.

Finally, as to all of the other amendments presented to the people by the 1978 Constitutional Convention for

their approval, we find that constitutional publication and balloting requirements have been satisfied. Accordingly, we hold that these proposed amendments have been ratified.

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William Paty and
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Melvin M. M. Masuda
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Association, amicus curiae

Burt T. Kobayashi

CONCURRING AND DISSENTING OPINION OF KIDWELL, J.

I join without reservation in most of what is said in the court's opinion, but am unable to agree that either the amendatory language appearing in Article III, Section 10 of the constitution as revised by the Convention, or the amendments purportedly presented under Question No. 34, were approved at the general election as required by Article XV, Section 2 of the constitution.

The procedure for amending the constitution provided by Article XV, Section 2 gives no effect to the proposal of amendments by a convention unless they are submitted to the electorate for approval. I do not dispute the proposition that submission of proposed amendments may be accomplished without placing the text of the amended constitution physically before each voter in the polling place. The opinion analyzes the steps taken to inform the voters prior to the election with respect to the effect of the proposed amendments, on the premise that those steps constituted a part of the process of submission of the amendments, rather than only a process designed to acquaint the voters with what was submitted. This is, in my opinion, an incorrect view of what was taking place.

The definitive action of the Convention, by which it settled upon the proposed amendments and determined the manner of their submission, was the adoption of Resolution No. 30. By this resolution the Convention resolved:

> That the proposed amendments to the Constitution be submitted to the people of the State of Hawaii in the form of the ballot attached hereto for ratification or rejection at the general election to be held on the 7th day of November, 1978. . . . . Such submission shall be by ballot and shall be conducted and the results thereof determined in conformity with Section 2, Article XV of the Constitution. The ballot for such submission . . . . shall be substantially in the form hereto attached . . . . (Emphasis added)

The form of ballot attached to Resolution No. 30 contains this significant communication to each voter:

> Please read instructions and information in the booklet which is part of this ballot. The full text of the proposed amendments on the ballot numbered 1-34, inclusive, is available for inspection in your voting unit.

Resolution No. 30 was presented to the Convention by a report of its Committee on Submission and Information, which report was adopted by the Convention. The report recited that the amendments were too complex and lengthy to be listed on the ballot, and stated:

> The numbers and the proposed amendments will be keyed to an explanatory booklet which will accompany the ballot card and also to a complete text of Constitutional changes displayed in each voting unit.

The report also stated that "full texts of the Constitution will be placed at the voter unit, thereby enabling voters who are not completely prepared an adequate opportunity to examine and review the proposed amendments and the revised Constitution as a whole."

The committee report proposed a public information program of the nature of that which was in fact conducted and which is described in the court's opinion. Authorization to conduct this informational program was given to the committee by adoption of the committee report. However, nothing in the committee report suggests authorization to change the manner of submission of the amendments to the voters which is provided in Resolution No. 30.

For reasons which are not significant to our present inquiry, the procedure prescribed in Resolution No. 30 for submission of the proposed amendments to the electorate was not followed precisely. The full text of all of the proposed amendments was not made available in the polling places. Instead, copies of the newspaper supplement which

had been published on October 29, 1978 were distributed to and were available for examination in each of the polling places. Nothwithstanding the representation made in the supplement that it contained the full text of the proposed amendments, the text of the amendments which are now in question was omitted and was not available for voter inspection. I am unable to dismiss this as an immaterial departure from the manner of submission which was determined upon by the Convention. Had the text of none of the amendments been made available to the voters at the polling places, the departure from the prescribed manner of submission would have been striking and difficult to disregard. Yet as to each of the amendments the text of which was omitted from the material delivered to the polling places the departure is equally striking. I am forced to the conclusion that, as to those amendments, a submission to the voters in a manner determined by the Convention did not take place and those amendments did not receive voter approval.

The mechanical test which I would apply to determine which amendments became a part of the constitution may appear to elevate form over substance. The effort of the majority to find a different solution, however, places us in an uneasy position of uncertainty as to the precise wording of our fundamental law. The court's opinion makes the effect of the affirmative vote on Question No. 34 a question for inquiry whenever the meaning of the constitution is sought. I would avoid that result, and place our determination on what I consider to be a sounder rationale, by holding that voter approval extended only to the amendments contained in full text in the newspaper supplement.

APPENDIX "A"

STATE OF HAWAII TOP B

OFFICIAL BALLOT

GENERAL ELECTION

TUESDAY, NOVEMBER 7, 1978

AMENDMENTS TO THE STATE CONSTITUTION PROPOSED BY THE 1978 CONSTITUTIONAL CONVENTION

146881

(OVER)

This stub shall be removed by the Election Official only.

Please read instructions and information in the booklet which is part of this ballot. The full text of the proposed amendments on the ballot numbered 1-34, inclusive, is available for inspection in your voting unit.

VOTE ONLY IN PART A OR PART B DO NOT VOTE IN MORE THAN ONE PART		
PART A ON ALL PROPOSED AMENDMENTS AS LISTED UNDER PART B, I VOTE:	YES	+
	NO	+
OR		
PART B I VOTE YES ON EACH OF THE PROPOSED AMENDMENTS AS LISTED BELOW EXCEPT THAT I VOTE NO ON THE FOLLOWING:		
1. 12 MEMBER JURY; CIVIL CASE AMOUNT	NO	+
2. INDEPENDENT GRAND JURY COUNSEL	NO	+
3. RIGHT TO PRIVACY	NO	+
4. OPEN PRIMARY ELECTION	NO	+
5. RESIGNATION OF CANDIDATES FOR PUBLIC OFFICE	NO	+
6. ELECTIONS; PARTIAL PUBLIC FINANCING; SPENDING & CONTRIBUTION LIMITS	NO	+
7. LEGISLATIVE TERMS; FUNCTIONS & PROCEDURES; SALARY COMMISSION	NO	+
8. REAPPORTIONMENT PROCEDURES	NO	+
9. EXECUTIVE DEPARTMENTS; TERM LIMITS	NO	+
10. COURTS; JUDICIAL SELECTION, DISCIPLINE	NO	+
11. STATE SPENDING LIMIT; TAX REFUND	NO	+
12. DEBT LIMITATION; EXCLUSIONS	NO	+
13. SPECIAL PURPOSE REVENUE BONDS	NO	+

201 CONTINUED ON OTHER SIDE (OVER)

STATE OF HAWAII TOP

OFFICIAL BALLOT

GENERAL ELECTION

TUESDAY, NOVEMBER 7, 1978

AMENDMENTS TO THE STATE CONSTITUTION PROPOSED BY THE 1978 CONSTITUTIONAL CONVENTION

CONTINUED FROM OTHER SIDE

This stub shall be removed by the Election Official only.

Please read instructions and information in the booklet which is part of this ballot. The full text of the proposed amendments on the ballot numbered 1-34, inclusive, is available for inspection in your voting unit.

14. REVENUES; BUDGET; POST-AUDIT	NO	+
15. TAX REVIEW & TAX CONFORMANCE	NO	+
16. COUNTY POWER TO TAX REAL PROPERTY	NO	+
17. PUBLIC HEALTH & WELFARE	NO	+
18. POPULATION GROWTH MANAGEMENT	NO	+
19. BOARD OF EDUCATION	NO	+
20. EDUCATION; HAWAIIAN STUDIES	NO	+
21. UNIVERSITY BOARD OF REGENTS	NO	+
22. WATER RESOURCES; PROTECTION & CONTROL	NO	+
23. ENVIRONMENT & RESOURCE PROTECTION	NO	+
24. LAND MANAGEMENT; AGRICULTURAL LAND	NO	+
25. CONTROL OF MARINE RESOURCES	NO	+
26. RESTRICTIONS ON NUCLEAR ENERGY	NO	+
27. DEPARTMENT OF HAWAIIAN HOME LANDS	NO	+
28. OFFICE OF HAWAIIAN AFFAIRS	NO	+
29. TRADITIONAL & CUSTOMARY RIGHTS	NO	+
30. CODE OF ETHICS	NO	+
31. PREAMBLE, STATE BOUNDARIES & MOTTO	NO	+
32. LIMITS ON ADVERSE POSSESSION	NO	+
33. MISCELLANEOUS REVISIONS	NO	+
34. TECHNICAL & STYLE CHANGES	NO	+

202 (OVER)

APPENDIX "B"

AMENDMENTS TO THE STATE CONSTITUTION PROPOSED BY THE 1978 CONSTITUTIONAL CONVENTION

November 7, 1978—State of Hawaii

PLEASE READ THIS INFORMATIONAL BOOKLET IT IS PART OF YOUR OFFICIAL BALLOT

All amendments propo ed by the 1978 Constitutional Convention have been incorporated into proposals 1-34 in Part B of the ballot. A brief description of each of the proposed amendments is contained in this booklet. The Constitutional amendments are available for your inspection in your voting unit.

VOTING INSTRUCTIONS

Vote only in Part A or Part B of your Constitutional Convention Ballot.
DO NOT VOTE IN BOTH PARTS OF THE BALLOT.

PART A: Vote YES in Part A if you approve of ALL the amendments proposed by the Constitutional Convention.

OR

Vote NO in Part A if you disapprove of ALL the amendments proposed by the Constitutional Convention.

PART B: Vote in Part B if you approve of some amendments but disapprove of other amendments proposed by the Constitutional Convention. Select those amendments that you disapprove of and vote NO on those selections. Your vote on all other questions will be counted as YES.

AMENDMENTS 1-34 PROPOSED BY CONSTITUTIONAL CONVENTION

1. **12 MEMBER JUR[illegible]; CIVIL CASE AMOUNT** (Article [illegible], Section 13 and 14)

   If adopted, this amendment provides that:

   - a person can have a jury trial in a civil case where the amount in question is $1,000 or more rather than $100 or more as it now reads.
   - a person shall have a 12 member jury in a criminal jury trial.

2. **INDEPENDENT GRAND JURY COUNSEL.** (Article I, Section II)

   If adopted, this amendment provides:

   - an independent lawyer to advise the grand jury.
   - a way to choose those lawyers, and requires that the legislature set their pay and how long they shall work.

3. **RIGHT TO PRIVACY.** (Article I, Section 6)

   If adopted, this amendment:

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- adds a judicial selection commission to recommend judges for the supreme court, court of appeals or circuit court who are then picked by the governor and approved by the senate, or judges for district courts who are picked by the chief justice of the supreme court.
- gives the supreme court more power to discipline judges and starts a judicial discipline commission.

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If adopted, this amendment:

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If adopted, this amendment:

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If adopted, this amendment:

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If adopted, this amendment:

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- requires the State to hold all public natural resources in trust for the benefit of the people of Hawaii.
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If adopted, this amendment:

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- requires the State to identify which agricultural lands are needed to promote the future of agriculture.
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- reserves to the State the right to manage and control ocean waters and lands which are located outside the boundaries of the State as long as federal or international law does not prevent the State from doing so.
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AMENDMENTS TO THE STATE CONSTITUTION PROPOSED BY THE 1978 CONSTITUTIONAL CONVENTION

November 7, 1978—State of Hawaii

PLEASE READ THIS INFORMATIONAL BOOKLET IT IS PART OF YOUR OFFICIAL BALLOT

All amendments proposed by the 1978 Constitutional Convention have been incorporated into proposals 1-34 in Part B of the ballot. A brief description of each of the proposed amendments is contained in this booklet. The Constitutional amendments are available for your inspection in your voting unit.

VOTING INSTRUCTIONS

Vote only in Part A or Part B of your Constitutional Convention Ballot.
DO NOT VOTE IN BOTH PARTS OF THE BALLOT.

PART A: Vote YES in Part A if you approve of **ALL** the amendments proposed by the Constitutional Convention.

OR

Vote NO in Part A if you disapprove of **ALL** the amendments proposed by the Constitutional Convention.

PART B: Vote in Part B if you approve of some amendments but disapprove of other amendments proposed by the Constitutional Convention. Select those amendments that you **disapprove** of and vote NO on those selections. Your vote on all other questions will be counted as YES.

AMENDMENTS 1-34 PROPOSED BY CONSTITUTIONAL CONVENTION

1. **12 MEMBER JURY; CIVIL CASE AMOUNT** (Article I, Section 13 and 14)

   If adopted, this amendment provides that:

   - a person can have a jury trial in a civil case where the amount in question is $1,000 or more rather than $100 or more as it now reads.
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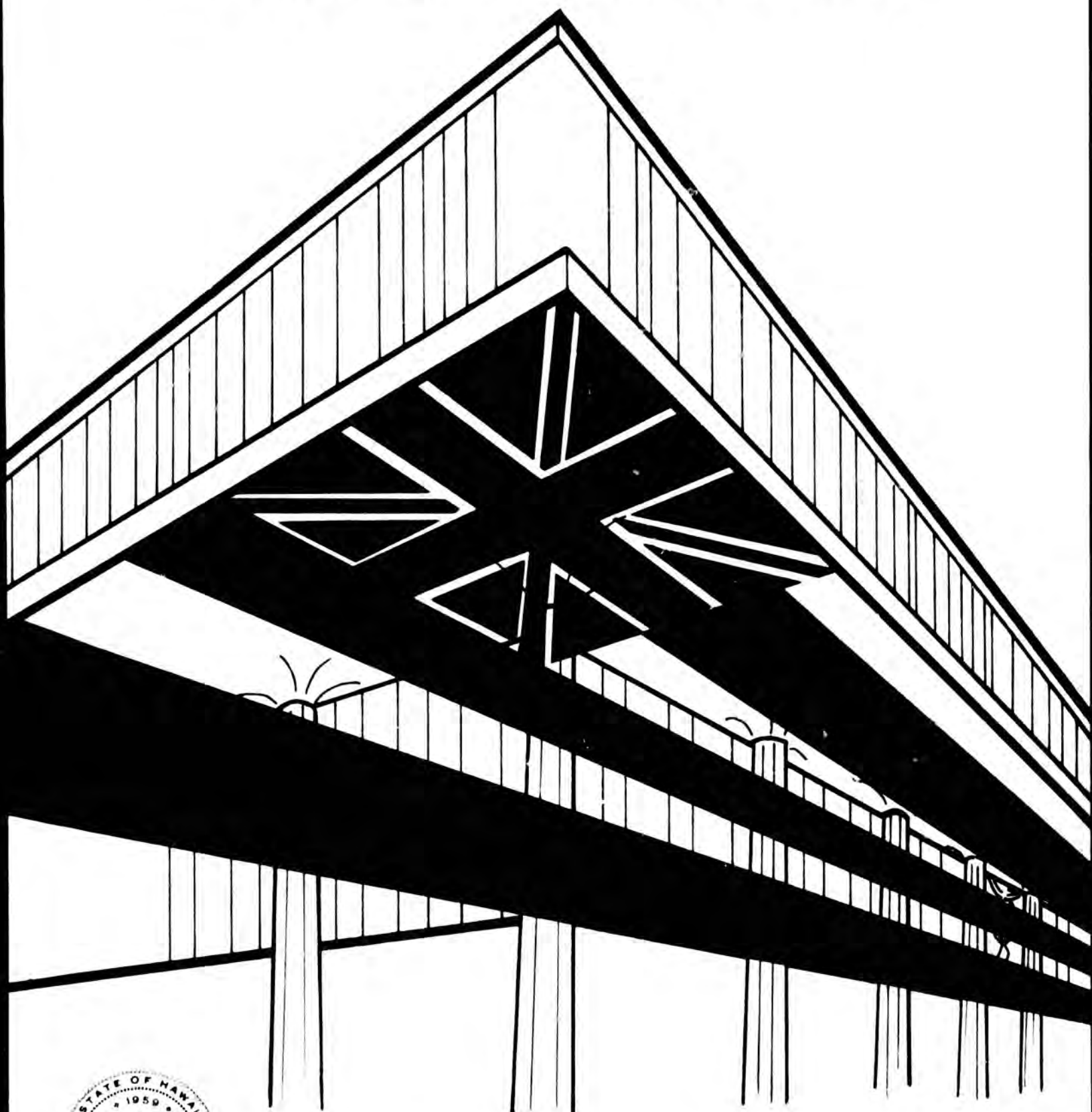
MANUAL FOR CANDIDATES



Prepared By The

OFFICE OF THE LIEUTENANT GOVERNOR

1978
MANUAL FOR CANDIDATES

CHIEF ELECTION OFFICER

LT. GOVERNOR NELSON K. DOI

OFFICE OF THE LIEUTENANT GOVERNOR

STATE CAPITOL

HONOLULU, HAWAII 96813

NELSON K. DOI
LIEUTENANT GOVERNOR

Dear Candidate:

At a time when people look at our government with caution and mistrust, I wish to congratulate you for choosing to become actively involved by running for office.

I sincerely hope that the example set by you and other candidates will help to sustain a faith in the democratic process that has made this nation great. I commend you for offering your services and for taking on the risks and burdens of a campaign. We need more citizens like you.

This edition of the MANUAL FOR CANDIDATES has been prepared to help you with information most frequently requested by candidates and their staff members.

I hope this manual will be of value to you as you conduct your campaign. If you need further assistance, please contact one of the persons listed on the next page.

MAHALO,

NELSON K. DOI

ELECTION PERSONNEL

For additional information, contact the appropriate office listed below.

OFFICE OF THE LIEUTENANT GOVERNOR

5th Floor
STATE CAPITOL
Honolulu, Hawaii 96813

Morris Takushi	(548-2517)	Director of Elections
Marsha Onaga	(548-2517)	Nomination papers, maps and other candidate information
Evelyn Oshiro	(548-2517)	Voter Registration
Tom Masaki	(548-6717)	Voter Education Coordinator
Shirlene Uyehara	(548-6717)	Voter Education

OFFICE OF THE CITY CLERK, CITY AND COUNTY OF HONOLULU

Honolulu Hale
Honolulu, Hawaii 96813

Eileen Lota	(523-4291)	City Clerk
John Kamana	(523-4293)	Deputy City Clerk
Kenneth Hashimoto	(523-4292)	Election Administrator

OFFICE OF THE COUNTY CLERK, COUNTY OF HAWAII

25 Aupuni Street
Hilo, Hawaii 96720

Rudy Legaspi	(961-8271)	County Clerk
Yasuki Arakaki	(961-8255)	Deputy County Clerk
Ed Kozohara	(961-8277)	Supervisor of Elections

OFFICE OF THE COUNTY CLERK, COUNTY OF MAUI

200 So. High Street
Wailuku, Maui 96793

James Ushijima	(244-7825)	County Clerk
Manuel K. Oishi	(244-7826)	Deputy County Clerk
George dela Nux	(244-7749)	Election Clerk

OFFICE OF THE COUNTY CLERK, COUNTY OF KAUAI

4396 Rice Street
Lihue, Kauai 96766

Tad Miura	(245-4786)	County Clerk
Tatsuo Kato	(245-5786)	Deputy County Clerk
William Pascua	(245-5785)	Election Administrator

CAMPAIGN SPENDING COMMISSION

Room 436, State Capitol
Honolulu, Hawaii 96813

Jack Gonzales	(548-5411)	Executive Director
Ray Onishi	(548-5411)	Associate Director
Rochelle Oshiro	(548-5411)	Campaign Spending laws, reports, and general information
Linda Takushi (Notary Public)	(548-5411)	
Caralyn Kuehneman (Notary Public)	(548-5411)	

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NOMINATION PROCEDURES AND QUALIFICATIONS

WHERE TO OBTAIN NOMINATION PAPERS:

ON OAHU: Lieutenant Governor's Office for Federal & State offices;
City Clerk's Office for City & County offices.

ON OTHER ISLANDS: County Clerk's Office for all offices.

QUALIFICATIONS FOR OFFICE:

For qualifications for specific offices, please refer to pages 15-20.

NUMBER OF REQUIRED SIGNATURES:

For U.S. Senator, U.S. Representative, Governor, Lieutenant Governor and School Board Member.....not less than 25;

For all other offices.....not less than 15.

[Candidates are advised to get more than the required minimum amount of signatures in the event some of the signers are disqualified. Signers should be encouraged to include their social security numbers and birthdates to aid in the verification process. If a signer cannot be positively identified due to a name or an address change, that signer will be disqualified. The task of identifying a signer would be made much easier if the requested information is provided.]

QUALIFICATION OF SIGNING NOMINATION PAPERS:

Signers must be registered voters who will be qualified to vote for their candidate in the designated election. In addition, they:

- Must be registered in the same district as the candidate;
- Must have same party preference as the candidate, or change party preference up to 4:30 p.m., July 7, 1978, at the City & County or County Clerk's Offices. (Party Preference is not applicable to the Constitutional Convention);
- Shall not sign the nomination papers of more than one candidate for the same office unless there is more than one seat available, in which case no person shall sign more nomination papers for candidates than the actual number of seats available.
- May sign the nomination paper of an individual running as a candidate from any party or as a non-partisan if they have not been designated a party preference.

DESIGNATION OF CANDIDATE'S NAME ON THE BALLOT:

- The Candidate's name must be correctly spelled in the portion of nomination paper called "DECLARATION OF CANDIDACY";
- Hawaiian or English equivalent or nickname is allowed on the ballot.
- Up to a maximum of 26 type spaces for letters, punctuation and blank spaces will be allowed for a candidate's name (including Hawaiian or English equivalent or nickname) to be printed on the ballot.

Constitutional Convention Election ..... 4:30 p.m., April 20, 1978

1978 Primary Election ..... 4:30 p.m., August 8, 1978

WHERE TO FILE NOMINATION PAPERS:

File papers at the office where they were issued.

FILING FEE:

For filling fees for specific offices, please refer to pages **15-20.**

INDIGENT CANDIDATE:

Filing fee will be waived if:

- The candidate declares by affidavit that he is an indigent;
- The candidate files a petition signed by at least ½ of 1% of the registered voters qualified to vote for the office sought;
- The petition and affidavit are filed with the nomination papers.

CHALLENGE:

Any nomination paper received by the Chief Election Officer or a County Clerk shall be deemed valid unless it is challenged. The candidate shall be notified through registered or certified mail of any challenge accepted by the Chief Election Officer or County Clerk. The decision of the Chief Election Officer or County Clerk concerning a challenged nomination paper shall be provided in writing to the candidate upon his request. Challenges:

- Must be made by 4:30 p.m. on the second day after the filing deadline or next working day;
- Will be decided by the Chief Election Officer or County Clerk not later than 4:30 p.m. on the second day after they are made.

IMPORTANT ELECTION LAWS

SECTION 11-72(3), HAWAII REVISED STATUTES (HRS)

Precinct officials; submission of names and assignments; vacancies. No parent, spouse, child, or sibling of a candidate shall be eligible to serve as a precinct official in any precinct in which votes may be cast for the candidate; nor shall any candidate for any elective office be eligible to serve as a precinct official in the same election in which he is a candidate. No candidate who failed of nomination in the primary or special election shall be eligible to serve as a precinct official in the general election next following.

SECTION 11-117, HRS

Withdrawal of candidates; disqualification; death; notice. Any candidate may withdraw not later than 4:30 p.m. on the day immediately following the close of filing for any reason and may withdraw after the close of filing up to 4:30 p.m. on the tenth day prior to an election for reasons of ill health when the notice is accompanied by a statement from a licensed physician indicating that such ill health may endanger the candidate's life, if he is a candidate for member of Congress or for state office, by giving notice in writing to the chief election officer, of if he is a candidate for a county office, by giving notice in writing to the county clerk of the county in which the candidate was seeking nomination or election.

On receipt of the notice of withdrawal, the chief election officer or the clerk shall inform the chairman of the political party of which the person withdrawing was a candidate. When the candidate dies, withdraws or is disqualified after the close of filing and the ballots have been printed, the chief election officer or the clerk shall either order the candidate's name striken from the ballot or that a notice of disqualification, withdrawal or death be prominently posted at the polling place on election day. In no case shall the filing fee be refunded after filing.

SECTION 11-210, HRS

Advertising. (a) All advertisements shall contain the name and address of the candidate, committee, or person paying for same.

(b) In addition to subsection (a) above, no person shall cause or submit any advertisement in support for a candidate or against a candidate's opponent, to be published, broadcasted, televised or otherwise circulated and distributed except under the following conditions:

(1) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcasted, televised, or circulated with the approval and authority of the candidate, provided that in the event that the literature or advertisement is paid for by the candidate or committee directly associated with a candidate, the notice of approval and authority need not be included; or

(2) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcasted, televised, or circulated without the approval and authority of the candidate.

CAMPAIGN SPENDING LAW

PURPOSE OF THE CAMPAIGN SPENDING LAW

The Legislature stated that the purpose of the Campaign Spending Law is to require disclosure of political campaign contributions and expenditures in order to promote public participation in the electoral process.

CAMPAIGN SPENDING COMMISSION SUPERVISES THE LAW

A five-member Campaign Spending Commission, appointed by the Governor, supervises the campaign spending laws through an Executive Director and staff. The Campaign Spending Commission is located in Room 436, Fourth Floor, State Capitol. The telephone number is 548-5411.

WHO MUST FILE WITH THE CAMPAIGN SPENDING COMMISSION?

All candidates, committees, and political parties are required to file reports.

ORGANIZATIONAL REPORT

An organizational report containing the name, address, office being sought and party affiliation of the candidate or candidates, the names and addresses of the committee or party, campaign treasurer and deputies, campaign chairman and deputy campaign chairman, together with a list of all banks or other depositories used and the applicable account numbers, and an accounting of contributions received as prescribed by law and the rules of the Commission <u>must be filed</u> on the <u>earliest</u> of the following applicable dates:

1. On or before the day of filing for nomination or election;
2. At least forty-five days before the primary or special primary election;
3. At least forty-five days before the general, special general, or special election; or
4. By the tenth day after:
   A. Receiving any contributions in an aggregate amount of more than $100 or
   B. Making or incurring any expenditure which is reportable under section 11-207 or 11-208, HRS.

OTHER REPORTS REQUIRED AND DATES TO BE FILLED WITH THE COMMISSION

	REPORT	DUE DATE
1.	Preliminary report for Con-Con	May 10, 1978 (4:30 p.m.)
2.	Final report for Con-Con	June 9, 1978 (4:30 p.m.)
3.	Pre-Primary Report	Sept. 27, 1978 (4:30 p.m.)
4.	Final Primary Report	Oct. 27, 1978 (4:30 p.m.)
5.	Pre-General Report	Oct. 27, 1978 (4:30 p.m.)
6	Final General Report	Nov. 27, 1978 (4:30 p.m.)

REQUIRED FORMS MAY ABE OBTAINED AT THE FOLLOWING LOCATIONS:

Campaign Spending Commission
State Capitol
Room 436
Honolulu, Hawaii 96813

County Clerk's Office
County of Maui
200 South High Street
Wailuku, Hawaii 96793

County Clerk's Office
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

County Clerk's Office
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766

FURTHER INFORMATION MAY BE OBTAINED BY TELEPHONE

Phone: 548-5411

(Toll-free calls from the Neighbor Islands may be placed by dialing "0" and asking the operator for Enterprise 5406.)

CAMPAIGN SIGN ORDINANCES

CITY AND COUNTY OF HONOLULU

The following guidelines have been established, based on current provisions in the Comprehensive Zoning Code (CZC):

1) General Provision: Political signs are prohibited signs as provided in Section 21-223 (CZC).
2) Headquarters Signs: Signs which identify the candidate's headquarters are permitted when such signs are located on the premises, subject to the sign regulations of the respective zoning districts. Before installing a "headquarters sign", it will be necessary to obtain a sign permit issued by the Building Department, City Hall. Detailed information can be obtained over the business counter or by telephone (523-4651). For interpretation or clarification of the rules, call the Zoning Plan Check Section at 523-4553.
3) Window Signs: Political signs which are posted inside windows are permitted in the candidate's bona fide campaign office.
4) Bumper Stickers: Bumper stickers are permitted on operable motor vehicles.
5) Hand-carried Political Signs: Political signs are permitted when carried by individuals.
6) Aerial Political Advertising: No person shall use an aircraft to display any political sign or advertising device, including but not limiting the generality of the foregoing, poster, banner, writing, picture, painting, light, model, display, emblem, notice, illustration, insignia, symbol and any other forms of advertising sign or device.

COUNTY OF HAWAII

ORDINANCE NO. 48, SECTION 2. Definitions.

(a) "Sign" shall mean and include every sign, device, figure, painting, drawing, message, placard, poster, billboard, ground sign, wall sign, roof sign, illuminated sign, projecting sign, temporary sign, marquee, awning, canopy, and street clock. and shall include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any person when the same is placed out of doors on real property or buildings or structures thereon in view of the general public.

ORDINANCE NO. 48, SECTION 3. Exempt Signs.

(4) Political campaign signs. Signs or posters not exceeding 1 square foot in display surface, announcing candidates seeking political office; provided that such signs or posters shall be permitted only for a period of 60 days preceding a general or special election and for a period of 10 days following such election.

COUNTY OF MAUI

ORDINANCE NO. 308, SECTION 3. Exempt Signs.

(4) Political campaign signs. Signs or posters not exceeding 18 square feet in display surface, announcing candidates seeking political office; provided that such signs or posters shall be permitted only for a period of 60 days preceding a general or special election and for a period of 10 days following such election.

COUNTY OF KAUAI

ORDINANCE NO. 159 (AMENDING PARAGRAPH "a" (4) OF SECTION 20.3 CHAPTER 4, CODE OF ORDINANCES, RELATING TO THE REGULATION OF OUTDOOR SIGNS)

(4) Political Campaign Signs. All political campaign billboards, signs, and posters are prohibited, with the exception of the following:

(a) Bumper stickers and other signs attached by adhesives to motor vehicles announcing candidates seeking political office.

(b) Signs identifying the headquarters of a political candidate may be erected and may be maintained in accordance with this Chapter; provided, however, that each political candidate shall be permitted to designate only one such headquarters.

(c) Signs or posters not exceeding 18 square feet in display surface announcing the candidate seeking political office; provided that these signs or posters should be permitted only within the limits of a County park wherein a political rally is being held, and for a period not to exceed 24 hours beginning 9 a.m. of the date of the political rally. The candidates shall be responsible for the removal of all posters or signs announcing their candidacy.

ELECTIONEERING IN THE POLLING PLACES

More detailed information can be found in the **Hawaii Revised Statutes,** Sections 11-132 and 19-6(7).

THOSE ALLOWED IN THE POLLING PLACES:

(1) Election officials;
(2) Watchers, if any, pursuant to Section 11-77;
(3) Candidates;
(4) Voters actually engaged in voting, going to vote or returning from voting;
(5) Any person, designated by a voter who is physically disabled, while he is assisting the voter; and
(6) Any person or nonvoter group authorized by the chief election officer or the county clerk to observe the election.

WHAT CANDIDATES MAY DO AT THE POLLING PLACES:

The candidates may vote and also observe the voting process to see that voting is progressing correctly and fairly. (They should identify themselves as candidates to the chairperson of the precinct officials when they enter the polling places.)

WHAT CANDIDATES CANNOT DO AT THE POLLING PLACES:

Candidates cannot engage in any activity for the purpose of influencing votes.

WHAT WATCHERS MAY DO:

The watchers may observe the conduct of the election in the polling places after presenting their identification to the chairperson of the precinct officials.

WHAT WATCHERS CANNOT DO:

The watchers will not be allowed to use polling place telephones, except to appeal to the clerk of the county if the chairperson fails to correct any violation called to his attention.

POLITICAL SIGNS AND BUMPER STICKERS ON CARS AT THE POLLING PLACES:

In general—cars, wagons, motorcycles, etc., with political signs and stickers may remain within the 1,000-foot area ONLY for the time that voters are actually engaged in voting. Cars belonging to workers that are parked within 1,000 feet of the polling places shall not display any political signs or bumper stickers.

OTHER FORMS OF POLITICAL ADVERTISING NOT ALLOWED WITHIN THE 1,000-FOOT AREA AROUND THE POLLING PLACES:

All political signs within public and private properties are prohibited.

All political clothing—armbands, hatbands, shirts, muumuus, dresses, campaign buttons, etc.—are prohibited.

RECOMMENDATION:

Candidates and/or their supporters should check the 1,000-foot area around each of their polling places prior to the election to insure that the laws are being complied with.

ELECTIONS 1978

CONSTITUTIONAL CONVENTION DELEGATE ELECTION
May 20, 1978
7:00 a.m. to 6:00 p.m.
102 Delegates to be elected from 51 Con-Con Districts

PRIMARY ELECTION
October 7, 1978
7:00 a.m. to 6:00 p.m.

GENERAL ELECTION
November 7, 1978
7:00 a.m. to 6:00 p.m.

ELECTIVE OFFICES
PRIMARY & GENERAL ELECTIONS

FEDERAL
U.S. Representatives - 2 seats

STATE
Governor - 1 seat
Lieutenant Governor - 1 seat
Senators - 25 seats
Representatives - 51 seats
Board of Education - 9 seats

CITY AND COUNTY OF HONOLULU
Councilmen - 9 seats

COUNTY OF MAUI
Mayor - 1 seat
Councilmen - 9 seats

COUNTY OF KAUAI
Mayor - 1 seat
Councilmen - 7 seats

IMPORTANT DEADLINES

	CON CON	PRIMARY	GENERAL
VOTER REGISTRATION	April 20, 1978 4:30 p.m.	September 7, 1978 4:30 p.m.	October 10, 1978 4:30 p.m.
PARTY PREFERENCE DESIGNATION CHANGE —PRIMARY ONLY—	Not Applicable	July 7, 1978 4:30 p.m.	Not Applicable
FILING NOMINATION PAPERS	April 20, 1978 4:30 p.m.	August 8, 1978 4:30 p.m.	Not Applicable
RECEIPT OF ABSENTEE BALLOT REQUESTS	Between March 21- May 13, 1978	Between August 8- September 30, 1978	Between August 8- October 31, 1978
RECEIPT OF ABSENTEE BALLOTS: a) If confined in home, hospital or institution:	By 6:00 p.m. on May 20, 1978*	By 6:00 p.m. on October 7, 1978*	By 6:00 p.m. on November 7, 1978*
	Ballots must be delivered to City Clerk's or County Clerk's Offices by Deadline		
b) Voting in-person at Offices of City & County Clerks (contact your county clerk for hours)	May 10 to May 19, 1978	Sept. 28 to Oct. 6, 1978	Oct. 27 to Nov. 6, 1978

CONSTITUTIONAL CONVENTION ELECTION CALENDAR 1978

SECTION OF HAWAII REVISED STATUTES	DEADLINE	
11-72	FEBRUARY 18	Political Parties to submit names of precinct officials
11-20	FEBRUARY 18	Clerk to notify voter to transfer registration.
11-92	FEBRUARY 18	Change precincts or establish central polling places.
11-20	MARCH 21	2nd notification to voter to transfer registration.
15-4	MARCH 21	Voters to begin request for an absentee ballot.
11-20	APRIL 05	List of voters with questionable address made available.
11-31	APRIL 10	Issue and publish election proclamation.
SLH 1977	APRIL 20	FILE NOMINATION PAPERS.
11-18	APRIL 20	Transfer of registration from one precinct to another.
11-24	APRIL 20	Close voter registration for CON-CON.
15-4	APRIL 21	Clerk may begin to mail request form for absentee ballot to voter in remote area for CON-CON.
12-8	APRIL 24	Filing objections to nomination papers.
12-9	APRIL 25	Transmit list of candidates to county clerks and vice versa.
11-207	MAY 10	Candidates to file Campaign Spending Preliminary Report.
11-77	MAY 10	Political parties to submit list of watchers for CON-CON.
11-117	MAY 10	Candidates to withdraw for a reason.
11-119	MAY 10	Delivery of absentee ballots to County Clerks.
15-4	MAY 13	Voters request for an absentee ballot for CON-CON.
11-73	MAY 15	Instruct precinct officials for CON-CON.
15-7	MAY 19	Close absentee voter precincts for CON-CON.
SLH 1977	MAY 20	CONSTITUTIONAL CONVENTION DELEGATE ELECTION.
15-9	MAY 20	Voters to return mailed, or other than mailed, absentee ballot to County Clerk.
11-174.5	JUNE 09	File complaint on contests for cause in CON-CON.
11-208	JUNE 09	Candidates to file final Campaign Spending Report.
SLH 1977	JULY 05	CONSTITUTIONAL CONVENTION CONVENES.

PRIMARY AND GENERAL ELECTION CALENDAR 1978

H.R.S.	DEADLINE	
11-62	MAY 10	Formation of new parties.
11-63	MAY 10	Filing party rules.
11-64	JUNE 09	Filing names of party officers.
11-72	JUNE 09	Political parties to submit names of precinct officials.
12-31	JULY 07	Change of party preference.
11-20	JULY 08	Clerk to notify voter to transfer registration.
11-92	JULY 08	Change precincts or establish central polling places for PRIMARY.
11-91	JULY 29	Issue and publish election proclamation.
11-20	AUGUST 08	Transfer of registration, 2nd notification to voters.
15-4	AUGUST 08	Voters to begin request for an absentee ballot.
12-6	AUGUST 08	File Nomination Papers for PRIMARY.
11-92	AUGUST 09	Change precincts or establish central polling places for GENERAL.
12-8	AUGUST 10	Filing objections to nomination papers.

(The box indicates item is of special interest to candidates.)

12-9	AUGUST 14	Transmit list of candidates to county clerks and vice versa.
11-20	AUGUST 23	List of voters with questionable addresses made available.
14-21		Parties to submit certified names and addresses of nominees as candidates for presidential electors and alternates.
11-18	SEPTEMBER 07	Transfer of registration from one precinct to another for PRIMARY.
11-24	SEPTEMBER 07	Close of voter registration for PRIMARY.
15-4	SEPTEMBER 08	Clerk may begin to mail request form for absentee ballot to voter in remote area for PRIMARY.
11-77	SEPTEMBER 27	Political party to submit list of watchers for PRIMARY.
11-117	SEPTEMBER 27	Candidates to withdraw for a reason.
11-119	SEPTEMBER 27	Delivery of absentee ballots to county clerks for PRIMARY.
11-207	SEPTEMBER 27	Candidates, committees and parties to file preliminary primary report.
15-4	SEPTEMBER 30	Voters to request for an absentee ballot for PRIMARY.
11-73	OCTOBER 02	Instruct precinct officials for PRIMARY.
15-7	OCTOBER 06	Close absentee voter precincts for PRIMARY.
12-2	OCTOBER 07	PRIMARY ELECTION
15-9	OCTOBER 07	Voters to return mailed, or other than mailed, absentee ballot to clerk for PRIMARY.
11-18	OCTOBER 10	Transfer of registration from one precinct to another for GENERAL.
11-24	OCTOBER 10	Close voter registration for GENERAL.
15-4	OCTOBER 11	Clerk may begin to mail request form for absentee ballot to voter in remote area for GENERAL.
11-173.5	OCTOBER 13	File complaint on contests for cause in PRIMARY.
11-208	OCTOBER 27	Candidates, committees and parties to file final primary report. Candidates, committees and parties to file preliminary general report of campaign spending.
11-77	OCTOBER 28	Political party to submit list of watchers for GENERAL.
11-117	OCTOBER 28	Candidates to withdraw for a reason in GENERAL.
11-119	OCTOBER 28	Delivery of absentee ballots to county clerks for GENERAL.
15-4	OCTOBER 31	Voters to request for an absentee ballot for GENERAL.
14-22		Final determination on contested nomination of presidential electors and alternates, made by presidential elector's committee.
11-73	NOVEMBER 02	Instruct precinct officials for GENERAL.
15-7	NOVEMBER 06	Close absentee polling place for GENERAL.
CONSTITUTION	NOVEMBER 07	GENERAL ELECTION.
15-9	NOVEMBER 07	Voters to return mailed, or other than mailed, absentee ballot to reach clerk for GENERAL.
11-174.5	NOVEMBER 27	File complaint on contests for cause in GENERAL.
11-208	NOVEMBER 27	Candidates, committees and parties to file final general report of campaign spending.
14-24		Chief Election Officer to certify to governor the names of the presidential electors and later alternates of the same political party of the winning candidates for president and vice president.
14-26		Presidential Electors assemble at State Capitol.
11-17	JANUARY 06	Remove voters from register upon failure to vote.
11-65	MARCH 07	Determine party disqualification.

***Deadlines for presidential election years, not applicable for 1978.

(The box indicates item is of special interest to candidates.)

AVAILABLE ELECTION MATERIALS

OFFICE OF THE LIEUTENANT GOVERNOR (FOR DISTRIBUTION)

1) **District and Precinct Boundaries, State of Hawaii, 1976**
2) **Election Laws of Hawaii, 1978**
3) Political Boundary Maps (Available for Purchase)
4) **Result of Votes Cast, Primary Election** (1959-1976)
5) **Result of Votes Cast, General Election** (1959-1976)
6) **Result of Votes Cast, Constitutional Convention, 1968**
7) **Voter Participation in Hawaii, 1970** (A Joint Publication of the Office of the Lieutenant Governor and the Department of Planning and Economic Development of the State of Hawaii)
8) **Voter Registration Program,** Reports for 1968, 1970 and 1972-1974

OFFICE OF THE LIEUTENANT GOVERNOR (FOR USE IN OFFICE)

1) Attorney General's Opinions
2) **Hawaii Revised Statutes**
3) Daniel W. Tuttle, Jr., **HAWAII VOTING BEHAVIOR: A Background Guide To Some Significant Characteristics Of Honolulu's (Oahu's) 139 Precincts** (Honolulu: Center for Governmental Development September, 1972)
4) Daniel W. Tuttle, Jr., **HAWAII VOTING BEHAVIOR: A Guide to Estimated Social and Economic Characteristics Of Honolulu's (Oahu's) 139 Precincts** (Honolulu: Center for Governmental Development September, 1972)
5) Daniel W. Tuttle, Jr., **1972 HAWAII VOTING BEHAVIOR: A Background Guide to Some Significant Characteristics Of Honolulu's (Oahu's) 139 Precincts** (Honolulu: Center for Governmental Development 1973)
6) Daniel W. Tuttle, Jr., **1972 HAWAII VOTING BEHAVIOR: A Background Guide To Some Significant Characteristics Of The Neighbor Islands' 100 Precincts** (Honolulu: Center for Governmental Development 1973)
7) Precinct Official Training Manual
8) **The Report and Reapportionment Plan of the 1973 Legislative Reapportionment Commission, State of Hawaii, July 16, 1973**
9) **The Reapportionment and Redistricting of Senatorial and Representative Districts for the State of Hawaii as Adopted by the Legislative Reapportionment Commission, July 16, 1973**
10) Rules and Regulations Relating to Elections
11) **Session Laws of Hawaii**

OFFICE OF THE CITY CLERK, CITY AND COUNTY OF HONOLULU (FOR DISTRIBUTION)

1) Council District Maps (May be purchased for $1.00 each)
2) Information brochures on elections and voter registration
3) Listing of Service Bureaus that provide list of registered voters and other mailing and elections services
4) **Voter Registration Street Directory** (May be purchased for $2.00)

OFFICE OF THE CITY CLERK, CITY AND COUNTY OF HONOLULU (FOR USE IN OFFICE)

1) **Report and Reapportionment Plan of the Council of the City and County of Honolulu,** 1973.

OFFICE OF THE COUNTY CLERK, COUNTY OF HAWAII (FOR DISTRIBUTION)

1) Campaign Spending Law forms and materials
2) Chronological Order of Important Dates
3) City Map ($5.00)
4) Island map ($5.00)
5) List of Polling places
6) List of Registered Voters (Island-$30.00, 2nd Rep. District-$15.00, 1st, 3rd and 4th Rep. District-$5.00)
7) Localities, County of Hawaii ($.50)
8) South Hilo District Street Directory ($.50)

OFFICE OF THE COUNTY CLERK, COUNTY OF HAWAII (FOR USE IN OFFICE)

1) 1974 and 1976 Reports of Campaign Contributions and Expenditures

OFFICE OF THE COUNTY CLERK, COUNTY OF MAUI (FOR DISTRIBUTION)

1) Campaign Spending Law forms and materials

OFFICE OF THE COUNTY CLERK, COUNTY OF MAUI (FOR USE IN OFFICE)

1) 1974 and 1976 Reports of Campaign Contributions and Expenditures

OFFICE OF THE COUNTY CLERK, COUNTY OF KAUAI (FOR DISTRIBUTION)

1) Campaign Spending Law forms and materials

OFFICE OF THE COUNTY CLERK, COUNTY OF KAUAI (FOR USE IN OFFICE)

1) 1974 and 1976 Reports of Campaign Contributions and Expenditures

CAMPAIGN SPENDING COMMISSION (FOR DISTRIBUTION)

1) Campaign Spending Law forms and materials

CAMPAIGN SPENDING COMMISSION (FOR USE IN OFFICE)

1) 1976 Reports of Campaign Contributions and Expenditures (Federal and State office candidates only)
2) 1976 Reports of Campaign Contributions and Expenditures (all candidates, committees, and parties)
3) Supplemental Reports
4) 1974 to present Reports of Campaign Contributions and Expenditures for Federal elective candidates, committees, and parties (includes Presidential and Congressional candidates)

[illegible] OFFICES

OFFICE	TERM	QUALIFICATIONS	NOMINATION REQUIREMENTS	COMPENSATION	ELECTION YEAR
United States Senator (2 seats) STATEWIDE	6 years (Noon, Jan. 3 to Noon, Jan. 3, 6 yrs. after election)	Qualified Voter U.S. citizen for 9 yrs. 30 years of age	Obtain papers at the Lt. Governor's Office No. of signatures: Not less than 25 registered voters of State Filing Deadline: By 4:30 p.m. sixtieth Day prior to Primary Filing Fee: $75.00 at time of filing	$57,000	1-1980 1-1982
United States Representative (2 seats) 2 CONGRESSIONAL DISTRICTS	2 years (Noon, Jan. 3 to Noon, Jan. 3, 2 yrs. after election)	Qualified Voter U.S. citizen for 7 yrs. 25 years of age Inhabitant of State	Obtain papers at the Lt. Governor's Office No. of signatures: Not less than 25 registered voters of Congressional District seeking election Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $75.00 at time of filing	$57,000	1978
Governor (1 seat) STATEWIDE	4 years (Noon, 1st Monday in Dec. to Noon, 1st Monday in Dec., 4 yrs. after election)	Qualified Voter of State 30 years of age State resident for 5 yrs. preceding election	Obtain papers at the Lt. Governor's Office No. of signatures: Not less than 25 registered voters of State Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $75.00 at time of filing	$50,000	1978

ELECTIVE OFFICES

OFFICE	TERM	QUALIFICATIONS	NOMINATION REQUIREMENTS	COMPENSATION	ELECTION YEAR
Lieutenant Governor (1 seat) STATEWIDE	4 years (Noon, 1st Monday in Dec. to Noon, 1st Monday in Dec., 4 years after election)	Qualified Voter of State 30 years of age State resident for 5 yrs. preceding election	Obtain papers at the Lt. Governor's Office No. of Signatures: Not less than 25 registered voters of State Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $75.00 at time of filing.	$45,000	1978
State Senator (25 seats) 8 SENATORIAL DISTRICTS	4 years (General Election Day to General Election Day, 4 yrs. after election)	Qualified Voter of respective Senatorial District State resident for not less than 3 years and a resident of the district seeking election for a period of at least three months prior to filing of Nomination papers	Obtain papers at the Lt. Governor's Office if from Oahu; and at respective County Clerk's Office if from county other than Oahu No. of Signatures: Not less than 15 registered voters of respective Senatorial District Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $25.00 at time of filing	$12,000 (plus $1,500 annual allowance; Non-Oahu legislator receives additional $20 per day)	1978
State House of Representatives (51 seats) 27 REPRE-SENTATIVE DISTRICTS	2 years (General Election Day to General Election Day, 2 yrs. after election)	Qualified Voter of respective Representative District State resident for not less than 3 years and a resident of the district seeking election for a period of at least three month prior to filing of Nomination papers.	Obtain papers at the Lt. Governor's Office if from Oahu; and at respective County Clerk's Office if from county other than Oahu No. of Signatures: Not less than 15 registered voters of respective Rep. District Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $25.00 at time of filing	$12,000 (plus $1,500 annual allowance; Non-Oahu legislator receives additional $20 per day)	1978

OFFICE	TERM	QUALIFICATIONS	NOMINATION REQUIREMENTS	COMPENSATION	ELECTION YEAR
State Board of Education (9 seats-7 at-large for the City & County of Honolulu and 2 at-large for the Neighbor Islands)	4 years (General Election Day to General Election Day, 4 yrs. after election)	Voters of respective School Board District or at-large district Shall not hold any other public office	Obtain papers at the Lt. Governor's Office if from Oahu; and at respective County Clerk's Office if from county other than Oahu No. of Signatures: Not less than 25 registered voters of respective School Board District Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $25.00 at time of filing	$50 per day of actual attendance at meeting; $25 personal expenses to outer islands	1978
Mayor, City & County of Honolulu (1 seat)	4 years (Noon, Jan. 2 to Noon, Jan. 2, 4 yrs. after election)	Qualified Voter of the City 30 years of age Resident of the District seeking election for a period of at least three months prior to filing of nomination papers.	Obtain papers at City Clerk's Office No. of Signatures: Not less than 15 registered voters of the City Filing Deadline: By 4:30 p.m. sixtieth day prior to the primary Filing Fee: $50.00 at time of filing	$46,049 (Based on a percentage)	1980
Councilmen, City & County of Honolulu (9 seats)	4 years (Noon, Jan. 2 to Noon, Jan. 2, 4 yrs. after election)	Qualified Voter of respective Council District Resident of the district seeking election for a period of at least three months prior to filing of nomination papers.	Obtain papers at City Clerk's Office No. of Signatures: Not less than 15 registered voters of respective Council District Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $25.00 at time of filing	$17,500 Chairman $19,250	1978

OFFICE	TERM	QUALIFICATIONS	NOMINATION REQUIREMENTS	COMPENSATION	ELECTION YEAR
Mayor County of Hawaii (1 seat)	4 years (Noon, 1st Monday of Dec. to Noon, 1st Monday of Dec., 4 years after election)	Resident of the county for at least 1 yr. immediately preceding his election. Qualified voter of the county.	Obtain papers at County Clerk's Office No. of Signatures: Not less than 15 registered voters of the County Filing Deadline: By 4:30 p.m. sixtieth day prior to primary election Filing Fee: $50.00 at time of filing	$45,144	1980
Councilmen, County of Hawaii (9 seats) --1-resident of Puna District; 1-Kau District, 1-N. and S. Kona District; 1-N. and S. Kohala; 1-Hamakua & 1-N. and S. Hilo)	4 years (Noon, 1st Monday of Dec. to Noon, 1st Monday of Dec., 4 yrs. after election)	Resident of the county for at least 1 yr. immediately preceding his election. Qualified voter of the Council District from which he is to be elected for District Councilman (6) or qualified voter of county for at large councilman (3).	Obtain papers at County Clerk's Office No. of signatures: Not less than 15 registered voters of the County or district in which to be elected Filing Deadline: By 4:30 p.m. sixtieth day prior to primary election Filing Fee: $25.00 at time of filing	$14,580 for members; $16,200 for Council Chairman	1980
Prosecuting Attorney, County of Hawaii (1 seat)	4 years (Noon, 1st Monday of Dec. to Noon, 1st Monday of Dec., 4 years after election	Attorney licensed to practice and in good standing before the Supreme Court of the State of Hawaii. Resident of the county for at least 1 yr. immediately preceding his election. Qualified voter of the county.	Obtain papers at County Clerk's Office No. of Signatures: Not less than 15 registered voters of the County Filing Deadline: By 4:30 p.m. sixtieth day prior to primary election Filing Fee: $25.00 at time of filing	$34,968	1980

OFFICE	TERM	QUALIFICATIONS	NOMINATION REQUIREMENTS	COMPENSATION	ELECTION YEAR
Mayor County of Maui (1 seat)	4 years (Noon, Jan. 2 to Noon, Jan. 2, 4 yrs. after election) limited to two consecutive full terms of office.	Qualified Voter of the County. Citizen of the United States	Obtain papers at County Clerk's Office No. of Signatures: Not less than 15 registered voters of the County Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $50.00 at time of filing	$35,000	1978
Councilmen, County of Maui (9 seats elected at-large; 1-resident of Lanai; 1-Molokai (except Kalawao); 1-E. Maui 1-W. Maui 3-Central Maui 2-No Dist. residency Requirements.)	2 years (Noon, Jan. 2 to Noon, Jan. 2, 2 yrs. after election)	Qualified Voter of the County Citizen of the United States Residency in a district as required.	Obtain papers at County Clerk's Office No. of Signatures: Not less than 15 registered voters of the County or district in which to be elected Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $25.00 at time of filing	$10,800 for Members; $12,000 for Council Chairman	1978
Mayor, County of Kauai (1 seat)	2 years (Noon, Jan. 2 to Noon, Jan. 2, 2 yrs. after election)	Qualified Voter of the County for at least 3 years immediately prior to his election 30 years of age	Obtain papers at County Clerk's Office No. of Signatures: Not less than 15 registered voters of the County Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $50.00 at time of filing	$34,000	1978

ELECTIVE OFFICES

OFFICE	TERM	QUALIFICATIONS	NOMINATION REQUIREMENTS	COMPENSATION	ELECTION YEAR
Councilmen, County of Kauai (7 seats at-large)	2 years (Noon, Jan. 2 to Noon, Jan. 2, 2 years after election)	Qualified Voter of the County for at least 2 years immediately preceding his election	Obtain papers at County Clerk's Office No. of Signatures: Not less than 15 registered voters of the County Filing Deadline: By 4:30 p.m. August 8, 1978 Filing Fee: $25.00 at time of filing	$10,800 for Members; $12,000 for Council Chairman	1978
Prosecuting Attorney, County of Kauai (1 seat)	4 years (Noon, Jan. 2 to Noon, Jan. 2, 4 years after election)	Attorney licensed to practice and in good standing before the Supreme Court of the State of Hawaii and shall have engaged in the practice of law in the State for at least 3 years Qualified Voter of County for at least 1 year immediately preceding his election	Obtain papers at County Clerk's Office No. of Signatures: Not less than 15 registered voters of the County Filing Deadline: By 4:30 p.m. 60 days prior to Primary election Filing Fee: $25.00 at time filing	$28,800	1980

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CONSTITUTION - 1973

A
Citizen's
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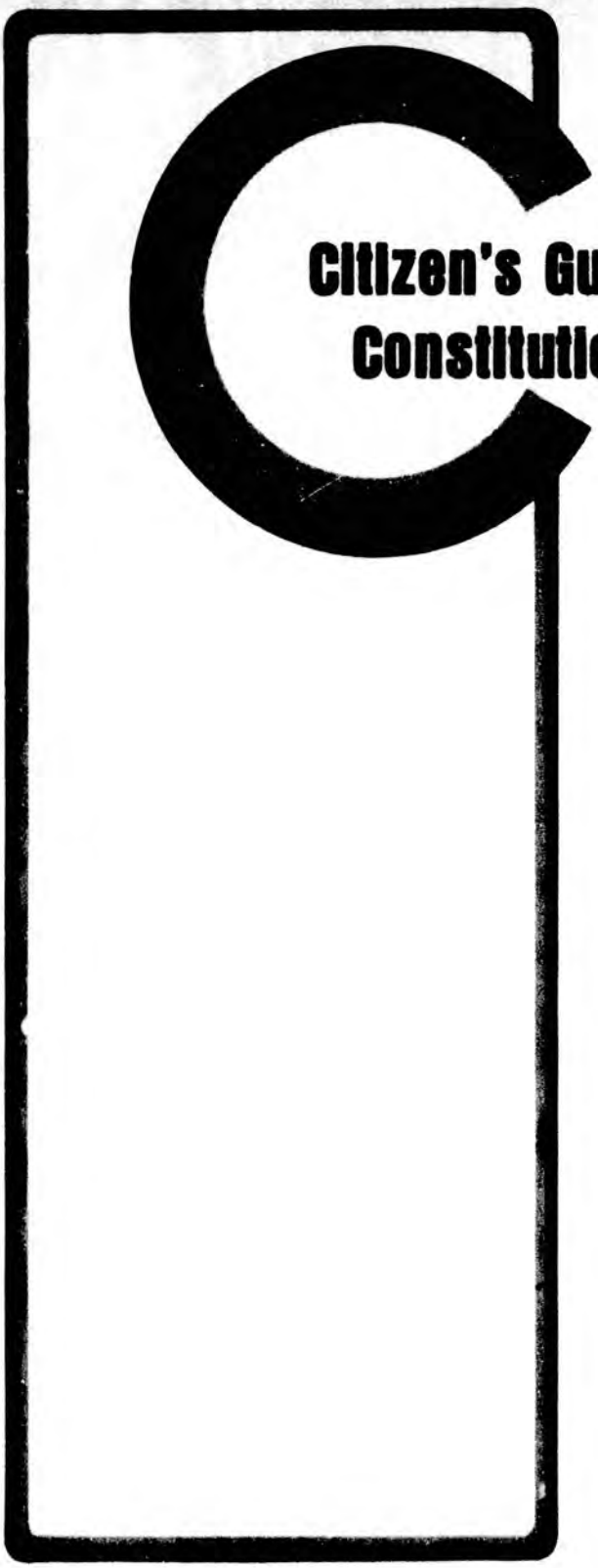


Citizen's Guide to the 1973 Constitutional Convention

Prepared by
the
Public
Affairs
Research
Council
of Louisiana

April 1973
Baton Rouge, Louisiana

TO ORDER ADDITIONAL
COPIES OF THIS GUIDE,
SEE PAGE 58.

Operation of the Convention

The Constitutional Convention of 1973 (CC 73) has the potential of becoming a landmark for the people of Louisiana. As indicated in PAR's report, "Constitutional Convention 1973—A Preview," published in July 1972, Louisiana has the second longest state constitution in the United States, a vast, unwieldy document which was condemned as a "crime," even as it was being enacted in 1921. The over 500 amendments that have been tacked on since have added enormously to its confusion, complexity and bulk.

The present convention is charged with the responsibility of drafting a new constitution for the State of Louisiana. The proposed constitution is to be completed by January 4, 1974 and submitted to the voters no later than the November 4, 1974 general election, according to the Governor's decision.

Membership

The convention is composed of 132 delegates, including:

- 105 elected, one from each state House of Representatives district.

- 12 appointed by the Governor to represent the following interest groups:
  - Agriculture
  - Civil Service
  - Consumers
  - Education
  - Industry
  - Judiciary
  - Labor
  - Law Enforcement
  - Professions
  - Racial Minorities
  - Wildlife and Conservation
  - Youth
- 15 appointed by the Governor from the public at large.

Delegates must be at least 18 years old, electors and residents of the state; in addition, elected delegates must be residents of the district from which they were elected. Public officials were permitted to run for delegate positions. If a vacancy occurs, the Governor is to appoint a replacement, who is to have the same qualifications as the delegate he replaces. Delegates are paid $50 a day for every day of attendance at convention or committee meetings; they are prohibited from accepting any other payments for the work they perform in the convention.

Structure of the Convention

The convention is organized on the legislative model, with a permanent presiding officer, standing committees, provisions for additional committees and subcommittees, and an administrative and research staff.

Standing procedural committees concerned with the operations of the convention are: Rules, Credentials and Ethics; Style and Drafting; Legislative Liaison and Transitional Measures; and Public Information.

Substantive committees assigned responsibility for specific parts of the constitution are: Bill of Rights and Elections; Executive Department; Legislative Powers and Functions; Judiciary; Local and Parochial Government; Revenue, Finance and Taxation; Education and Welfare; and Natural Resources and Environment.

Another group of steering committees having broad intracommittee tasks in procedural and substantive areas are: the Executive Committee, which acts as the executive board of the convention and handles convention administrative and financial matters; the Committee on Committees which made all the assignments of delegates to other committees; the Coordinating Committee which resolves conflicts among substantive committees; and the Composite Committee which will be holding hearings throughout the state before the substantive committees complete their work in order to elicit views on major constitutional issues and stimulate public interest on the issues.

All committees are to consist of at least 10 and no more than 30 members; the committees presently range from 10 to 23 members each.

No delegate serving on the Executive Committee shall serve as chairman or vice-chairman of any substantive committee.

Convention rules provide that delegates will serve on one and only one substantive committee and no more than one procedural committee. During the initial phase of the convention, delegates were permitted to indicate the substantive committee on which they wanted to serve, and assignments were made on the basis of delegate preferences.

Procedural committees are each required to have representation from

each of the eight congressional districts in Louisiana.

The effect of the above restrictions on committee assignments and chairmanships is to prevent any small group from exercising excessive control over the convention and to diffuse power and responsibility among all of the 132 delegates. When committee assignments were made the spirit and intent of the rules were carried out; no delegate serves on more than one substantive committee, and the requirement for representation from all congressional districts has insured board participation in procedural committees. Since the steering committees are staffed in part by officers of the convention and partly by chairmen of other committees, there are some delegates who hold seats in one substantive, one procedural and one or two steering committees, but this occurs in few cases.

The convention may, if it desires, sit as a "Committee of the Whole," during which delegates may engage in more informal debates and discussions and nondelegates may present their views to the convention as a whole.

A table showing the committees, their responsibilities and their membership is on pages 8 to 13.

Officers and Key Staff Members of the Convention

The officers of the convention are: chairman, first vice-chariman, three vice-chairmen, secretary and treasurer. The duties of each officer are as follows:

Chairman: Acts as the presiding officer, supervises the convention staff, appoints committees for special functions, and acts as chairman of the Executive Committee. He is also an ex officio nonvoting member of all substantive committees.

First vice-chairman: Presides in the absence of the chairman, performs other duties as designated, serves on the Executive Committee and serves as a nonvoting member of the Rules, Credentials and Ethics Committee.

Three vice-chairmen: Preside in the absence of the chairman and first vice-chairman when needed, serve on the Executive Committee, and each serves as a nonvoting member on one of the following procedural committees: Style and Drafting, Legislative Liaison and Transitional Measures, and Public Information.

Secretary: Carries out all duties pertaining to the official records of the convention, serves on the Executive Committee, is responsible for calling the roll and reading all proposals and other items of business to the convention, and handles the printing and distribution of official convention papers and documents.

Treasurer: Responsible for the convention budget and financial transactions and serves on the Executive Committee.

A list of convention officers is on page 7.

Convention Staff

The constitutional convention, unlike its 1921 predecessor, will be supported by a full-time staff, including professional researchers with the capability of studying constitutional and legal provisions and of providing

research material to the committees and subcommittees.

The convention was empowered under Act 2 of 1972 to hire a research director to supervise at least 14 full-time research assistants. The assistants must have at least a bachelor's degree and 1 year of law school or comparable experience.

By the third week of February most of the authorized staff had been hired, equipment had been procured, the assembled working papers of the 1970-71 Louisiana Constitutional Revision Commission had been transferred, and the research staff had begun its work.

In addition, the research staff is to consist of four research supervisors, who are to be the deans or their designees of the LSU, Tulane, Loyola and Southern University law schools; 11 legislators appointed by the Governor (six from the House, five from the Senate) and four members of the Louisiana State Law Institute. No compensation is to be paid to these staff members for their service.

The chief clerk and the sergeant at arms, and their respective staffs were hired to assist in conducting the convention. Both positions are appointed by the chairman, subject to the approval of the convention, and both have important roles in the day-to-day operations of the convention.

The chief clerk, who is not permitted to be a delegate, is the chief administrator and parliamentarian of the convention. All the duties of the secretary may be delegated to the clerk except service on the Executive Committee and certification of official papers.

The sergeant at arms and his assistants are charged with the primary responsibility of maintaining order and decorum in the convention and committee proceedings, insuring that absent delegates are reminded to attend convention and committee meetings, signing for and delivering delegates' correspondence and assisting the convention and committee chairmen as needed.

A list of key staff members is on page 7.

Public Access to the Convention

Convention and committee meetings and hearings are open to the public and news media. Convention and Committee of the Whole proceedings are to be recorded verbatim and transcribed. Committee procedures may be recorded verbatim. The Executive Committee may hold executive sessions when considering personnel matters, but no action may be taken during executive session. Such sessions are open to all delegates but not to the public or news media.

The convention rules provide a designated area for news media when the convention is in session, but state that only delegates and staff members will be allowed on the convention floor during sessions.

Committees and subcommittees are authorized to hold meetings and hearings at places throughout the state as they desire, and the rules require committees to hold public hearings on those items which may go into the constitution.

Committee Meetings

Committee meetings can be called by the chairman or a majority of the committee members, but at least 4 days' notice of the meeting must be

given committee members when the convention is not in session. At least 24 hours' notice must be given for meetings called while the convention is in session.

Notice of committee meetings must be filed with the secretary of the convention. Persons interested in being notified of committee meetings can request the secretary to notify them of such meetings. See the "Where To Find it Guide," page 55.

Information about convention and committee meetings will also be available through the news media.

Writing the Constitution

Convention rules establish the procedure for drafting and voting on constitutional provisions, including a timetable, which is shown on page 6. Those propositions intended to become a part of the constitution will be called "proposals." Matters of general interest, which are not intended to be part of the constitution will be called "resolutions."

A proposal may be introduced by a delegate or delegates or by a committee on behalf of a majority of its membership.

Committee proposals prepared and approved by the several committees prior to July 5, 1973, shall constitute the first proposals to be introduced in the convention. No proposals may be introduced by delegates or committees after the first 60 days following July 5, 1973. Amendments to proposals may be submitted at any time.

All proposals must go through three readings, which are to take place on three separate days. The introduction of a proposal, when it is first read to the convention by the secretary, is called the first reading.

After the first reading, proposals are referred by the chairman to the appropriate substantive committee, which begins the second reading. Referrals of proposals to committees are to take place on the day following introduction. All proposals must have a public hearing before committee action may be taken, and such hearings are required to be publicized. After hearings and deliberation, committees will report the proposals to the convention in one of the following manners: favorably, unfavorably, with amendments, without action, without action with recommendation that they be referred to another committee or reported by substitute. The convention then votes to approve, reject or return for reconsideration the committee reports. If a proposal is approved, it is then sent to the Committee on Style and Drafting and engrossed (putting the proposal into revised form).

The third reading precedes final passage and enrollment. A proposal that is passed (by affirmative vote of at least 67 of the 132 convention delegates) is then enrolled, referred once more to the Committee on Style and Drafting, approved in its finally styled form, and enrolled.

Convention rules specify minimum time limits for delegates to receive and familiarize themselves with the contents of the proposals. Printed copies of proposals must be distributed to the delegates at least 48 hours before final action may be taken on a proposal.

If any amendments are offered, they are to be submitted in writing, printed and distributed to all delegates before being voted upon.

After all proposals have gone

through the above process and been individually adopted and put into the finished document, the final draft of the entire constitution must be approved by a majority of the delegates. The convention is authorized to submit, in addition to the proposed draft constitution, any alternative proposals that it deems advisable, so that the voters may be able to exercise their choice on individual controversial issues instead of voting for or against the entire document.

The proposed final draft and alternatives must be forwarded to the Governor on or before January 4, 1974, and he will decide whether to call a special election for approval of the new constitution or have it included in the 1974 general (congressional) election. The Governor's decision is to be announced before February 3, 1974. In any case, the latest that voting may occur on the adoption of the new constitution is November 4, 1974, with the constitution, if ratified, to become effective no later than midnight December 24, 1974.

Convention Timetable

January 5, 1973	Convention convened, organized, adopted rules and adjourned.
January 5, 1973–July 5, 1973	Staff hired and proposals prepared on constitutional provisions. Committees and delegates file proposals with the assistance of staff, as needed.
June 22, 1973	Deadline for mailing draft of committee proposals to delegates.
July 5, 1973	Convention reconvenes, and proposals are introduced with those from committees having first priority.
July 5, 1973–September 3, 1973	Committee and delegate proposals introduced and processed. No Proposals may be introduced after September 3.
July 5, 1973–January 4, 1974	All draft proposals are debated, hearings are held and the constitution is put into final draft form.
January 4, 1974	Deadline for submitting draft of proposed constitution to Governor.
February 3, 1974	Deadline for Governor to announce whether a special election will be called for constitutional ratification or whether it will be a part of the next general election.
November 4, 1974*	Next general election (congressional) at which proposed constitution can be submitted for voter ratification.
November 24, 1974*	Deadline for promulgation of election results.
December 24, 1974*	New constitution, if ratified, becomes effective at midnight.

*Governor may call a special election prior to November 4, 1974. If ratified, would become effective on date of proclamation of new constitution, if ratified, becomes effective on date of proclamation of promulgates election results. General election laws provide that returns are to be promulgated within 10 to 20 days after the election.

Officers, Staff and Committees

The following is a listing of officers elected by the convention, key staff members and a roster of each convention committee.

OFFICERS

Chairman: E. L. "Bubba" Henry
First Vice Chairman: Ruth Loyd Miller
Vice Chairman: Thomas A. Casey
Vice Chairman: Avery C. Alexander
Vice Chairman: Chris J. Roy
Secretary: Moise W. Dennery
Treasurer: Herman Joseph "Monday" Lowe

KEY STAFF MEMBERS

Chief Clerk: David Poynter
Sergeant-at-Arms: Richard Barrios
Research Director: Norma Duncan
Public Information Officer: Bob Pellegrin

CONVENTION COMMITTEES

The convention committees are grouped below in three major categories—steering committees, procedural committees and substantive committees—and the roster includes the officers and members of each committee. Committee assignments of individual delegates can be found on pages 14 to 21.

Steering Committees

EXECUTIVE COMMITTEE

Acts as the executive board of the convention, assists the Chairman as needed and acts as the committee on convention personnel and hiring, budget, facilities, grants and assistance,and purchases.

Chairman: E. L. "Bubba" Henry
Members: John A. Alario, Jr.
Avery C. Alexander
Thomas A. Casey
Norman Edward Carmouche
Lawrence A. Chehardy
Ralph L. Cowen
Moise W. Dennery
R. Harmon Drew
Gordon Flory
Frank Fulco
Louis Landrum, Sr.
Herman Joseph "Monday" Lowe
Ruth Loyd Miller
Autley Benjamin Newton
Samuel B. Nunez, Jr.
Arthur J. Planchard
Chris J. Roy
Perry Segura
John R. Thistlethwaite
Anthony Joseph Vesich, Jr.
Shady R. Wall
Lantz Womack

COMMITTEE ON COMMITTEES

Selects the delegates to serve on all other committees.

Chairman: E. L. "Bubba" Henry
Members: Joseph Edward Anzalone, Jr.
James Thompson Burns
Walter James Champagne, Jr.
Ralph L. Cowen
Errol David Deshotels
Edward Joseph D'Gerolamo
H. M. "Mutt" Fowler
Kenneth Dale Kilpatrick
Walter I. Lanier, Jr.
Gordon J. Martin
Louis George Riecke, Sr.
Jasper K. Smith
Novyse E. Soniat
Richard S. Thompson
Joseph Francis Toomy
F. D. "Dan" Winchester

COMPOSITE COMMITTEE

Holds public hearings throughout the state to solicit public views on constitutional issues and generate public interest and support for the convention. (Membership includes chairmen of all substantive committees.)

Chairman: James L. Dennis
Members: Robert J. Aertker
Cecil R. Blair
E. L. "Bubba" Henry
Alphonse Jackson, Jr.
Louis Joseph Lambert, Jr.
Chalin Octave Perez
Benjamin B. "Sixty" Rayburn
Tom Stagg

COORDINATING COMMITTEE

Considers any issues of overlap and/or conflict among substantive committees and makes recommendations to resolve them. It shall also assure that each provision of the 1921 constitution shall be considered by at least one substantive committee. (Membership includes chairmen of all substantive committees.)

Chairman: E. L. "Bubba" Henry
Members: Robert J. Aertker
Cecil R. Blair
James L. Dennis
Alphonse Jackson, Jr.
Louis Joseph Lambert, Jr.
Ruth Loyd Miller
Chalin Octave Perez
Benjamin B. "Sixty" Rayburn
Tom Stagg

Procedural Committees

LEGISLATIVE LIAISON AND TRANSITIONAL MEASURES

Maintains liaison with the legislative branch and Louisiana Law Institute and provides for coordination of the transition of subject matter from the constitution to appropriate laws.

Chairman: Edward F. LeBreton, Jr.
Vice Chairman: Mary Zervigon
Members: Edward Joseph D'Gerolamo
R. Harmon Drew
Calvin C. Fayard
Henry G. Hardee, Jr.
Johnny Jackson, Jr.
Louis Joseph Lambert, Jr.
Walter I. Lanier, Jr.
Conway LeBleu
Edward N. Lennox
Robert Jackson Munson
Benjamin B. "Sixty" Rayburn
Jasper K. Smith
Richard S. Thompson
Kendall L. Vick
Lantz Womack

PUBLIC INFORMATION

Considers and implements measures to inform the people on the convention. It shall plan and implement the report to be given to the voters of Louisiana on the convention's work and direct the effort to obtain approval of the new constitution and the form and manner of presentation.

Chairman: Patrick A. Juneau, Jr.
First Vice Chairman: John Clyde Fontenot
Second Vice Chairman: Joe N. Silverberg
Secretary: Judy Gardner Dunlap
Members: Robert J. Aertker
Philip Olden Bergeron
Ethan J. Chatelain
Norman E. "Pete" Heine
Kenneth Dale Kilpatrick

Louis George Reicke, Sr.
Charles E. Roemer, III
Dorothy M. Taylor
Harold Joseph Toca
Joseph Francis Toomy
Risley Claiborne Triche
Shady R. Wall

RULES, CREDENTIALS AND ETHICS

Considers rules, credentials of delegates, questions of ethics, news media and employees, and any procedural disputes referred to it by the chairman of the convention.

Chairman: James L. Stovall
Vice Chairman: Walter Gregory Arnette, Jr.
Secretary: Heloise C. Corne
Members: Clyde F. Bel, Sr.
Donald T. "Boysie" Bollinger
Rudolph M. Elkins
Gordon Flory
J. K. Haynes
James A. McDaniel
Pegram J. Mire
Lawrence B. Sandoz, Jr.
Varyon C. Shannon
Alvin D. Singletary
Tom Stagg
Thomas A. Velazquez
George Ethel Warren

STYLE AND DRAFTING

Controls literary style, consistency arrangement and numbering. The committee shall have authority to rephrase or regroup proposed language, but not to change the sense or purpose of any proposal.

Chairman: Albert Tate, Jr.
Vice Chairman: Max N. Tobias
Secretary: Emmett Asseff
Members: John L. Avant, Sr.
David Conroy
James L. Dennis
Camille F. Gravel, Jr.
Anthony Joseph Guarisco, Jr.
R. Gordon Kean, Jr.
Donald Gene Kelly
Chalin Octave Perez
Anthony Mark Rachal, Jr.
Earl Joseph Schmitt
J. Burton Willis

Substantive Committees

BILL OF RIGHTS AND ELECTIONS

Considers the preamble, bill of rights, human rights, obligations of citizenship, distribution of powers, suffrage and elections, the amendment process and future constitutional conventions.

Chairman: Alphonse Jackson, Jr.
First Vice Chairman: Judy Gardner Dunlap
Second Vice Chairman: Anthony Joseph Guarisco, Jr.
Members: Louis "Woody" Jenkins
Chris J. Roy
Novyse E. Soniat
Ford E. Stinson
Kendall L. Vick
Shady R. Wall
Gerald N. Weiss

EDUCATION AND WELFARE

Considers public education, welfare, consumer affairs, civil service, labor and industry.

Chairman: Robert J. Aertker
Vice Chairman: Anthony Mark Rachal
Secretary: Matthew R. Sutherland
Members: Minos H. Armentor
Norman Edward Carmouche
Heloise C. Corne
Ralph L. Cowen
Gordon Flory
Bill Parker Grier
J. K. Haynes
Felix Eugene Hernandez
Eual Joseph Landry, Sr.
J. Kenneth Leithman
Edward N. Lennox
Louis George Riecke, Sr.
Horace C. Robinson
Perry Segura
Joe N. Silverberg
John R. Thistlethwaite
Harold Joseph Toca
Mary E. Wisham

EXECUTIVE DEPARTMENT

Considers the executive department, reorganization, term of the governor and other elected officials, and impeachment.

Chairman: Tom Stagg
Vice Chairman: Elmer R. Tapper
Secretary: Hilda Brien
Members: Mack Abraham
Avery C. Alexander
Joseph Edward Anzalone, Jr.
Walter Gregory Arnette, Jr.
Emmett Asseff
Moise W. Dennery
Stanwood R. Duval, Jr.
Camille F. Gravel
James L. Stovall

JUDICIARY

Considers the judiciary, tenure and selection of judges, the department of justice, district attorneys, sheriffs, clerks of court and coroners.

Chairman: James L. Dennis
Vice Chairman: Ambroise H. Landry
Secretary: Philip Olden Bergeron
Members: John L. Avant, Sr.
Clyde F. Bel, Sr.
James Thompson Burns
Errol David Deshotels
R. Harmon Drew
Wendell Haynes Gauthier
Donald Gene Kelly
Richard H. Kilbourne
Gordon J. Martin
Jessel M. Ourso, Sr.
Lawrence b. Sandoz, Jr.
Albert Tate, Jr.
Max N. Tobias, Jr.
Anthony Joseph Vesich, Jr.
J. Burton Willis

LEGISLATIVE POWERS AND FUNCTIONS

Considers the legislative department, apportionment, qualifications and regular and special sessions.

Chairman: Cecil R. Blair
Vice Chairman: Calvin C. Fayard
Secretary: Gary M. O'Neill
Members: Thomas A. Casey
Frank Fulco
Paul David Ginn

Patrick A. Juneau, Jr.
Kenneth Dale Kilpatrick
Louis Landrum, Sr.
Edward F. LeBreton, Jr.

LOCAL AND PAROCHIAL GOVERNMENT

Considers local and parochial government, home rule, special d icts, consolidation of governments and inte overnmental cooperation.

Chairman: Chalin Octave Perez
Vice Chairman: I. Jackson "Jack" Burson, Jr.
Vice Chairman: Joseph A. Conino
Vice Chairman: Johnny Jackson, Jr.
Vice Chairman: Terry Ray Reeves
Secretary: R. Gordon Kean, Jr.
Members: Harvey W. Cannon, Jr.
Ethan J. Chatelain
Edward Joseph D'Gerolamo
H. M. "Mutt" Fowler
Joseph I. Giarrusso, Sr.
George Dewey Hayes
Norman E. "Pete" Heine
Walter I. Lanier, Jr.
Varyon C. Shannon
James E. Stephenson
Dorothy M. Taylor
Joseph Francis Toomy
Frank Joseph Ullo
Mary Zervigon

NATURAL RESOURCES AND ENVIRONMENT

Considers public lands, minerals, water resources, wildlife, environmental concerns, recreation and agriculture.

Chairman: Louis Joseph Lambert, Jr.
Vice Chairman: Robert Jackson Munson
Secretary: Alvin D. Singletary
Members: Donald T. "Boysie" Bollinger
James George Derbes
Rudolph M. Elkins
Richard P. Guidry
Henry G. Hardee, Jr.
Wellborn Jack
Conway LeBleu
Thomas W. Leigh
Ruth Loyd Miller
P. Lynn Perkins
Richard S. Thompson
Thomas A. Velazquez
George Ethel Warren
Lantz Womack

REVENUE, FINANCE AND TAXATION

Considers revenue, finance, taxation, assessors and assessment, exemptions, state debts and management of state funds.

Chairman: Benjamin B. "Sixty" Rayburn
Vice Chairman: Frank Millard Edwards
Secretary: Charles E. Roemer, III
Members: John A. Alario, Jr.
Charles Allen Badeaux
James H. Brown, Jr.
Walter James Champagne, Jr.
Lawrence A. Chehardy
David Conroy
J. D. De Blieux
John Clyde Fontenot
Herman Joseph "Monday" Lowe
James A. McDaniel
Claude Mauberret, Jr.
Pegram J. Mire
Autley Benjamin Newton

Samuel B. Nunez, Jr.
Arthur J. Planchard
Earl Joseph Schmitt
Charles O. Slay

Jasper K. Smith
Risley Claiborne Triche
F. D. "Dan" Winchester

Roster of Delegates

The table on the following pages lists the constitutional convention delegates by either the districts from which they were elected or the groups they were appointed by the Governor to represent. The table also lists the convention committee assignments of each delegate. The following code was used to designate the committees.

Steering Committees:

Code	Committee Name
E-1	Executive Committee
E-2	Committee on Committees
E-3	Coordinating Committee
E-4	Composite Committee

Procedural Committees:

Code	Committee Name
P-1	Rules, Credentials, Ethics
P-2	Style and Drafting
P-3	Legislative Liaison and Transition
P-4	Public Information

Substantive Committees:

Code	Committee Name
S-1	Bill of Rights and Elections
S-2	Executive Department
S-3	Legislative Powers and Functions
S-4	Judiciary
S-5	Local and Parochial Government
S-6	Revenue, Finance and Taxation
S-7	Education and Welfare
S-8	Natural Resources and Environment

Elected Delegates

District Number	District Description*	Delegate	Committee Assignments
1	Caddo (Wards 1, 2, 3, 5, 6 and 9)	Jasper K. Smith	E-2, P-3, S-6
2	Caddo (Ward 4—precincts 1, 5, 31, 39, 40, 57, 65, 67 and 71)	Alphonse Jackson, Jr.	E-3, E-4, S-1
3	Caddo (Ward 4—precincts 2, 25, 30 32, 33, 34, 37, 41, 42, 43, 44, 45, 46, 54, 55 and 58)	Wellborn Jack	S-8
4	Caddo (Ward 4—precincts 3, 4, 35, 36, 38, 52, 53, 59, 60, 61, 69 and 70)	Varyon C. Shannon	P-1, S-5
5	Caddo (Ward 4—precincts 12, 13, 16 20, 21, 22, 23, 24, 26, 27, 49, 50, 51, 56, 62, 63 and 68)	Tom Stagg	E-3, E-4, P-1, S-2
6	Caddo (Ward 4—precincts 6, 7, 8, 9 10, 11, 14, 15, 17, 18, 19, 28, 29, 47, 48, 64 and 66)	Frank Fulco	E-1, S-3
7	Caddo (Wards 7 and 8), DeSoto (Wards 1, 2, 4 and 6)	Emmett Asseff	P-2, S-2
8	Bossier (Ward 2)	Ford E. Stinson	S-1
9	Webster (Ward 3), Bossier (Wards 1, 3, 4, 5 and 6)	Charles E. Roemer III	P-4, S-6



Convention Districts

District Number	District Description*	Delegate	Committee Assignments
10	Webster (Wards 1, 2, 4 and 5)	R. Harmon Drew	E-1, P-3, S-4
11	Claiborne, Union (Wards 1, 2, 3, 4, 5, 6, 7, 9 and 10)	Bill Parker Grier	S-7
12	Lincoln	Kenneth Dale Kilpatrick	E-2, P-4, S-3
13	Ouachita (Wards 6 and 7), Bienville, Jackson	E. L. "Bubba" Henry *Convention Chairman*	Voting member of steering and non-voting member of substantive committees.
14	Morehouse (Wards 1, 2, 3, 4, 7, 8 and 9), Union (Ward 8), Ouachita (Wards 1 and 2)	Paul David Ginn	S-3
15	Ouachita (Wards 5 and 8)	Shady R. Wall	E-1, P-4, S-1
16	Ouachita (Ward 10—less precinct 13)	James L. Dennis	E-3, E-4, P-2, S-4
17	Ouachita (Wards 3, 4 and 9, Ward 10—precinct 13)	Thomas W. Leigh	S-8
18	Morehouse (Wards 5, 6 and 10), West Carroll, East Carroll	Rudolph M. Elkins	P-1, S-8
19	Richland (Wards 1, 2, 3, 4 and 6), Madison	James A. McDaniel	P-1, S-6
20	Richland (Wards 5 and 7), Franklin, Tensas	Lantz Womack	E-1, P-3, S-8
21	Catahoula, Concordia	James H. Brown, Jr.	S-6
22	Winn, Caldwell, LaSalle (Wards 1, 2, 4 and 7)	Terry Ray Reeves	S-5
23	Natchitoches	Donald Gene Kelly	P-2, S-4
24	DeSoto (Wards 3, 5, 7 and 8), Red River, Sabine	H. M. "Mutt" Fowler	E-2, S-5
25	Grant, LaSalle (Wards 3, 5, 6 and 8), Rapides (Wards 5, 7 and 8)	Richard S. Thompson	E-2, P-3, S-8
26	Rapides (Ward 1—precincts 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 24, 25, 26, 29)	Chris J. Roy *General Vice Chairman*	E-1, S-1
27	Avoyelles (Ward 1), Rapides (Wards 9, 10 and 11)	Charles O. Slay	S-6
28	Avoyelles (Wards 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11)	P. Lynn Perkins	S-8
29	Rapides (Ward 1—precincts 2, 3, 17, 18, 20, 21, 22, 23, 27 and 28, Wards 2, 3, 4 and 6)	Cecil R. Blair	E-3, E-4, S-3
30	Vernon (Wards 1, 2, 3, 5, 6 and 8), Beauregard (Ward 2)	Felix Eugene Hernandez	S-7
31	Vernon (Wards 4 and 7), Beauregard (Ward 3)	James E. Stephenson	S-5
32	Allen, Beauregard (Wards 1, 4, 5, 6, 7 and 8), Calcasieu (Wards 5 and 6)	Errol David Deshotels	E-2, S-4
33	Calcasieu (Ward 4—less Westlake, Ward 7)	Arthur J. Planchard	E-1, S-6

District Number	District Description*	Delegate	Committee Assignments
34	Calcasieu (Ward 1, Ward 3—precincts 16, 17, 18, 19, 26, 27, 28, 29, 33, 34, 39, 41 and 42)	Gerald N. Weiss	S-1
35	Calcasieu (Ward 3—precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24 and 40, Ward 4—City of Westlake)	Mack Abraham	S-2
36	Calcasieu (Ward 3—precincts 25, 30, 31, 32, 35, 36, 37 and 38), Cameron	Conway LeBleu	P-3, S-8
37	Calcasieu (Wards 2 and 8), Jefferson Davis	Walter Gregory Arnette, Jr.	P-1, S-2
38	Evangeline, St. Landry (Ward 7)	John Clyde Fontenot	P-4, S-6
39	St. Landry (Wards 2, 3, 4 and 5), Lafayette (Ward 6)	Walter James Champagne, Jr.	E-2, S-6
40	St. Landry (Ward 1, Ward 6—precinct 4)	Lawrence B. Sandoz, Jr.	P-1, S-4
41	St. Landry (Ward 6—less precinct 4), Acadia (Wards 2, 3, 4 and 7)	I. Jackson "Jack" Burson, Jr.	S-5
42	Acadia (Wards 1, 5 and 6)	Ralph L. Cowen	E-1, E-2, S-7
43	Lafayette (Wards 1, 2, 4, 8, 9 and 10)	Patrick A. Juneau, Jr.	P-4, S-3
44	Lafayette (Wards 5 and 7, Ward 3—precincts 1, 2, 3, 4, 5, 14, 15, 16, 17, 18, 19 and 26)	Heloise C. Corne	P-1, S-7
45	Lafayette (Ward 3—precincts 6, 7, 8, 9, 10, 11, 12, 13, 20, 21, 22, 23, 24 and 25)	Ethan J. Chatelain	P-4, S-5
46	St. Martin (Wards 1, 2, 3, 4 and 5), Iberia (Ward 4)	J. Burton Willis	P-2, S-4
47	Vermilion (Wards 3, 4, 5, 6, 8 and 9)	Henry G. Hardee, Jr.	P-3, S-8
48	Iberia (Wards 5 and 6)	Minos H. Armentor	S-7
49	St. Mary (Wards 1, 2 and 7), Iberia (Wards 1, 2, 3, 7, 8 and 9), Vermilion (Wards 1, 2 and 7)	Perry Segura	E-1, S-7
50	St. Mary (Wards 3, 4, 5, 8 and 10), St. Martin (Ward 6)	F. D. "Dan" Winchester	E-2, S-6
51	Terrebonne (Wards 4, 8, 9 and 10), St. Mary (Wards 6 and 9)	Anthony Joseph Guarisco, Jr.	P-2, S-1
52	Terrebonne (Wards 1 and 2, Ward 3—precincts 1, 2, 3, 4, 5, 6, 15, 16, 17, 18, 19, 21 and 22)	Stanwood R. Duval, Jr.	S-2
53	Terrebonne (Ward 3—precincts 7, 8, 9, 10, 11, 12, 13, 14, 20, 20A and 23, Wards 5, 6 and 7), Lafourche (Ward 11)	Charles Allen Badeaux	S-6
54	Lafourche (Wards 4, 7, 8, 9 and 10), Jefferson (Ward 11)	Donald T. "Boysie" Bollinger	P-1, S-8
55	Lafourche (Wards 1, 2, 3, 5 and 6)	Walter I. Lanier, Jr.	E-2, P-3, S-5
56	St. Charles, St. John the Baptist (Wards 1, 2 and 3)	Eual Joseph Landry, Sr.	S-7
57	St. James (Wards 1, 2, 3, 4, 7, 8, 9 and 10), St. John the Baptist (Wards 4, 5 and 6)	Gordon J. Martin	E-2, S-4

District Number	District Description*	Delegate	Committee Assignments
58	Ascension (Wards 1, 2, 3 and 4), Assumption, St. James (Wards 5 and 6)	Norman Edward Carmouche	E-1, S-7
59	Livingston (Wards 3, 5 6, 7 and 10), Ascension (Wards 5, 6, 7, 8, 9 and 10)	Louis Joseph Lambert, Jr.	E-3, E-4, P-3, S-8
60	Iberville, West Baton Rouge (Wards 1 and 2)	Jessel M. Ourso, Sr.	S-4
61	West Baton Rouge (Wards 3, 4, 5, 6 and 7), Pointe Coupee	Herman Joseph "Monday" Lowe — *Treasurer*	E-1, S-6
62	West Feliciana, East Feliciana, East Baton Rouge (Ward 2—precincts 6 and 7)	Richard H. Kilbourne	S-4
63	East Baton Rouge (Ward 2—precincts 3, 5, 8, 10, 13, 14, 18, 19, 20 and 21)	George Dewey Hayes	S-5
64	East Baton Rouge (Ward 2—precincts 1, 2, 4, 9, 11, 12, 15, 16, 17 and 23)	Gary M. O'Neill	S-3
65	East Baton Rouge (Ward 1—precincts 36 and 54, Ward 3—precincts 1, 7, 8, 9, 12, 14, 15 and 18)	Harvey W. Cannon, Jr.	S-5
66	East Baton Rouge (Ward 1—precincts 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 50, 58, 61 and 62)	Louis "Woody" Jenkins	S-1
67	East Baton Rouge (Ward 1—precincts 1, 2, 3, 4, 6, 9, 11, 12, 13, 15, 16, 17, 45, 51, 67 and 68)	Mary E. Wisham	S-7
68	East Baton Rouge (Ward 1—precincts 7, 8, 10, 14, 32, 35, 37, 38, 39, 40, 41, 48, 59, 63, 64, 65, 66 and 70)	J. D. De Blieux	S-6
69	East Baton Rouge (Ward 1—precincts 33, 34, 49, 52, 53, 55, 57, 60, 71 and 72, Ward 3—precincts 11, 13, 16 and 17)	Robert J. Aertker	E-3, E-4, P-4, S-7
70	East Baton Rouge (Ward 1—precincts 42, 43, 44, 46, 47, 56 and 69, Ward 3—precincts 3, 4, 5, 6, 10 and 19)	R. Gordon Kean, Jr.	P-2 S-5
71	St. Helena (Wards 1, 2, 3 and 4), Livingston (Wards 1, 2, 4, 8, 9 and 11)	Calvin C. Fayard, Jr.	P-3, S-3
72	St. Helena (Wards 5 and 6), Tangipahoa (Wards 1, 2, 3, 4, 5 and 6)	Joseph Edward Anzalone, Jr.	E-2, S-2
73	Tangipahoa (Wards 7 and 8)	Autley Benjamin Newton	E-1, S-6
74	Washington (Wards 1, 2, 6 and 9), St. Tammany (Wards 1, 2, 3, 4, 5 and 10)	James Thompson Burns	E-2, S-4
75	Washington (Wards 3, 4, 5, 7 and 8)	Benjamin B. "Sixty" Rayburn	E-3, E-4, P-3, S-6
76	St. Tammany (Wards 6, 7, 8 and 9)	Alvin D. Singletary	P-1, S-8
77	Jefferson (Ward 9—precincts 4, 5, 6, 7, 8, 9A, 9B, 9C, 9D, 9E, 9F, 9G and 10C)	Edward Joseph D'Gerolamo	E-2, P-3, S-5

District Number	District Description*	Delegate	Committee Assignments
78	Jefferson (Ward 9—precincts 1, 2 3A, 3B, 3C, 3D, 3E, 10D, 11, 12 and 13)	Wendell Haynes Gauthier	S-4
79	Jefferson (Ward 9—precincts 10A and 10B, Ward 10—precincts 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28, Ward 8—precincts 37 and 37B)	James L. Stovall	P-1, S-2
80	Jefferson (Ward 8—precincts 17A, 19A, 19B, 20A, 21, 21A, 23, 25A, 28, 30 and 31, Ward 10—precincts 5, 6, 10, 11, 15, 16 and 17)	Joseph A. Conino	S-5
81	Jefferson (Ward 8—precincts 1, 2, 3, 4, 6, 7, 8, 11, 12, 13, 14, 15, 16, 18 and 22, Ward 10—precincts 1, 2, 3, 4, 7, 8, 9, 12, 13 and 14)	David Conroy	P-2, S-6
82	Jefferson (Ward 7—precincts 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, Ward 8—precincts 24, 25, 26, 27, 27A, 29A, 34, 35, 36, 37A, 38 and 39)	Harold Joseph Toca	P-4, S-7
83	Jefferson (Ward 5—precincts 1, 1A, 2 and 3, Ward 4—precincts 10, 11, 12, 13, 14, 15, 16, 17 and 18)	John A. Alario, Jr.	E-1, S-6
84	Jefferson (Ward 4—precincts 1, 2, 3, 4, 5, 6, 7, 7A, 8, 9 and 9A, Ward 3—precinct 7)	Frank Joseph Ullo	S-5
85	Jefferson (Ward 3—precincts, 1, 2, 3, 4, 5 and 6, Ward 2—Gretna, Ward 1—Gretna)	Joseph Francis Toomy	E-2, P-4, S-5
86	Orleans (Ward 15—precincts 14B, 14C, 17, 17A, 18, 18A, 18B, 16, 19 and 19A), Jefferson (Ward 1—less Gretna, Ward 2—less Gretna)	Matthew R. Sutherland	S-7
87	Orleans (Ward 15—precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11A, 12, 12A, 13, 13A, 14, 14A, 15, 15A and 17B)	Earl Joseph Schmitt	P-2, S-6
88	Jefferson (Ward 7—precincts 1, 2, 3 and 4), Orleans (Ward 17—precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 13A, 14, 15, 16 and 17, Ward 16—precincts 7, 8 and 9)	Novyse E. Soniat	E-2, S-1
89	Orleans (Ward 16—precincts 1, 1A, 2, 3, 4, 5 and 6, Ward 14—precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 18A, 19 and 21)	Moise W. Dennery *Secretary*	E-1, S-2
90	Orleans (Ward 11—precinct 19, Ward 12—precincts 17, 18, 19 and 20, Ward 13, Ward 14—precincts 20, 22, 23, 24, 24A, 25, 26 and 26A)	Thomas A. Casey *General Vice Chairman*	E-1, S-2
91	Orleans (Ward 12—precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, Ward 11—precincts 14, 15, 16, 17 and 18)	Louis Landrum, Sr.	E-1, S-3
92	Orleans (Ward 10—precincts 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Ward 11—precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13)	Edward F. LeBreton, Jr.	P-3, S-3

District Number	District Description*	Delegate	Committee Assignments
93	Orleans (Wards 1 and 2, Ward 3—precincts 1, 4 and 6, Ward 4—precinct 2, Ward 10—precincts 13 and 14)	Avery C. Alexander *General Vice-Chairman*	E-1, S-2
94	Orleans (Ward 17—precincts 18, 18A, 19, 19A, 20 and 21, Ward 4—precincts 9, 10, 10A, 11, 12, 13, 13A, 14, 14A, 15, 16, 16A, 17, 17A, 18, 18A, 19, 20, 20A, 21, 21A, 22 and 23, Ward 5—precincts 12, 13, 14, 15 16, 17, 18 and 19, Ward 6—precincts 8 and 9)	Anthony Joseph Vesich, Jr.	E-1, S-4
95	Orleans (Ward 3—precincts 3, 3A, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Ward 4—precincts 3, 4, 5, 6, 7 and 8, Ward 5—precincts 6, 7, 8, 9, 10 and 11)	Claude Mauberret, Jr.	S-6
96	Orleans (Ward 5—precincts 1, 2, 3, 4 and 5, Ward 6—precincts 1, 2, 4, 5, 6 and 7, Ward 7—precincts 1, 2, 4, 4A, 5, 6 and 7, Ward 8—precincts 1, 2, 4, 5 and 6)	James George Derbes	S-8
97	Orleans (Ward 7—precincts 8, 9, 9A, 10, 11, 12, 13, 14, 15, 16, 17, 17A, 18, 19, 20, 20A, 21, 27, 27A, 27B and 28)	Thomas A. Velazquez	P-1, S-8
98	Orleans (Ward 7—precincts 22, 23, 24, 25, 26, 26A, 28A, 29, 30, 31, 32, 33, 33A, 34, 35, 36, 36A, 37, 38, 38A, 39, 40, 41 and 42, Ward 8—precincts 26, 27, 28 and 29)	Joseph I. Giarrusso, Sr.	S-5
99	Orleans (Ward 8—precincts 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 25A, 26A, 27A and 30, Ward 9—precincts 29A, 30, 30A, 31, 31A, 31B, 31C, 31D, 31E, 33, 33A, 42, 42A and 43)	Louis George Riecke, Sr.	E-2, P-4, S-7
100	Orleans (Ward 9—precincts 32, 34, 35, 36, 36A, 36B, 37, 37A, 38, 38A, 39, 39A, 39B, 40, 40A, 40B, 41, 43A, 44, 44A and 45)	Philip Olden Bergeron	P-4, S-4
101	Orleans (Ward 8—precincts 7, 8, 9, 10, 11, 12 and 14, Ward 9—precincts 21, 23, 24, 25, 25A, 27, 28, 28A, 28B, 28C and 29)	Johnny Jackson, Jr.	P-3, S-5
102	Orleans (Ward 9—precincts 3, 3A, 3B, 5, 5A, 6, 6A, 6B, 6C, 6D, 8, 8A, 10, 22 and 26)	George Ethel Warren	P-1, S-8
103	Orleans (Ward 9—precincts 1, 1A, 2, 4, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20), St. Bernard (Wards 1 and 2)	Elmer R. Tapper	S-2
104	St. Bernard (Wards 3, 4 and 5)	Samuel B. Nunez, Jr.	E-1, S-6
105	Plaquemines, St. Bernard (Wards 6 and 7), Jefferson (Ward 6)	Chalin Octave Perez	E-3, E-4, P-2, S-5

*NOTE: The wards referred to in the district descriptions are those existing as of the date of the census, April 1, 1970, except in Jefferson and Caddo where ward lines were recently revised. All precincts cited are those currently in effect.

Appointed Delegates

Appointed to Represent	Delegate	Committee Assignments
Agriculture	Robert Jackson Munson	P-3, S-8
Civil Service	Anthony Mark Rachal, Jr.	P-2, S-7
Consumers	Hilda Brien	S-2
Education	Horace C. Robinson	S-7
Industry	Edward N. Lennox	P-3, S-7
Judiciary	Albert Tate, Jr.	E-4, P-2, S-4
Labor	Gordon Flory	E-1, P-1, S-7
Law Enforcement	Frank Millard Edwards, Jr.	S-6
Professions	Ruth Loyd Miller *First Vice Chairman*	E-1, E-3, S-8
Public-At-Large	Clyde F. Bel, Sr.	P-1, S-4
	Lawrence A. Chehardy	E-1, S-6
	Judy Gardner Dunlap	P-4, S-1
	Richard P. Guidry	S-8
	Camille F. Gravel, Jr.	P-2, S-2
	J. K. Haynes	P-1, S-7
	Norman E. "Pete" Heine	P-4, S-5
	Ambroise H. Landry	S-4
	J. Kenneth Leithman	S-7
	Pegram J. Mire	P-1, S-6
	Joe N. Silverberg	P-4, S-7
	John R. Thistlethwaite	E-1, S-7
	Risley Claiborne Triche	P-4, S-6
	Kendall L. Vick	P-3, S-1
	Mary Zervigon	P-3, S-5
Racial Minorities	Dorothy M. Taylor	P-4, S-5
Wildlife and Conservation	John L. Avant, Sr.	P-2, S-4
Youth	Max N. Tobias, Jr.	P-2, S-4

Characteristics of Delegates

Compared to the 1972 Legislature, the constitutional convention membership is older, has had more prior experience in elective and appointive public office, includes more women, is better educated and includes a higher proportion of blacks and ıblicans (12 blacks compared with ıt in the Legislature and six Repul ans compared with four in the Legislature).

Public Service Experience

About 20 percent of the delegates are currently serving in the state Legislature, and 30 percent have had some legislative experience. Many delegates have served in more than one public service position. While a smaller proportion of the delegates have held elective local offices than those in the 1972 Legislature, a far larger proportion have served on boards and commissions, in political party offices and in local public service posts. The representation of such groups as tax assessors, law enforcement officials and educators has contributed heavily to

the local public service employment categories.

Public Service Experience of Delegates	Elected	Appointed	Total
Boards/commissions	24	12	36
City/town council	6	2	8
La. House of Representatives	30	3	33
La. Senate	7	0	7
Mayors	4	2	6
Party positions	22	6	28
Police juries	4	0	4
School boards	5	1	6
Oth . types of public service employment:			
Local	36	13	49
State	7	7	14
Federal	7	2	9

Age

Delegates' ages range from 19 to 72, with a median age of 49 and an average age of 46. The median and average age of members of the 1972 House of Representatives was 44, while the median age of members of the 1972 Senate was 42 and the average age was 44. The convention delegate appointed to represent youth is 25 years old; there are five other delegates younger than 25.

Age of Delegates	Elected	Appointed	Total
Under 30	17	1	18
30-39	18	4	22
40-49	20	8	28
50-59	33	11	44
60-69	13	2	15
Over 70	1	0	1
No response	3	1	4

Occupation

As is the case with the Legislature, the largest occupational group is made up of attorneys. The convention has a smaller proportion of persons involved in finance, real estate and retail sales, while representation from the fields of education and public employment is double that of the Legislature. "Other" includes such diverse fields as industrial hygiene, the ministry, mortuary science and newspaper publishing.

Professions of Delegates	Elected	Appointed	Total
Agriculture	8	1	9
Attorneys	42	5	47
Education	9	3	12
Financial	4	1	5
Housewives	1	2	3
Insurance	3	1	4
Medicine	4	0	4
Public employees	8	9	17
Real estate	3	1	4
Retail sales	4	0	4
Students	4	0	4
Other	15	4	19

Religion

The delegates' religious preferences follow a pattern similar to that of members of the Legislature; close to half are Catholic, while Baptists and Methodists comprise the next most numerous groups.

Religious Preferences of Delegates	Elected	Appointed	Total
Baptist	20	4	24
Catholic	46	13	59
Episcopalian	9	1	10
Jewish	2	2	4
Methodist	15	4	19
Presbyterian	6	1	7
Other	3	0	3
No response	4	2	6

Education

Convention delegates are an extremely well educated group, 93 having

graduated from college and another 30 having had some college education. Only three delegates have had no formal education beyond the high school level. College graduates include 51 with law degrees and 7 with medical degrees, and several have undertaken graduate studies, with 15 masters' and 1 doctorate degree having been completed thus far. Fourteen of the delegates have attended advanced business or professional schools as a part of their career development.

Sex

The ratio of females to males is five times greater in the constitutional convention than in the Legislature, with a higher proportion of appointed than elected delegates being women.

Sex of Delegates	Elected	Appointed	Total
Female	5	5	10
Male	100	22	122

Biographical Information On Delegates

The following biographical information was provided by the convention delegates and has not been verified by PAR. Most of the sketches include the following information: age, occupation, marital status, education, work experience, military service, service as a public official and affiliation with organizations. Among the most frequently used abbreviations in the biographical sketches are: ABA (American Bar Association), Am. (American), AMA (American Medical Association), Assn. (association), B. A. (bachelor of arts), bd. (board member), B. S. (bachelor of science), chm. (chairman), com. (committee), comm. (commission), Demo. (Democrat), dir. (director), div. (division), exec. (executive), J. D. (doctor of laws), KC (Knights of Columbus), La. (Louisiana), LL. B. (bachelor of laws), M. A. (master of arts), M. S. (master of science), nat'l (national), pres. (president), rep. (representative), Repub. (Republican), sec. (secretary), soc. (society), treas. (treasurer), univ. (university), YMBC (Young Men's Business Club).

Committee assignments of the convention delegates can be found on pages 14 to 21.



MACK ABRAHAM

District 35; Demo. Born 3/23/25; retail grocer (1967 to date) and registered professional engineer; married (Mildred Harlan). Graduate, Lake Charles public schools; attended McNeese Jr. Coll. and Notre Dame; B. S., LSU. Engineer (1948-66); U. S. Navy (1943-46). Governor's Consumer Advisory Bd. (1972 to date). Past pres. and bd., La. Retail Food Dealer Assn.; sec. and bd., Affiliated Food, Inc.; Chamber of Commerce; bd., parish United Appeals; bd., La. Retailers Assn.; chm., Episcopal Day School Bd. Bd., Episcopal Church. Address: 1620 Legion St., Lake Charles 70601. Phone: (318) 433-1970.



ROBERT J. AERTKER

District 69; Demo. Born 6/22/16; parish superintendent of schools (1956 to date); married (Caralea Hatchell). Graduate, New Orleans public schools; B. A., M. A., LSU. Teacher, coach, principal (1946-56); chief warrant officer, U. S. Army (1941-46), teacher (1937-41). Parish Bd. of Health (1956 to date). Past pres., Baker Civic Club; past v. pres., Lions Club; Red Cross; Am. Legion; Phi Delta Kappa; La. Teachers' Assn. Elder, moderator, Presbyterian Church. Address: Box 2950, Baton Rouge 70821. Phone: (504) 926-2790.



JOHN A. ALARIO, JR.

District 83; Demo. Born 9/15/43; owner, operator income tax service (1966 to date); married (Ree Williamson). Graduate, Jefferson public schools; B. A., Southeastern La. Univ. Accountant (1966-72); teacher (1965-66). State rep. (1972 to date); city Demo. Exec. Com. (1965 to date); parish Demo. Exec. Com. (1968-72). Nat'l Soc. of Public Accountants; Am. Soc. of Federal Tax Accountants; La. Accountants Assn.; KC; Volunteer Fire Co.; Lions. Catholic. Address: 603 Fourth St., Westwego 70094. Phone: (504) 347-3525.



AVERY C. ALEXANDER

District 93. Minister and insurance broker. Attended Xavier, Southern and Tulane Universities. Delegate and Credential's Committee Member, 1972 Demo. Nat'l Convention. Address: 2921 Philip St., New Orleans 70113. Phone: (504) 895-7716.



JOSEPH EDWARD ANZALONE, JR.

District 72; Demo. Born 8/18/35; attorney (1964 to date); married (Jeanette Lee). Graduate, Independence public schools; B. S.,

Southe: ı La. Univ.; J. D., Loyola Univ. Law cle.. (1963-64). Episcopalian. Address: 135 E. Oak St., Amite 70422. Phone: (504) 748-7192.



MINOS H. ARMENTOR

District 48; Demo. Born 11/18/14; attorney (1936 to date); married (Mina Bower). Graduate, New Iberia public schools; J. D., LSU. City attorney (1964 to date); La. Coordinating Council for Higher Education (1969-72); past chm., parish Demo. Exec. Com.; past pres., parish Bd. of Supervisors of Elections; LSU Bd. of Supervisors (1958-72); assistant district attorney (1941-54); state representative (1940-41). Omicron Delta Kappa; past pres., Rotary Club. Catholic. Address: Box 1418, New Iberia 70560. Phone: (318) 369-3826.

No Picture Available

WALTER GREGORY ARNETTE, JR.

District 37; Repub. Born 12/22/47; law student; married (Jane LeBouef). Graduate, Jennings public schools; attended USL; attending LSU Law School (scheduled to graduate, May 1973). Oil field worker and welder (1969); U. S. Army (1969-70). Catholic. Address: 421 Fifth St., Jennings 70546. Phone: (318) 824-1101.



EMMETT ASSEFF

District 7; Demo. Born 5/15/16. Graduate, Mansfield public schools; B. A., M. A., LSU; Ph. D., Univ. of N. C. in political science and history; attended Harvard. Deputy parish registrar of voters (1971-72); dir., La. Legislative Council (1952-65); research associate, PAR (1951-52); dir., LSU Bureau of Governmental Research (1949-51); U. S. Army (1941-45); has taught political science at several colleges and universities. 3-year trustee, VFW; chm., Voice of Democracy Program. Episcopalian. Address: Box 379, Mansfield 71052. Phone: (318) 872-3976.



JOHN L. AVANT, SR.

Appointed by Governor to represent wildlife and conservation; Demo. Born 7/27/26; attorney (1949 to date); married (Genevieve Rhorer). Graduate, La. schools, attended Alma Coll.; LL. B., LSU. U. S. Navy (1944-46). Order of the Coif; Omicron Delta Kappa; House of Delegates, La. Bar Assn.; Bd. of Governors, La. Trial Lawyers Assn.; La. Cattlemen's Assn.; Am. Legion. Baptist. Address: P. O. Drawer 3778, Baton Rouge 70821. Phone: (504) 348-1401.



CHARLES ALLEN BADEAUX

District 53; Demo. Born 8/28/28; v. pres. and mgr., loan co. (1961 to date); married Carolyn Guedry). Graduate, Houma public schools; attended LSU. Assistant bank cashier (1949-61); assistant food store mgr. (1945-49). Parish school bd. (1956-70), pres. (1967-70). Elks. Catholic. Address: Box 1464, Houma 70360. Phone: (318) 872-2604.



CLYDE F. BEL, SR.

Appointed by Governor to represent public at large; Demo. Born 10/10/05; merchant and realtor; married (Carmelita G. Killelea). Graduate, New Orleans parochial schools and Soule Business Coll. V. pres., Savings and Loan Assn.; managing dir., veterans housing facility (1948-53). City constable (1953 to date); Demo. State Central Com. (1939-63); state rep. (1944-48). Bd. member, district v. pres. and past pres., La. City Marshals and City Constables Assn.; past pres., Nat'l Venetian Blinds Assn. of Am.; past pres., Southwestern Venetian Blinds Assn.; chm., Affiliated Council Demo. Organization (1966 to date); legislative com., Chamber of Commerce; YMBC; KC; Nat'l Assn. of Firefighters; Fraternal Order of Police; Elks; Freret Business Men's Assn. Catholic. Address: 4439 S. Galvez St., New Orleans 70125. Phone: (504) 822-3736 or 523-3258.



PHILIP OLDEN BERGERON

District 100; Demo. Born 3/5/54; coll. student. Graduate, New Orleans parochial schools; attending LSU in New Orleans. Catholic. Address: 4818 Cardenas Dr., New Orleans 70127. Phone: (504) 242-6362.



CECIL R. BLAIR

District 29; Demo. Born 4/2/16; cattle farmer, real estate and pest control business; married (Susie George). Graduate, Sicily Island, La. public schools; B. S., La. Tech; M. S., LSU. U. S. Navy (1944-46). State senator (1960-64; 1966 to date); state rep. (1952-56). Kiwanis; Am. Legion. Deacon and supt. of Senior Citizens Dept., Baptist Church. Address: Lecompte 71346. Phone: (318) 776-3241.

No Picture Available

DONALD T. "BOYSIE" BOLLINGER

District 54; Repub. Born 9/11/49; v. pres., shipyard (1971 to date); married (Latheresha Gardner). Graduate, Lockport schools; B. A., USL. Marine broker (1971 to date); shipyard superintendent (1970-71); part-time boat operator (1967-70). Sec., Lions Club. Catholic. Address: Rt. 1, Box 663, Lockport 70374. Phone: (504) 532-2554.



HILDA BRIEN

Appointed by Governor to represent consumers; Demo. Born 11/8/20; housewife; married (Charles). Attended Nuremburg, Germany schools; Nursing degree, Heidelberg Univ. Graduate nurse (1941-67). Parish Bd. of Elections (1972 to date). Col. on Governor Edwin Edwards' staff (1972). Received U. S. Naturalization May 29, 1952. Catholic. Address: Box 81, DuLarge Rt., Houma 70360. Phone: (504) 872-9675.



JAMES H. BROWN, JR.

District 21; Demo. Born 5/6/40; attorney; married (Alma-Dale Campbell). LL. B., Tu-

lane. Officer, La Nat'l Guard. La. Bicentennial Com.; state senator (1972 to date). Past dist. commander, Am. Legion; dist., La. and Am. Bar Assns.; Am. Judicature Soc.; bd., Ouachita Valley Council, Boy Scouts of Am.; Lion; Rotarian; La. Jaycees; Farm Bureau; Cattlemen's Assn. Presbyterian. Address: Box 797, Ferriday 71334. Phone: (318) 757-4545.



JAMES THOMPSON BURNS

District 74; Demo. Born 6/29/00; attorney (1922 to date); married (Lois Coney). Graduate, Covington schools; LL. B., Tulane. Pres., land co. (1966 to date); U. S. Army (1918). District attorney (1936-60); state rep. (1932-36); past chm., Parish Hospital Bd. Past scout exec.; past chm., Red Cross; Mason; Am. Legion; parish and La. Bar Assns. Elder, Presbyterian Church. Address: Box 94, Covington 70433. Phone: (504) 892-1420.



I. JACKSON "JACK" BURSON, JR.

District 41; Demo. Born 2/12/39; attorney (1965 to date); married (Myra Bordelon). Graduate, Basile public schools; B. A., USL; LL. B., Tulane; Woodrow Wilson Fellow in Am. Government and Constitutional Law, Georgetown Univ. (1961-62). Elevator operator and clerical assistant, U. S. Senate (1961-62); warehouseman; law clerk; IRS summer intern. Assistant district attorney (1973 to date); parish school bd. (1969 to date). Past dist. deputy, grand knight and recorder, KC; past v. pres., Chamber of Commerce; past pres., Jaycees; pres., parish Bar Assn.; parish chm., Am. Red Cross; past v. pres. and pres., USL student body; outstanding graduate award, USL (1961); law school award for excellence in constitutional law; Order of the Coif; Tulane Law Review. Catholic. Address: Box 985, Eunice 70535. Phone: (318) 457-4286.



HARVEY W. CANNON, JR.

District 65; Demo. Born 7/19/33; supervisor of attendance and child welfare for parish school bd. (1968 to date); married (Mary Elaine McCoy). Graduate, Baton Rouge public schools; B. S., M. Ed., LSU; graduate work, Southern Ill. Univ. and LSU. Teacher and coach (1958-68); U. S. Army (1956-58). Demo. State Central Com. (1972 to date); parish councilman (1968-72), mayor pro tempore (June 1972). District v. pres., La. Police Jury Assn.; Nat'l Assn. of County Officials; La. Teachers' Assn.; Phi Delta Kappa educational fraternity; LSU Alumni Federation; Nat'l Academy of Political and Social Science. Baptist. Address: 12622 LaMargie Dr., Apt. A-H, Baton Rouge 70815. Phone: (504) 275-1618 or 926-2790 (ext. 349).

No Picture Available

NORMAN EDWARD CARMOUCHE

District 58; Demo. Born 2/4/06; school superintendent (1946 to date); married (Anna Belle Gianelloni). Graduate, Napoleonville public schools; B. A., M. A., LSU. Parish supervisor of instruction and attendance (1938-46); teacher (1927-38). Phi Kappa Phi; past pres., La. School Superintendent's Assn.; legislative consultant, La. Teachers' Assn.; PAR. Catholic. Address: Box 217, Napoleonville 70390. Phone: (504) 369-7252.



THOMAS A. CASEY

District 90; Demo. Born 7/4/31; attorney (1956 to date); married (Kathy Brady). Graduate, New Orleans parochial schools; Ph. B., J. D., Loyola Univ. U. S. Army Military Police (1952-54). State rep. (1968 to date). Alliance for Good Government Legislator of the Year Award for New Orleans (1972); Blue Key; Who's Who in Am. Coll. and Univ.; pres., Jesuit High School Parents Club; past pres., Ursuline Academy Advisory Council and Jaycees; past chm., Loyola Law Alumni; past v. pres., Carrollton Business Men's Assn.; city, La. and Am. Bar Assns. Catholic. Address: 435 Audubon Blvd., New Orleans 70125. Phone: (504) 866-4027.



WALTER JAMES CHAMPAGNE, JR.

District 39; Demo. Born 9/9/20; merchant, cattleman, farmer, banker; married (Myrtis Thibeaux). Attended Leonville public schools; graduate, Opelousas public schools; B. S., LSU; graduate, Air Force Statistical School, Harvard Graduate School of Business Administration; graduate, Information and Education School, Univ. of Paris. Bank v. pres. and dir.; U. S. Air Force (5 years). City and parish Demo. Exec. Com. Past pres. and bd., La. Angus Assn., Evangeline Angus Assn. and parish Cattlemen's Assn.; past pres., LSU Alumni Assn., Coll. of BA; past pres. and v. pres., parish LSU Alumni; past chm. and v. chm., St. Landry Bi-Racial Com. Catholic. Address: Box 6, Port Barre 70577. Phone: (318) 585-2310 or 585-2335.



ETHAN J. CHATELAIN

District 45; Demo. Born 8/13/15; realtor, merchant; married (Helena Steib). Graduate, Alexandria schools; attended USL. Owner, specialties co. (1951 to date); real estate investor (1950 to date); owner, operator, city bus system (1945-66); U. S. Army Medical Corps (1942-45). Parish planning and zoning comm. (1953-60), chm. (1960); city Demo. Exec. Com. (1958-62). City Outstanding Citizen's Award (1955); past pres., Chamber of Commerce and Kiwanis Club. Catholic. Address: Box 3744, Lafayette 70501. Phone: (318) 232-3898.



LAWRENCE A. CHEHARDY

Appointed by Governor to represent public at large, Demo. Born 3/10/21; attorney (1943 to date) and parish tax assessor (1965 to date); married (Louise Ramoneda). Graduate, New Orleans schools; LL. B., Tulane. Assistant attorney general (1948-52). City, parish, La. and Am. Bar Assns., La. State Assessor Assn.; YMBC; Optimist. Catholic. Address: 211 Mulberry Dr., Metairie 70005. Phone (504) 831-2030.

A. THOMAS COLTEN

NOTE: He was originally appointed by the Governor to represent the public at large, but he later resigned as a delegate to the convention. The governor then appointed Norman E. "Pete" Heine to fill the vacancy.



JOSEPH A. CONINO

District 80; Demo. Born 8/17/20; attorney (1961 to date); married (Mae Evelyn Moragas). Graduate, New Orleans schools; B. B. A., Tulane; J. D., Loyola Univ.; graduate work, Wharton School of Finance, Univ. of Pa. Real estate investments (1951 to date); insurance and real estate business (1951-61); U. S. Navy (1942-45). Appeals agent, selective service (1967-70); judge ad hoc for Parish Court (1970). Citizenship counselor, boy scouts; past chm. and bd., Chamber of Commerce; House of Delegates, La. Bar Assn.; sec.-treas., parish Bar Assn.; past pres., Kiwanis Club; past 1st v. pres., YMBC. Catholic. Business address: 1920 Jefferson Hwy., New Orleans 70121. Phone: (504) 834-9010.



DAVID CONROY

District 81, Demo. Born 12/27/29, attorney (1952 to date); married (Ann Gundelson). Graduate, New Orleans schools; B. A., J. D., Tulane Univ. U. S. Army (1952-54). Phi Beta Kappa; Order of the Coif; Omicron Delta Kappa; Who's Who in South and Southwest; past chm. of Corporation Law Section and past member of House of Delegates, La. Bar Assn.; past pres. and bd., New Orleans Speech and Hearing Center; bd., Louise S. McGehee School and Family Service Soc.; 1st v. pres., St. Thomas More Catholic Lawyers Assn.; Beverly Knoll Civic Assn. Catholic. Address: 437 Dorrington Dr., Metairie 70005. Phone: (504) 581-3333.



HELOISE C. CORNE

District 44; Demo. Teacher; widowed. Graduate, Carencro schools; B. A., USL; attended Univ. of Angers, France. Pres. and past v. pres., State Assn. of Classroom Teachers; bd., La. Teachers' Assn.; past pres., parish assn. of classroom teachers and parish teachers assn.; parliamentarian and past v. pres., Alpha Delta Kappa. Catholic. Address: 521 E. University, Lafayette 70501. Phone: (318) 232-4231.



RALPH L. COWEN

District 42; Demo. Born 9/5/19; farmer (1946 to date); married (Katherine Jenkins). Graduate, Crowley public schools; B. S., LSU. U. S. Army (1941-46). Pres., La. Rice Promotion Bd. Farmer of the Year (1972); pres., La. Rice Council; v. pres., Rice Council for Market Development; past pres., Rotary Club, International Rice Festival and parish Cattlemen's Assn. Methodist. Address: Box 61, Midland 70557. Phone: (318) 783-6496.



J. D. De BLIEUX

District 68; Demo. Born 9/12/12; attorney (1938 to date); married (Dorothy Lepine). Attended Caldwell public schools; graduate Ouachita Parish public schools; A. A., Ouachita

chita Parish Jr. Coll.; LL. B., LSU. U. S. Army (1942-45). State senator (1964 to date and 1956-60); chm., La. State Advisory Com. to U. S. Comm. on Civil Rights. Knight of St. Gregory; bd., Community Advancement, Inc.; United Commercial Travelers; Chamber of Commerce; PAR; Lion; Am. Legion; Amvets; KC; Serra Club. Catholic. Address: Box 3574, Baton Rouge 70821. Phone: (504) 344-2686.



EDWARD JOSEPH D'GEROLAMO

District 77; Demo. Born 1/7/23; construction exec. (1969 to date); married (Madelyn Negrotto). Graduate, Kenner public schools; B. S., Loyola Univ. Administrative assistant to parish pres., (1958-60), owner, rental property (1954-72); tax consultant and restaurant owner (1947-54). State rep. (1972 to date); city mayor (1962-70); city alderman (1954-62). Parish Man of the Month Award; Lions Club Civic Award; past pres., Lions Club and Athletic Club; YMBC; Driftwood Civic Assn. Catholic. Address: No. 25 Emil Ave., Kenner 70062. Phone: (504) 729-3584 or 722-3919.



MOISE W. DENNERY

District 89; Demo. Born 4/29/15; attorney (1937 to date); married (Phyllis Sugarman). Graduate, New Orleans private schools; B. A., J. D., Tulane. Military transport pilot (1943-44). Chm., La. Educational Television Authority (1971 to date); La. Civil Service Comm. (1952-62), chm. (1956-62); sec., New Orleans Charter Comm. (1950-52). La. Civil Service League Lemann Award (1964); pres., local Bar Assn. (1972-73); honorary chm., La. Civil Service League; past pres., Bureau of Governmental Research and Metropolitan Goals Council; past chm., Isidore Newman School. Jewish. Address: 505 Hibernia Bldg., New Orleans 70112. Phone: (504) 524-3666.



JAMES L. DENNIS

District 16; Demo. Born 1/9/36; district judge (1972 to date); married (Camille Smith). Graduate, Monroe public schools; B. A., La. Tech; J. D., LSU; 1972 graduate, Nat'l Coll. of the State Judiciary. Attorney (1962-72); U. S. Army (1955-57). State rep. (1968-72); coordinator, La. Constitutional Revision Comm. (1970-72). Former managing ed., La. Law Review; Order of the Coif; Jaycee Outstanding Young Man (1971); honorary chm., Muscular Dystrophy and March of Dimes; former member, La. Bar Assn. House of Delegates; past pres., 4th District Jr. Bar Assn.; pres., PTA. Bd. of Stewards, Methodist Church. Address: 300 St. John St., Monroe 71201. Phone: (318) 322-7912.



JAMES GEORGE DERBES

District 96; Demo. Born 11/30/44; attorney, newspaper publisher (1970 to date); married (Jeannette Gottlieb). Graduate, New Orleans schools; B. B. A., J. D., Tulane Univ. Assistant district attorney for juvenile court (1970 to date), New Orleans Legal Assistance Staff (1968-69); dir., Release on Recognizance Program (1968); Com. for Juvenile Code (1970-72); pres., New Orleans Release on Recognizance Program. Bd., Vieux Carre Property Owners & Assoc. Catholic. Address: 315 Richards Bldg., New Orleans 70112. Phone: (504) 522-8706.



ERROL DAVID DESHOTELS

District 32; Demo. Born 7/14/4?; attorney (1969 to date); married (Jacqueline Rozas). Graduate, Mamou public schools; B. A., J. D., LSU. Aerial surveyor (1965-66); highway dept. employee (1964-65). Assistant district attorney (1972 to date); city attorney and city prosecutor (1969 to date). State dir., Jaycees; sec.-treas., parish Bar Assn.; La. and Am. Bar Assns.; inst. rep., Boy Scouts. Address: Box 399, Oberlin 70655. Phone: (318) 639-4309.



R. HARMON DREW

District 10; Demo. Born 2/5/17; attorney (1941 to date); married (Margaret Elam). Graduate, Minden Public schools; attended La. Tech.; J. D., LSU. State rep. (1972 to date), Demo. State Central Com. (1968 to date); city judge (1949-54); city attorney and assistant district attorney (1946-49). Past commander, VFW; Am. Legion; Farm Bureau; parish and La. Bar Assns. Presbyterian. Address: Box 793, Minden 71055. Phone: (318) 377-0476.



JUDY GARDNER DUNLAP

Appointed by Governor to represent public at large; Demo. Born 11/26/40; homemaker; married (Dr. W. H.). Graduate, Gilbert public schools; graduate, USL; completed internship in dietetics, Univ. of Okla. Medical Center. Dietitian (1963-64). La. and Am. Dietetic Assns.; Woman's Auxiliary to East Baton Rouge Parish Medical Soc. Methodist. Address: 3721 Floyd Dr., Baton Rouge 70808. Phone: (504) 343-7761.



STANWOOD R. DUVAL, JR.

District 52; Demo. Born 2/8/42; attorney (1966 to date); married (Virginia Horsley). Graduate, Houma Public schools; B. A., J. D., LSU. Assistant city attorney (1970-72). City-parish Outstanding Jaycee Award (1969); past pres., Focus, Inc. (good government organization) and Jaycees; past v. pres., Kiwanis Club; bd., St. Matthews School. Episcopalian. Address: Box 1568, Houma 70360. Phone: (504) 876-6410.



FRANK MILLARD EDWARDS, JR.

Appointed by Governor to represent law enforcement; Demo. Born 10/12/35; sheriff (1968 to date); married (Dora Jean Miller). Graduate, Amite public schools; B. A., LL. B., LSU. Attorney (1960-68). Governor's Revenue Sharing Com. (1973). Sec.-treas., La. Sheriff's Assn.; La. Bar Assn.; parish Cattlemen's Assn.; La. and parish Farm Bureau. Catholic. Address: Tangipahoa Parish Sheriff's Office, Box 727, Amite 70422. Phone: (504) 345-6150.



RUDOLPH M. ELKINS

District 18; Demo. Born 9/5/21; farmer (1943 to date); married (Helen Luttrel). Graduate, Farmerville public schools; attended Northeast Jr. Coll.; B. S., LSU. Dairy farmer (1945-69); teacher (1944-45); agricultural extension employee (1943-44); Farmers Home Administration (1942-43). Dir., Northeast Power Coop., Farmers Home Administration and Farm Bureau; past dir., Northeast Pure Milk Assn.; Outstanding Young Farmer of La. (1960); Master Farm Family (1966). Church of God. Address: Rt. 4, Oak Grove 71263. Phone: (318) 428-4498.



CALVIN C. FAYARD, JR.

District 71; Demo. Born 8/12/43; attorney (1969 to date); married (Cynthia Felder). Graduate, Springfield public schools; B. S., Southeastern La. Univ.; J. D., LSU. La. Air Nat'l Guard (1968 to date); research assistant and staff attorney, La. Legislative Council (1966-72). City attorney (1970 to date); chm., parish Demo. Exec. Com. (1971 to date). Bd. of directors, Southeastern Alumni Assn. and Chamber of Commerce; sec.-treas., district Bar Assn., La. and Am. Bar Assns.; past chm., parish March of Dimes. Methodist. Address: Box 233, Livingston 70754. Phone: (504) 686-7206.



GORDON FLORY

Appointed by Governor to represent labor; Demo. Born 8/19/22; exec. v. pres., La. AFL-CIO (1956 to date); married (Dorothy L. Smith). Graduate, Shreveport public schools; attended Northeast Univ. Glass plant worker (1941-62). State Advisory Com. on Manpower Development and Training; Governor's Com. on Employment of the Handicapped; La. Parolee Rehabilitation Com.; La. Comm. on Human Relations, Rights and Responsibilities; La. Labor Mediation Bd.; La. Labor-Management Comm. of Inquiry; Capital Area Health Planning Com.; La. Comm. on Intergovernmental Relations; La. Consumers' Advisory Council; La. Special Com. to Study Automobile Insurance; La. Advisory Council on Employment Security; La. Advisory Com. on Vocational Education. Local community service planning council; bd., Community Advance., Inc.; Soc. for Advancement of Management; Southwest Educational Development Laboratory; local civic center com. Baptist. Address: Box 3477, Baton Rouge 70821. Phone: (504) 343-5747.



JOHN CLYDE FONTENO.

District 38; Demo. Born 1/11/48; attorney (1972 to date); married (Julia Dimiterchik). Graduate, Ville Platte public schools; B.S., J.D., LSU. U. S. Army (1972). Catholic. Address: 225 Court St., Ville Platte 70586. Phone: (318) 363-5535 or 363-2765.



H. M. "MUTT" FOWLER

District 24; Demo. Born 2/13/18; insurance agent (1951 to date); married (Katherine Posey). Graduate, Red River Parish public schools; attended Northwestern State Univ. Employed by credit assn. (1946-51); U. S. Army (1941-45). State representative (1972 to date); mayor (1953-72). Past master, Masonic Lodge; Shriner; past pres. and past district governor, Lions Club; Coordinating Development Council of Northwest Louisiana; v. chm., Steering Com., Twin Valley RC&D. Chm., Official Bd., Methodist Church. Address: Box 405, Coushatta 71019. Phone: (318) 932-5597.



FRANK FULCO

District 6; Demo. Born 8/26/08; co-owner, printing co. and newspaper publisher; married (Josie Tritico). Graduate, Shreveport public schools; attended Tulane. State rep. (1956-72); police juror (1936-40). 3-term past pres., Nat'l Federation of Young Men's Club; past pres., Progressive Men's Club; past reg. v. pres., Jaycees; past pres., Optimist Club; Elks. Catholic. Address: 124 Atlantic, Shreveport 71105. Phone: (318) 868-0106.



WENDELL HAYNES GAUTHIER

District 78; Demo. Born 4/14/43; attorney (1970 to date); married (Anne Barrios). Graduate, Iota public schools; B. A., USL; graduate, Loyola Univ. School teacher (1965-69); U. S. Marine Corps Reserve (1961-67). Who's Who in Am. Coll. and Univ.; parish Bar Assn.; pres., Driver Education and La. Upgrade. Catholic. Address: 203 S. Jefferson Davis Pkwy., New Orleans 70119. Phone: (504) 482-1157.



JOSEPH I. GIARRUSSO, SR.

District 98; Demo. Born 9/15/23; pres., security services co. (1971 to date); married (Doris Loup). Graduate, New Orleans parochial schools, FBI Academy and Harvard Management Institute for Police Chiefs; attended Interpol School, Paris. City Superintendent of Police (1960-70); joined police department in 1946. Police Pension Bd.; Mayor's Com. on Crime and Delinquency; Mayor's Com. on Human Relations; Mayor's Com. on Traffic Safety; Orleans Parish Demo. Com.; La. Highway Safety Comm.; Exec. Com., International Assn. of Chiefs of Police; International House; pres. and founder, New Orleans Police Department Fraternal Order of Police; Rotarian; bd., Mercy Hospital, N. O. A. C. and Goodwill Industry; Comm. on Alcoholism for Greater New Orleans; Jaycees; YMBC; La. Civil Service League Lemann Award for Distinguished Service; Jaycee Award for Outstanding Service; Municipal Employee of the Year Award. Address: 6008 Cameron Blvd., New Orleans 70122. Phone: (504) 288-2364.



PAUL DAVID GINN

District 14; Demo. Born 8/13/51; student; single. Graduate, Bastrop public schools; attending Northeast La. Univ. (sched' led to

graduate May 1973). Salesman (1971); grocery cashier (1968 to date). District 14 delegate to 5th Congressional District Demo. Caucus (1972); District Attorney's Youth Advisory Council (1972 to date). Senator, Northeast Student Government Assn. (1971); v. chm., 5th Congressional District Constitutional Convention Delegates. Baptist. Address: 818 South Washington, Bastrop 71201. Phone: in Bastrop—(318) 281-5574 or 281-3865; in Monroe—(318) 325-6455.



CAMILLE F. GRAVEL, JR.

Appointed by Governor to represent public at large; Demo. Born 8/10/15; attorney (1940 to date); married (Katherine David). Graduate, Alexandria schools; attended Univ. of Notre Dame, LSU and Catholic Univ. of Am. U. S. Capitol Police Force (1937-39). La. Bd. of Tax Appeals (1972); Bd., La. Council on Human Relations (1965-68); La. Interdepartmental Health Policy Comm. (1967-68); General Counsel, La. Labor Comm. of Inquiry (1967); La. Advisory Com. on Civil Rights and Nat'l Advisory Bd. on Community Relations (1965-67); Governor's Advisory Comm. on La. Workmen's Compensation Laws and Tax Laws (1964-65); Demo. State Central Com. (1948-64); delegate to Demo. nat'l conventions (1956, 60, 64, 72); presidential elector (1952); attorney for La. Tax Comm. (1948-52); Nat'l Citizens Com. for Community Relations (1964-68); Who's Who in Am.; Knight of St. Gregory; Elk; Am. Legion; PAR; La. Civil Service League; Am. Trial Lawyers Assn.; La. Wildlife Federation, Inc.; KC. Catholic. Address: Box 1792, Alexandria 71301. Phone: (318) 442-0471.



BILL PARKER GRIER

District 11; Demo. Born 10/2/22; industrial hygienist (1967-72); single. Graduate, Okolona Ark. public schools; attended Henderson State Teachers Coll.; B. A., Univ. of N. C.; graduate work, Tulane. Oil producer (1954-66); U. S. Army (1943-46). 5-term pres., Farm Bureau; North Central La. Cattlemen's Assn.; Am. Legion. Methodist. Address: Box 147, Farmerville 71241. Phone: (318) 368-6211.



ANTHONY JOSEPH GUARISCO, JR.

District 51; Demo. Born 9/29/38; attorney (1966 to date); married (Sherry Perdue). Graduate, Morgan City parochial schools, B. S., Nicholls State Univ.; J. D., Loyola Univ. Part-time high school business law teacher (1972 to date). Jaycee Outstanding Young Man of Am. (1967); past pres., Loyola Student Bar Assn. and Nicholls State Univ. Alumni Federation; pres., parish Council on Alcoholism and Drug Abuse; La. and Am. Trail Lawyers Assns.; La. Bar Assn. Catholic. Address: Box 2727, Morgan City 70380. Phone: (504) 385-0950.



RICHARD P. GUIDRY

Appointed by Governor to represent public at large; Demo. Born 9/22/29; pres., tug service co. and cinema co.; v. pres., contracting co., real estate development co. and drive inn theater; married (Phyllis Guidry). Graduate, Lafourche Parish public schools; attended LSU. Bank bd. of dir. State rep. (1952-56; 1964 to date); House floor leader for governor (1964 to date); chm., House Judiciary B Com.; chm., La. Governmental Affairs Com.; Gulf State Marine Fisheries Compact; La. Superport Task Force; Coastal and Geodaic Survey; delegate to 1968 Nat'l Demo. Convention. Catholic. Address: Box 8, Galliano 70354. Phone: (504) 475-5290.



HENRY G. HARDEE, JR.

District 47; Demo. Born 12/12/19; businessman, farmer (1947 to date); married (Sue Lewis). Graduate, Gueydan public schools; B. S., LSU. U. S. Air Force (1942-46). City Demo. Exec. Com. (1965 to date); past pres., La. Rice Council. Bd., Gueydan Memorial Hospital; past v. pres., La. Farm Bureau. Methodist. Address: 405 Boatner St., Gueydan 70542. Phone: (318) 536-6000.



GEORGE DEWEY HAYES

District 63; Demo. Born 6/4/26; teacher (1950 to date); married (Mildred Wilson). Graduate, Clinton public schools; B. S., M. A., Southern Univ. Real estate broker (1958-72); treas., credit union (1955-72); U. S. Navy (1945-46). Treas., Assn. of Classroom Teachers; La. and Nat'l Education Assns. Baptist. Address: 1009 Progress Rd., Baton Rouge 70807. Phone: (504) 775-7699.



J. K. HAYNES

Appointed by Governor to represent public at large. Exec. sec., La. Education Assn. (1955 to date). Attended Bishop Coll. and Atlanta Univ. Pres. and field sec., LEA (1942-49); former teacher and principal. La. Dept. of Education's 100-Man Curriculum Study Committee; La. Higher Education Assistance Comm.; La. Coordinating Council for Higher Ed. Mason; Frontiers of America; bd., Community Advancement, Inc.; life member, Nat'l and La. Education Assns.; pres., Nat'l Council of Officers of State Teachers Assns.; bd., Bishop Coll.; recipient of numerous civic awards and citations for work in education and service to public. Bd., Baptist Church. Address: P. O. Box 73882, Baton Rouge 70807. Phone: (504) 356-2523.



NORMAN E. "PETE" HEINE

Appointed by Governor to represent public at large; Demo. Born 12/4/28; real estate and insurance business (1961 to date); married (Georgia Pilcher). Attended public schools in Baton Rouge; graduate, Jefferson Military Coll., Washington, Miss.; attended La. Coll. Service station owner (1953-61); utilities co. employee (1953); U. S. Air Force (1948-52). Mayor (1964 to date); alderman and mayor pro-tem (1956-64); Demo. Com. (1956-60). Past pres. and exec. com., La. Municipal Assn.; local Jaycees Outstanding Young Man of 1965; past pres., Lions Club; past pres., Kiwanis; VFW; volunteer fire department; PTA. Baptist. Address: 1721 Texas Ave., Baker 70714. Phone: (504) 775-3577



E. L. "BUBBA" HENRY

District 13; Demo. Born 2/10/36; attorney (1961 to date); married (Frances Turner). Graduate, Jonesboro public schools; B. A., Baylor Univ.; J. D., LSU. State rep. (1968 to date), speaker (1972 to date). Past dir.,

Lions Club; past pres., Jaycees; past bd. member, Young Lawyers Section, La. Bar Assn.; past member, La. Law Inst. Baptist. Address: P. O. Drawer 726, Jonesboro 71251. Phone: (318) 259-4164.



FELIX EUGENE HERNANDEZ

District 30; Demo. Born 8/30/07; merchant; married (Dorothy Nolan). Graduate, Leesville public schools; attended LSU. Pres. of farm supply, hardware and home building companies; bank bd.; U. S. Navy (1942-45). La. Veterans Affairs Comm.; La. Bd. of Commerce and Industry; chm., parish economic development council, library bd., planning comm. and bi-racial comm.; parish jury comm.; mayor (1958-62); state rep. (1952-56); city alderman at large and mayor pro-tem (1932-36). Mason; Shriner; Nat'l Advisory Bd., Assn. of the U. S. Army; bd., La. Forestry Assn.; past pres., La. Wildlife Federation; past district chm., Boy Scouts; past pres., Chamber of Commerce; CABL; PAR; Am. Legion; Nat'l Security Com., past state, district and post commander, and past member of Nat'l Council of Administration, VFW. Member and past chm., bd., Methodist Church. Address: 2315 Texas Rd., Leesville 71446. Phone: (318) 239-3497.



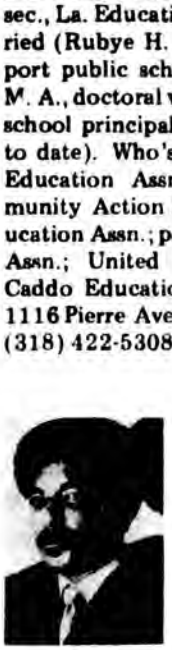
WELLBORN JACK

District 3; Demo. Born 11/26/07; attorney (1932 to date); married (Sue DeWitt). Graduate, Shreveport public schools; A. B., Centenary Coll.; LL. B., J. D., Tulane; attended Univ. of N. C. and Univ. of Southern Calif. Law School. State rep. (1940-64). La. Law Institute Council; city, La. and Am. Bar Assns.; Chamber of Commerce; Lion. Episcopalian. Address: 1625 Slattery Bldg., Shreveport 71101. Phone: (318) 424-3213.



ALPHONSE JACKSON, JR.

District 2; Demo. Born 11/27/27; asst. exec. sec., La. Education Assn. (1970 to date); married (Rubye H. McClure). Graduate, Shreveport public schools; B. A., Southern Univ.; M. A., doctoral work, N. Y. Univ. Elementary school principal (1951-70). State rep. (1972 to date). Who's Who (1968); state dir., Nat'l Education Assn.; bd., Caddo-Bossier Community Action Program; past pres., Nat'l Education Assn.; past 1st v. pres., La. Education Assn.; United Demo. Campaign; NAACP; Caddo Education Assn. Baptist. Address: 1116 Pierre Ave., Shreveport 71103. Phone: (318) 422-5308.



JOHNNY JACKSON, JR.

District 101; Demo. Born 9/19/43; exec. dir., Desire Community Center; married (Jean). Graduate, New Orleans public schools; B. A., Southern Univ.; attended LSU in New Orleans; completed training program in housing and community organizing. Community organizer (1965); employed by retail and catalog sales store (1961-65) and cab co. (1959-61). State rep. (1972 to date). Past v. pres., Desire Area Community Council and Sons of Desire; past bd. member, Total Community Action; v. pres., Desire School for Special Education. Baptist. Address: 2814 Clouet St., New Orleans 70126. Phone: (504) 947-5111.



LOUIS "WOODY" JENKINS

District 66; Demo. Born 1/3/47; journalist; married (Diane C. Aker). Graduate, Baton Rouge public schools; B. A., J. D., LSU. Owner, advertising agency (1972 to date); newspaper editor and publisher (1966-69); TV announcer (1965-66); radio announcer (1964-65). Chm., Comm. on Constitutional Revison of Demo. Party of La. (1972 to date); Demo. State Central Com. (1971 to date); state rep. (1972 to date); delegate, Demo. nat'l convention (1972). Nat'l chm., Am. Bar Assn. Com. on Service to Law Students; assistant editor, Am. Bar Assn. publication, "Docket Call"; parish chm., March of Dimes; bd., Lions Club. Methodist. Address: Box 52889, Baton Rouge 70805. Phone: (504) 357-4515 or 357-9874.



PATRICK A. JUNEAU, JR.

District 43; Demo. Born 12/13/37; attorney (1965 to date); married (Truley Chapman). Graduate, Lafayette public schools; attended USL; B. A., J. D., LSU; graduate, U. S. Army Adjutant General School. Law clerk (1962-65); Captain, U. S. Army (1960-62). Lake Martin Comm. (1970 to date); parish baseball comm. (1967 to date). U. S. Army Commendation Medal (1961); Omicron Delta Kappa; Chamber of Commerce; bd., La. Kidney Foundation, YMBC, Boy's Club and parish Bar Assn.; La. and Am. Bar Assns. Catholic. Address: Box 3527, Lafayette 70501. Phone: (318) 232-9700.



R. GORDON KEAN, JR.

District 70; Demo. Born 8/23/19; attorney (1948 to date); married (Eilleen Murphy). Graduate, Baton Rouge public schools; A. B., J. D., LSU. U. S. Armed Forces (1941-46). City-parish attorney (1950-69). Past pres., Chamber of Commerce and Rotary Club; chm., Municipal Legal Study Center, Southwestern Legal Foundation. Episcopalian. Address: Box 1588, Baton Rouge 70821. Phone: (504) 348-0951.



DONALD GENE KELLY

District 23; Demo. Born 5/23/41; attorney (1963 to date); married (Patricia Fulton). Graduate, Coushatta public schools; attended Northwestern State Univ.; LL. B., LSU Law clerk and investigator (1963-66). V. pres. and past sec.-treas., parish bar assn.; House of Delegates, La. Bar Assn. Baptist. Address: P. O. Box 70, Natchitoches 71457. Phone: (318) 352-2069.



RICHARD H. KILBOURNE

District 62; Demo. Born 8/30/12; attorney (1935 to date); married (Nan Dennard). Graduate, Clinton public schools; J. D., LSU. U. S. Army (1936). District attorney (1954-72); attorney to assist inheritance tax col-

lector (1940-48). Congress of Freedom, Inc. Liberty Award (1970-72); past master, Masonic Lodge; parish Bar Assn.; past member, House of Delegates, La. Bar Assn.; past pres., La. District Attorneys Assn.; Am. Conservative Union; Farm Bureau; Am. Security Council. Protestant. Address: Box 511, Clinton 70722. Phone: (504) 683-5205.



KENNETH DALE KILPATRICK

District 12; Demo. Born 6/24/28; funeral dir.; married (Anne Burford). Graduate, Farmerville public schools; attended La. Tech; graduate, Landig Coll. of Mortuary Science, completed specialized course in insurance and marketing, Southern Methodist Univ. Sec.-treas., life insurance co.; pres., funeral home co. and monument works co. State senator (1972 to date). Pres., La. Funeral Directors Assn.; past pres., Chamber of Commerce. Baptist. Address: Box 1038, Ruston 71270. Phone: (318) 255-7537.



LOUIS JOSEPH LAMBERT, JR.

District 59; Demo. Born 12/21/40; attorney (1967 to date); married (Mary Smith). Attended Ascension Parish public schools; graduate, Capital Page School, Washington, D. C.; B. A., LSU; LL. B., Loyola. School teacher (1964-65). State senator (1972 to date), Gonzales town attorney (1969 to date). Past chm., March of Dimes and United Givers Drives; La. and Am. Bar Assns.; La. City Attorney's Assn.; Jaycees; La. Land Title Assn. Methodist. Address: 306 S. Burnside St., Gonzales 70737. Phone: (504) 644-2881.



LOUIS LANDRUM, SR.

District 91. Minister. Attended Chicago Baptist Seminary, Union Theological Seminary, Grunewald School of Music and Southern Univ. Leadership Training Institute. Baptist. Address: 3024 Fourth St., New Orleans 70125. Phone: (504) 943-6313.



AMBROISE H. LANDRY

Appointed by Governor to represent public at large; Demo. Born 12/3/15; parish clerk of court (1952 to date); married (Althae M. Clement). Graduate, Thibodaux public schools. U. S. Air Force (1944-46). Municipal fire bd. Pres., International Assn. of Clerks, Recorders, Election Officials and Treasurers; past pres., Nat'l Assn. of Clerks and Recorders; past bd. member, La. Clerks Assn.; past Grand Knight, KC; past pres. and treas. of fire co. Catholic. Address: Box 390, Thibodaux 70301. Phone: (504) 447-3175 or 447-4841.



EUAL JOSEPH LANDRY, SR.

District 56; Demo. Born 1/9/04; retired principal; married (Caroline Montz). Graduate, Crowley public schools; B. S., M. S., LSU. Mgr., Country Club (1968-72); high school principal (1930-68); col., U. S. Air

Force (1941-46); coach and assistant principal (1924-30). Post commander, Am. Legion; La. Teachers' Assn.; Retired Teachers' Assn.; Retired Officers' Assn.; KC; past pres., parish Teachers' Assn.; past pres., Community Action Program; La. State Teachers' Legislative Com. Catholic. Address: Rt. 1, Box 208, Hahnville 70057. Phone: (504) 783-2003 (Luling).



WALTER I. LANIER, JR.

District 55; Demo. Born 2/28/37; attorney (1961 to date); married (Rita Claire McQueen). Graduate, Thibodaux public schools; B. S., LL. B., LSU. U. S. Army Judge Advocate General's Corps (1962-64); legal clerk for La. Supreme Court justice (1961). Assistant district attorney (1967-72). City Outstanding Young Man Award (1967); Outstanding Local Chapter Pres., La. Jaycees (1967); U. S. Army Commendation Medal (1964); past pres. and chaplain, Jeycees; v. pres. and past sec., Chamber of Commerce; past pres., parish Bar Assn.; parish Community Action Bd.; VFW; Am. Legion. Episcopalian. Address: Box 648, Thibodaux 70301. Phone: (504) 447-3713.



CONWAY LeBLEU

District 36, Demo. Born 10/4/18; cattleman, farmer; married (Virgie McCall). Graduate, Lake Charles public schools; attended McNeese Junior Coll. and Col. A. & M.; B. S., LSU. U. S. Air Force (1942-46); employed by petroleum companies (1938-). State rep. (1964 to date); Sabine River Authority; police juror (1956-60). Farm Bureau; Cattlemen's Assn.; Am. Legion; VFW; Optimist. Methodist. Address: Box 266, Cameron 70631. Phone: (318) 775-5360.



EDWARD F. LeBRETON, JR.

District 92; Demo. Born 8/16/13; partner, insurance agency (1940 to date); married (Gladys L. Gay). Graduate, New Orleans public schools; attended Tulane Univ. Bd., homestead assn.; U. S. Navy (1942). State rep. (1952 to date), dean, La. House of Representatives; La. Stadium and Exposition Comm.; Governor's Joint Legislative Com. on Hurricane and Insurance; Governor's Joint Interim Legislative Com. on State Air Transportation Needs (1969); pres., U. S. Advisory Com. on Studies of Natural Disaster, Dept. of Housing and Urban Development (1965); treas., Audubon Park Comm. (1954-61); Regional Planning Comm. Past pres., Nat'l Soc. of State Legislators; bd. and exec. com., Conference of Insurance Legislators; bd. (1968 to date) and exec. com. (1972), International House; Nat'l Assn. of Casualty Surety Agents, member, Model Staff Project, Citizens Conference on State Legislatures; v. pres., Adult Education Center, Inc.; Am. Judicature Soc.; Chamber of Commerce; VFW; La. Historical Soc. Catholic. Address: 219 Carondelet St., New Orleans 70130. Phone: (504) 529-3681.



THOMAS W. LEIGH

District 17; Demo. Born 4/8/03; attorney (1924 to date); married (Louise Grisham). Graduate, Monroe public schools; LL. B., LSU. Chm., State Mineral Bd. (1966-72), LSU Bd. of Supervisors (1940-60). Honorary member, Order of the Coif; v. pres., La. State Law Institute; past pres., La. State Bar Assn.; Am. Bar Assn. House of Delegates. Episcopalian. Address: Box 1671, Monroe 71201. Phone: (318) 323-7786.



J. KENNETH LEITHMAN

Appointed by Governor to represent public at large; Demo. Born 7/24/30; owner, insurance agency (1964 to date); married (Cynthia Tillotson). Graduate, New Orleans schools; B. S., Loyola Univ. Insurance business (1955-64); U. S. Army Military Police Corps (1952-54); state rep. (1968 to date), speaker pro tem (1972 to date); parish school bd. (1964-68). Outstanding citizen awards from Rotary Club, Group Life Underwriters Assn. and Lions Club; nat'l v. pres., Muscular Dystrophy Assn.; bd., parish Community Services Council, Insurance Exchange and parish Comm. on Aging; past pres., Lions Club; past adult advisor, Teenagers March Against Leukemia. Catholic. Address: Box 333, Gretna 70053. Phone: (504) 367-7777.



EDWARD N. LENNOX

Appointed by Governor to represent industry. Born 7/27/25; business exec., v. pres., holding company (cane sugar refining, chemical grade lime manufacturing, dredging, mining and construction materials); married (Joan Marie Landry). U. S. Infantry (1943-46). Governor's Advisory Com. on River Area Transportation and Planning Study (1971-72); New Orleans Bd. of Trade; Ala. Governor's Advisory Council on Economics; past pres., Orleans Levee Bd. (1969-72), La. Bd. of Highways (1965-67); chm., New Orleans Aviation Bd. (1960-67). Who's Who in the South and Southwest; Community Leaders of Am.; Personalities of the South, Who's Who in Finance and Industry; pres.-elect, local area Chamber of Commerce; area v. pres., PAR; bd., Methodist Hospital; exec. com., Good Roads Assn.; bd., Construction Industry Legislative Council; past pres., La. Motor Transport Assn.; Metropolitan New Orleans Safety Council. Catholic. Address: 862 Topaz St., New Orleans 70124. Phone: (504) 581-1488.



HERMAN JOSEPH "MONDAY" LOWE

District 61; Demo. Born 7/25/23; certified public accountant (1958 to date); married (Bessie Peavy). Graduate, Port Allen public schools; B. S., LSU. Bookkeeper (1951-58). La. Constitutional Revision Comm. (1970-72); state rep. (1964-68); assistant parish sec.-treas. (1958-63); city clerk (1955-63). Soc. of La. CPAs Distinguished Service Award (1969); past chapter pres., Soc. of La. CPAs; Nat'l Assn. of Accountants; Am. Accounting Assn.; Beta Alpha Psi honorary accounting fraternity; Am. Legion; VFW; KC. Catholic. Address: Box 3637, Baton Rouge 70821. Phone: (504) 348-5856.



JAMES A. McDANIEL

District 19; Repub. Born 9/29/26; farmer (1959 to date); married (Bonnie Holman). Graduate, Union Parish public schools; B. S., M. S., LSU. Farm management (1953-59); employed by LSU Cooperative Extension Service (1949-53). La. Soybean Promotion Bd. (1970 to date). 1971 4-H Alumni of Year; pres., Am. Soybean Institute (1971 to date); chm., Soybean Div., La. Farm Bureau; La. and Am. Soybean Assns.; Soybean Action Com., Am. Farm Bureau; past pres., La. Swine Assn. Methodist. Address: Rt. 2, Box 13, Tallulah 71282. Phone: (318) 574-1905.



GORDON J. MARTIN

District 57; Demo. Born 2/20/20; sheriff (1956 to date); married (Doris Haydel). Graduate, Lutcher public schools; attended several law enforcement schools. Deputy sheriff (1948-56); farmer (1946-48); U. S. Army Military Police (1942-45). Past pres., La. Sheriff's Assn.; bd., La. Peace Officers Assn. and parish Community Action Organization; KC; Lion. Catholic. Address: Box 83, Convent 70723. Phone: (504) 562-3562.



CLAUDE MAUBERRET, JR.

District 95; Demo. Born 2/11/22; veterinarian (1947 to date) and assessor (1960 to date); married (Diane Bennett). Graduate, New Orleans schools; D. V. M., Auburn Univ. Demo. State Central Com. (1952 to date). La. and Am. Veterinarian Medical Assns.; International Assn. of Assessing Officers; La. Assessors' Assn. Catholic. Address: 218 N. St. Patrick St., New Orleans 70119. Phone: (504) 482-4985.



RUTH LOYD MILLER

Appointed by Governor to represent professions; Demo. Born 5/29/22; attorney (1957 to date); married (Judge Minos D., Jr.). Graduate, Tallulah public schools; B. A., LSU; attended Blue Ridge Coll. and Union Theological Seminary. Editor and pres. of publishing co.; editorial assistant, Univ. News Bureau (1946-47); dir., Wesley Foundation (1942). La. Mineral Ed., (1972); pres., Bd. of Supervisors of Elections (1972 to date). Parish, La. and Am. Bar Assns.; Phi Delta Delta legal fraternity; Am. Judicature Soc.; delegate to 1970 White House Conference on Youth; 6 yrs. volunteer dir., All City Schools Twirling and Flag Corps: Cameron Parish Historical Assn.; Lake Charles Civic Symphony Auxiliary; past bd. member, Lake Charles Civic Symphony Orchestra. Methodist. Address: P. O. Drawer 1309, Jennings 70546. Phone: (318) 824-4580.



PEGRAM J. MIRE

Appointed by Governor to represent public at large, Demo. Born 11/1/20; parish tax assessor (1952 to date); married (Ella R. Gautreau). Graduate, Gonzales public schools; attended LSU and Vanderbilt; completed foreign area and language course, Army Specialized Training Program; completed Am. Banking Inst. Bank v. pres. (1963 to date); real estate broker; life insurance agent (1948-52); mgr. of family business (1948-52); oil co. employee (1946-48); La. Nat'l Guard (1948-52); U. S. Army (1942-46); Army Reserve (1946). Pres., past v. pres., sec.-treas. and program chm., La. Assessors' Assn. Catholic. Address: Box 544, Donaldsonville 70346. Phone: (504) 473-9239.



ROBERT JACKSON MUNSON

Appointed by Governor to represent agriculture; Demo. Born 12/9/12; farmer (1935 to date); married (Kathryn Fluke). Graduate,

Cheneyville public schools; attended Okla. Univ.; B. S., LSU. State rep. (1956 to date); chm., House Appropriations Com.; member, Legislative Budget Com.; parish police jury (1948-56). Past master, Masonic Lodge; Shriner; parish Farm Bureau; La. Wildlife Federation; La. Cattlemen's Assn. Episcopalian. Address: Box 425, Cheneyville 70325. Phone: (318) 279-2663.



AUTLEY BENJAMIN NEWTON

District 73; Demo. Born 3/25/36; attorney (1965 to date); married (Miriam Eakin). Graduate, Hammond public schools; B. A., LL. B., LSU. Am. Bar Assn.; past sec.-treas., district Bar Assn. Presbyterian. Address: Box 1682, Hammond 70401. Phone: (504) 345-8660.



SAMUEL B. NUNEZ, JR.

District 104; Demo. Born 1/27/30; pres., insurance agency; married (Elaine Potter). Graduate, St. Bernard Parish public schools; B. S., LSU. U. S. Air Force (1951-55). State senator (1969 to date); state rep. (1964-69). Jaycee; St. Bernard Heart Council; Aircraft Owners and Pilots Assn.; Am. Legion; Chamber of Commerce. Catholic. Address: 2016 Packenham Dr., Chalmette 70043. Phone: (504) 279-5551.



GARY M. O'NEILL

District 64; Demo. Born 9/16/51; single; law student, teacher (1971 to date). Graduate, Baton Rouge schools; B. A., LSU; attending LSU Law School. Income tax consultant and bookkeeper (1970 to date). Class representative to LSU Student Bar Assn. Catholic. Address: 7441 Prescott Rd., Baton Rouge 70812. Phone: (504) 357-1700.



JESSEL M. OURSO, SR.

District 60; Demo. Born 3/12/32; sheriff (1972 to date; 1964-68); married (Eula LeBlanc). Graduate, Plaquemine public schools; attended LSU Law Enforcement Inst., Baton Rouge City Police Academy and La. State Police Academy. State trooper (1957-63); policeman (1955-57); U. S. Army (1952-54). La. Sheriffs Assn.; La. Peace Officers Assn.; Nat'l Sheriff's Assn.; Elk; Am. Legion; Optimist; VFW. Catholic. Address: 1404 Plaquemine St., Plaquemine 70764. Phone: (504) 687-3555.



CHALIN OCTAVE PEREZ

District 105; Demo. Born 6/19/23; attorney (1948 to date) and pres., Parish Comm. Council (1967 to date); married (Mary Ellen Sheehan). B. B. A., LL. B., Tulane. Catholic. Address: Braithwaite P. O., Louisiana 70040. Phone: (504) 682-3111.



P. LYNN PERKINS

District 28; Demo. Born 8/25/46; attorney (1970 to date); single. Graduate, Alexandria

parochial schools; B.S., LSU-Alexandria; J.D., LSU Law School. Outstanding Young Women of America (1971); LSU Moot Court Semi-finalist (1969); pres. and past v. pres. and sec., parish bar assn.; La. and Am. Bar Assns.; Nat'l Assn. of Women Lawyers; Bd., Avoyelles Cattlemen's Assn. Catholic. Address: Box 148, Moreauville 71355. Phone: (318) 985-2823.



ARTHUR J. PLANCHARD

District 33; Demo. Born 3/14/30; attorney (1958 to date); married (Diane Keenan). Graduate, Sulphur public schools; B. S., J. D., LSU; attended LSU graduate school. Mgr., mortgage loan dept. (1957-58); U. S. Army (1953-55). Chm., city fire and police civil service bd. (1970-72). Past pres., Rotary Club; Am. Legion; VFW; Southwest, La. and Am. Bar Assns. Catholic. Address: P. O. Drawer 288, Sulphur 70663. Phone: (318) 527-6388.



ANTHONY MARK RACHAL, JR.

Appointed by Governor to represent civil service; Demo. Born 12/5/25; Xavier Univ. exec. v. pres. (1968 to date); married (Louise Eugere). Graduate, Shreveport schools; B. S., Xavier Univ.; M. Ed., Wayne State Univ. Remodeling, decorating and real estate business (1957 to date); book reviewer (1972 to date); U. S. Office of Education consultant (1969-71); special assistant to chm. of U. S. Civil Service Comm. (1965-68); dir. of employee utilization, U. S. Dept. of Labor (1964-65); univ. placement and recruitment dir. (1960-64); univ. asst. professor (1957-60); H. S. dept. head (1947-57); U. S. Army (1944-46). Advisory com. member, La. Coordinating Council for Higher Education (1969 to date). Exec. com., New Orleans Consortium (Dominican, Xavier and Loyola) (1969 to date); advisory com. to bd., New Orleans Metropolitan Area Com.; Urban League of Greater New Orleans; Xavier Alumni Assn.; advisory bd., Red Cross. Catholic. Address: 1435 N. Johnson St., New Orleans 70116. Phone: (504) 949-6359 or 486-7411.



BENJAMIN B. "SIXTY" RAYBURN

District 75; Demo. Born 8/11/16; pipefitter; married (Hazel Eugene Blanchard). Graduate, Miss. public schools; attended trade school in La. State senator (1951 to date); state rep. (1948-51); police juror (1944-48). Mason; Shriner; Lion. Baptist. Address: 606 Ave. B, Bogalusa 70427. Phone: (504) 732-9511.



TERRY RAY REEVES

District 22; Demo. Born 7/9/46; city planner (1970 to date); married (Renee Allbritton). Graduate, Winnfield public schools; B. A., M. A., Northwestern State Univ. U. S. Air Force (1968-69). Parish Demo. Exec. Com. Community Leaders of Am. (1972); past treas., Jaycees; Mason; sec., Eastern Star Lodge; Order of the Eastern Star; Rotarian. Baptist. Address: Box 333, Winnfield 71483. Phone: (318) 628-2772.



LOUIS GEORGE RIECKE

District 99; Demo. Born 12/27/03; pres., lumber co.; widower. Graduate, Orleans public schools; attended Tulane, Soule Busi-

ness Coll. and Delgado Central Trade School. Lumber and millwork (1919-72). Parish school bd. (1956-68), pres. (2 terms); bd., City Dept. of Public Welfare (1946-48); v. pres., New Orleans Charity Hospital (1940-52). Honorary life member, YMBC; pres., Elmwood Industrial Assn.; exec. com., Times Picayune Doll and Toy Fund; parish exec. com., Chamber of Commerce; past pres., La. and New Orleans YMBC. Catholic. Address: 4678 Arts St., New Orleans 70122. Phone: (504) 282-5713.



HORACE C. ROBINSON

Appointed by Governor to represent education; Demo. Born 3/15/20; exec. sec., La. Teachers' Assn. (1967 to date); married (Lillian Malone). Graduate, Claiborne Parish public schools; B. A., La Tech.; M. Ed., LSU; additional graduate work, LSU and Univ. of Ark. Field secretary, La. Teachers' Assn. (1952-67); school principal and visiting teacher (1945-52); employee, U. S. War Dept. (1942-45); high school teacher (1940-41). Phi Kappa Phi; Nat'l Education Assn.; Phi Delta Kappa educational fraternity; past v. chm., United School Com. of La.; Nat'l Rifle Assn.; Am. Radio Relay League. Address: Box 1906, Baton Rouge 70821. Phone: (504) 343-9243.

No Picture Available

CHARLES E. ROEMER III

District 9; Demo. Born 10/4/43; mgr., data system co. (1969 to date). Graduate, Bossier City public schools; B. A., M. B. A., Harvard. Bank dir.; mgr., investments firm (1967-69); farm mgr. (1964-65). Delegate, Demo. nat'l convention (1972); Bossier Parish Outstanding Young Man (1971); chm., parish Heart Fund; Nat'l Assn. of Accountants; Farm Bureau; Jaycee. Methodist. Address: Rt. 1, Box 434, Bossier City 71010. Phone: (318) 423-8691.



CHRIS J. ROY

District 26; Demo. Born 3/27/56; attorney (1960 to date); married (Janice Ryder). Graduate, Marksville schools; B. A., J. D., LSU. Landman (1960); deputy clerk, 3rd Circuit Court of Appeals; U. S. Army and La. Nat'l Guard (10 years). Bd. of Governors, La. Trial Lawyers Assn. and 8th Congressional District of La. State Bar Assn.; city, parish and Am. Bar Assns.; past dist. chm., Boy Scouts. Catholic. Address: Box 1792, Alexandria 71301. Phone: (318) 442-0471.



LAWRENCE B. SANDOZ, JR.

District 40; Demo. Born 7/23/21; attorney (1948 to date); married (Romayne Fontenot). Graduate, Opelousas public schools; B. A., J. D., LSU. U. S. Army Infantry (1942-45). La. and Am. Bar Assns. Catholic. Address: P. O. Drawer 900, Opelousas 70570. Phone: (318) 942-9771.



EARL JOSEPH SCHMITT

District 87; Repub. Born 12/31/44; attorney (1969 to date); married (Joyce Nicholson). Graduate, New Orleans schools; B. S., J. D.,

Loyola Univ. Engineer (1966-67). Repub. State Central Com. (1972 to date). Algiers Sunshine Club; La. and Am. Bar Assns.; steering com., Red Cross, Catholic. Address: 608 Verret, New Orleans 70114. Phone: (504) 368-7846.



PERRY SEGURA

District 49; Demo. Born 12/14/29; architect (1954 to date); married (Emma Lou Davant). Graduate, New Iberia schools; B. S., LSU; attended USL. Farmer (1947-50). State Demo. Exec. Com. (1964 to date); parish Demo. Exec. Com. (1960 to date). Catholic. Address: Box 1300, New Iberia 70560. Phone: (318) 364-2452.



VARYON C. SHANNON

District 4; Demo. Born 5/2/10; executive dir., levee bd.; married (Claire Wood). Graduate, Miss. public schools; graduate, business coll. Construction engineer, U. S. Army Corps of Engineers (1936-52). State rep. (1972 to date); dir., North Shreveport Lions Club. Baptist. Address: home—6825 Canal Blvd., Shreveport 71108; office—6122½ Hearne Ave. Shreveport. Phone: home—(318) 636-3132; office—(318) 636-5950.



JOE N. SILVERBERG

Appointed by Governor to represent public at large; Demo. Born 6/8/13; newspaper publisher (1946 to date); married (Mary E. Mayer). Graduate, Wisc. public schools; attended Univ. of Wisc.; B. A., LSU. U. S. Army (1942-46); newspaper editor (1938-39). La. Tourist Development Comm. (1972 to date); city civil service bd. (1972 to date); Regional Planning Comm. (1961 to date); city housing authority (1950-65). City Boss of the Year (1968); chm. of city goals com. (1971); past commander, Am. Legion and VFW; dir., La. Good Roads Assn.; past pres., La. Press Assn. Jewish. Address: Box 550, Thibodaux 70301. Phone: (504) 447-4055.



ALVIN D. SINGLETARY

District 76; Demo. Born 9/27/42; attorney (1969 to date). Graduate, Slidell public schools; B. A., LSU; J. D., Loyola Univ. City, parish and La. Bar Assns.; LSU honor graduate (1964). Baptist. Address: 1410 Eighth St., Slidell 70458. Phone: (504) 643-1712.



CHARLES O. SLAY

District 27; Demo. Born 12/14/21; parish chief deputy tax assessor (1946-72); married (Elaine Sills). Graduate, Buckeye public schools; attended La. Coll. and Alexandria Business Coll. Parish school board (1948-72), pres. (2 years). Protestant. Address: Box 2002, Alexandria 71301. Phone: (318) 442-8261 or 445-7301.



JASPER K. SMITH

District 1; Demo. Born 6/20/05; attorney (1930 to date); married (Mildred Fields). Graduate, Shreveport public schools; attended Davidson Coll. and Tulane. City and parish Demo. Exec. Com.; city attorney (1934 to date); state rep. (1944-48, 1952-64). City and La. Bar Assns.; Am. Judicature Soc.; past pres., Lions Club; Mason. Presbyterian. Address: 211 W. Tennessee Ave., Vivian 71082. Phone: (318) 375-2669.



NOVYSE E. SONIAT

District 88; Demo. Born 6/24/28; office mgr. (1957 to date); married (Llewelyn J.). Graduate, Shreveport public schools; attended Southern Univ. and Xavier Univ.; completed executive secretarial course. NAACP. Catholic. Address: 1323 Joliet St., New Orleans 70118. Phone: (504) 866-1322.



TOM STAGG

District 5; Repub. Born 1/19/23; attorney (1949 to date); married (Margaret Mary O'Brien). Graduate, Shreveport public schools; attended Marion Military Institute and Cambridge Univ.; B. A., J. D., LSU. Second Lt. to capt., U. S. Army (1943-46); pres. of two real estate investment firms; managing partner, shopping center. La. Governor's Offshore Revenue Advisory Com.; Repub. State Central Com. (1956 to date), Repub. Nat'l Committeeman (1964-72); delegate to Repub. nat'l conventions (1956, 60, 64, 68, 72); chm., Shreveport Airport Authority; city, La. and Am. Bar Assns.; Chamber of Commerce; Sierra Club; Am. Legion; Wilderness Soc.; Photographic Soc. of Am.; PAR; CABL; LSU Foundation; La. Forestry Assn.; La. Wildlife Federation. Address: 808 Beck Bldg., Shreveport 71101. Phone: (318) 424-3294.



JAMES E. STEPHENSON

District 31; Demo. Born 6/6/26; doctor of chiropractic (1950 to date); married (Marjorie Bordosky). Graduate, Ganado, Tex. public schools; attended Texas A. & M.; D. C., Texas Chiropractic Coll. State rep. (1972 to date). U. S. Maritime Service (1943-45). Past master, Masonic Lodge. Methodist. Address: 304 N. Pine St., De Ridder 70634. Phone: (318) 463-7313.



FORD STINSON

District 8; Demo. Born 8/24/14; attorney, cattleman, farmer (1936 to date); married (Edna Earle Richardson). Graduate, Benton public schools; graduate, LSU Law School. Air Force (1941-46). City and parish Demo. Exec. Com. (1937 to date); state rep. (1940-44, 1952-72); town councilman (1937-40). VFW; 40 & 8; Lion; Farm Bureau, Cattlemen's Assn.; parish, La. and Am. Bar Assns.; La. and Am. Trial Lawyers Assn.; Kappa Alpha social fraternity; Phi Delta Phi legal fraternity; Red River Valley Improvement Assn.; LSU Alumni Assn.; Chamber of Com-

merce. Methodist. Address: P. O. Box 276, Benton 71006. Phone: (318) 965-2259.



JAMES L. STOVALL

District 79; Demo. Born 3/20/19; minister (1943 to date); married (Alice Balay Mills). Graduate, Shreveport public schools; A. B., Centenary Coll.; B. D., Southern Methodist Univ. U. S. Navy (1943-45). La. State Apprenticeship Council (1963-73). Founder, E. Baton Rouge Parish Family Counseling Service; past pres., E. Baton Rouge and Calcasieu Ministerial Assns.; United Givers; chm., Bd. of the Church and Soc. for the La. Conference of the Methodist Church; delegate to 1972 Methodist Church General Conference and Jurisdictional Conference; Mason. Methodist. Address: home—2512 Margie St., Metairie 70003; business—1901 Lexington Ave., Monroe 71201. Phone: (318) 322-4454 or 322-4305 (Monroe).



MATTHEW R. SUTHERLAND

District 86; Demo. Born 2/7/19; attorney (1949 to date); married (Bonnie Gaffney). Graduate, New Orleans schools; attended LSU; B. A., LL. B., Tulane. 2nd v. pres. and general counsel, life insurance co.; U. S. Navy (1942-45). Parish school bd. (1954-66), pres., (1959, 63, 66); bd., Orleans Teachers' Retirement and Delgado Trades and Technical Institute; Past pres., La. School Bd. Assn.; dir., Nat'l School Bd. Assn.; Who's Who in Am.; Chamber of Commerce; YMBC; International House; bd., Total Community Action; steering com., Am. Red Cross; city, La. and Am. Bar Assns.; International Claims Assn.; Assn. of Life Insurance Counsel. Legislative Com., Health Insurance Assn. of Am. Episcopalian. Address: 2400 Canal St., New Orleans 70114. Phone: (504) 821-2510.



ELMER R. TAPPER

District 103; Demo. Born 6/19/29; attorney (1955 to date); married (Audra Galjour). Graduate, St. Bernard public schools; attended Tulane Univ.; B. A., USL; LL. B., Loyola Univ. U. S. Army (1953-55). State rep. (1969 to date and 1960-64); assistant attorney general (1956-59). Catholic. Address: 401 Livingston Ave., Arabi 70032. Phone: (504) 271-2561.



ALBERT TATE, JR.

Appointed by Governor to represent the judiciary; Demo. Born 9/12/20; associate justice, La. Supreme Court (1970 to date); married (Claire Jeanmard). B. A., George Washington Univ.; J. D., Yale Univ., certificate in civil code studies, LSU. Judge, La. Court of Appeals (1954-70); attorney (1948-54); U. S. Army (1942-45). Comm. on Correction, Treatment and Rehabilitation (1971 to date); Com. to Aid Employment of the Handicapped (1958 to date); La. Education Com. of 100 (1965-67); chm., La. Judiciary Comm. (1968-70); chm., La. Comm. on Aging (1956-59). Past v. chm. and chm. of La. Conference of Court of Appeal Judges; past chm., v. chm. and sec., Nat'l Appellate Judges Conference; past post commander, Am. Legion; past pres., Jaycees; past district chm., Boy Scouts; Chamber of Commerce; Rotarian; VFW. Catholic. Address: Supreme Court of La., New Orleans 70112. Phone: (504) 527-5361.



DOROTHY M. TAYLOR

Appointed by Governor to represent racial minorities; Demo. Born 8/10/31; married (Johnny, Jr.). Graduate, New Orleans public schools; completed leadership course, Southern Univ. Deputy clerk, New Orleans Civil Dist. Court (1969-71); recreation supervisor (1965-68); teacher aide (1963-65). State rep. (1971 to date); chm., House Health and Welfare Com.; delegate to Demo. Nat'l Convention (1972) and Nat'l Women Political Caucus (1973). Bd., Urban League of Greater New Orleans; Central City E. O. C.; Central City Reclamation Assn., PTA pres. (1956-66, 3 different schools); Black Unity Caucus; Nat'l Black Legislators Assn., Black Women's Caucus; Women in Politics; bd., ACLU; bd., General Council on Ministries and Black Methodist Church Renewal; YMCA; League of Good Government; League of Women Voters. Past pres., Women's Soc. of Christian Service, Methodist Church. Address: 2724 Melpomene, New Orleans 70113. Phone: (504) 524-6865.



JOHN R. THISTLETHWAITE, JR.

Appointed by Governor to represent public at large; Repub. Born 7/16/18; newspaper editor emeritus; married (Patricia Norman). Graduate, Opelousas public schools; attended USL; B. A., Tulane; graduate, Columbia Univ. Am. Press Institute. Newspaper editor and publisher (1939-72); U. S. Marine Corps (1942-46). La. Coordinating Council for Higher Education (1968 to date); city planning comm. (1956 to date); parish Repub. Exec. Com. (1964 to date). Sigma Delta Chi Special Award for Outstanding Contribution to Advancement of Am. Journalism (1962); Am. Newspaper Publishers' Assn.; past pres., La. Press Assn.; bd., Council for a Better La.; past trustee, PAR. Methodist. Address: 705 S. Court St., Opelousas 70570. Phone: (318) 942-3477.



RICHARD S. THOMPSON

District 25; Demo. Born 12/30/16; farmer (1941 to date); married (Ellen Lucille Anderson). Graduate, Boyce public schools; B. S., LSU. State rep. (1972 to date); parish jury comm. (1962-72). Past pres. (5 years), La. Assn. of Soil and Water Conservation District Supervisors; chm. (8 years), La. Soil & Water Conservation Comm.; Advisory Comm., Southern Farm Forum; past pres., Farm Bureau; past pres., Lions Club; bd., Valley Farmers Cooperative Assn.; Mason. Baptist. Address: Rt. 2, Box 22, Colfax 71417. Phone: (318) 793-2049 (Boyce).



MAX N. TOBIAS, JR.

Appointed by Governor to represent youth; Demo. Born 9/9/47; attorney (1971 to date); single. Graduate, New Orleans private schools; B. A., J. D., Tulane Univ. Law clerk for La. Supreme Court (1971-72). La. and Am. Bar Assns. Jewish. Address: 732 Cherokee St., New Orleans 70118. Phone: (504) 581-5055.



HAROLD JOSEPH TOCA

District 82; Demo. Born 12/9/14; owner, laundry and drycleaning business; married (Pauline Canatella). Graduate, Bay St. Louis, Miss. public schools; graduate, St. Stanislaus Coll. Bd. member and past pres., Jefferson Business Men Organization; YMBC; Lion; advisory bd., Jefferson Parish Vocational-Technical Training School. Catholic. Address: 1013 Turnbull Dr., Metairie 70001. Phone: (504) 833-2624.



JOSEPH FRANCIS TOOMY

District 5; Demo. Born 5/4/48; income tax consultant (1970 to date). Attended New Orleans parochial schools; graduate, Jefferson parochial school; attended USL; B. A., M. B. A., Tulane Univ. David Crockett Volunteer Fire Co., Tulane Alumni Assn.; Tulane Business Soc. Catholic. Address: 61 Willow Dr., Gretna 70053. Phone: (504) 361-4904.



RISLEY CLAIBORNE TRICHE

Appointed by Governor to represent public at large; Demo. Born 8/16/27; attorney; married (Clara Caballero). Graduate, Ascension Parish private schools; attended Spring Hill Coll.; LL. B., LSU. State rep. (1955-68); mayor of Napoleonville (1955); alderman (1954). Parish Jaycees outstanding young man of year (1954); La. and Am. Bar Assns.; v. pres., La. Assn. for Mental Health; KC; Catholic. Address: Box 339, Napoleonville 70390. Phone: (504) 369-4771.



FRANK JOSEPH ULLO

District 84; Demo. Born 6/30/32; dentist (1960 to date); married (Blanche DeFraites). Graduate, Jefferson public schools; attended Southeastern La. Univ.; D. D. S., Loyola Univ. U. S. Coast Guard (1952-60). City, La. and Am. Dental Assns.; Omicron Kappa Upsilon nat'l honor dental soc.; C. Victor Vignes Odontological Soc. and Honor Soc.; Delta Sigma Delta dental fraternity. Catholic. Address: 4701 Westbank Expressway (Box 15) Marrero 70072. Phone: (504) 341-8561.



THOMAS A. VELAZQUEZ

District 97; Demo. Born 1/10/39; postal clerk (1968 to date); married (Linda Decou). Graduate, New Orleans parochial schools; attended Catholic Univ.; B. S., Southern Univ. in New Orleans. U. S. Army (1962-64); assistant mgr., petroleum co. (1960-62). Economic development consultant, Nat'l Catholic Conference on Interracial Justice Convention; N. O. Central Com. of Knights and Ladies of St. Peter Claver; nat'l treas. and past nat'l pres., Southern Univ. in New Orleans Alumni Assn.; founder and com. chm., St. Augustine High School Alumni Assn.; sgt. at arms, Am. Postal Workers Union Local; Voter Registration Com., Com. on Urban Politics;

NAACP; Urban League; Nat'l Municipal League; Com. to Save Charity Hospital; Am. Chemical Soc. V. pres., parish council, Catholic Church. Address: 1772 N. Broad St., New Orleans 70119. Phone: (504) 949-5301.



ANTHONY JOSEPH VESICH, JR.

District 94; Demo. Born 12/25/25; attorney (1951 to date); married (Rita Curtis). Graduate, New Orleans schools; LL. B., Loyola Univ. U. S. Navy (1943-46). State rep. (1956-72). Catholic. Address: 20 Killdeer St., New Orleans 70124. Phone: (504) 588-9053.



KENDALL L. VICK

Appointed by Governor to represent public at large; Demo. Born 4/7/34; asst. attorney general (1972 to date), married (Kathy Moore). Graduate, private schools; attended Washington Univ., Balliol Coll., Oxford, London School of Economics, Inst. of Advanced Legal Studies (London); LL. B., Emory Univ. Attorney (1963 to date). Presbyterian. Address: 234 Loyola Ave., New Orleans 70112. Phone: (504) 527-8375.



SHADY R. WALL

District 15; Demo. Born 12/11/22; realtor; married (Lallage Feazel). Graduate, Ouachita Parish public schools; attended Northeast Jr. Coll., La. Tech, LSU Law School. U. S. Army. State rep. (1968 to date, 1948-56). Bd. of Tri District Boys Club, W. Monroe Boys Club, and Northeast La. Cancer Soc.; Chamber of Commerce. Baptist. Address: 1001 Trenton St., W. Monroe 71291. Phone: (318) 323-2206.



GEORGE ETHEL WARREN

District 102; Demo. Born 11/20/18; housewife; married (Edward). Graduate, Jackson, Miss. private schools; attended Jackson Coll. Nat'l opinion research interviewer (1968); volunteer community worker (1942 to date); school teacher (1937-40). Pres., Citizen Voter Education Assn.; state bd., PTA; recording secretary, parish PTA; parliamentarian, Black Women's Caucus; YWCA. Baptist. Address: 1836 Reynes St., New Orleans 70117. Phone: (504) 944-8507.



GERALD N. WEISS

District 34; Demo. Born 6/14/23; surgeon; married (Elaine Bresler). Attended Shreveport public schools; graduate, New Orleans public schools; B. S., M. D., Tulane; postgraduate work. Surgical consultant, Government of British Honduras (1960); AMDOC Volunteer to Guatemala (1968); surgical consultant, Barzilar Hospital, Ashkelon, Israel (1971); ass't. clinical instructor, Dept. of Surgery, LSU (1973); pres., Research Inst. for Quality Health Plans; Army Medical Corps (1942-48). Salvation Army Distinguished Service Award (1970); Law-Science Academy of America Gold Medal Award (1968), founding member, Am. Soc. of Abdominal Surgeons, Law-Science Inst.; parish, dist. and

La. Med. Soc.; AMA; International and Am. Coll. of Surgeons; past pres., Southwe . La. Chapter, La. Assn. for Mental Health; past biparish pres., Red Cross (1957-58); Chamber of Commerce; chm., Lake Charles Coordinating Council for Community Emergency Medical Services; Kiwanian. Jewish. Address: 1611 Foster St., Lake Charles 70601. Phone: (318) 433-8507.



J. BURTON WILLIS

District 46; Demo. Born 9/25/19; attorney (1948 to date); married (Celine Marie Durand). Graduate, St. Martin Parish schools; attended USL, DePaul and Notre Dame Univ.; LL. B., J. D., Loyola Univ. Law clerk (1948-53); U. S. Navy (1941-45); U. S. Naval Reserves (1937-41); sec. (1938-39). Assistant bar examiner, La. Supreme Court (1964 to date); attorney to assist inheritance tax collector (1969 to date). Am. Legion; WOW; Elks; parish and La. Cattlemen's Assn.; parish, district, La. and Am. Bar Assns.; Am. Judicature Soc.; St. Thomas More Law Club; La. and Am. Trial Lawyers Assns ; Law Science Academy of Am. Catholic. Address: 422 S. Main St., St. Martinville 70582. Phone: (318) 394-3034.



F. D. "DAN" WINCHESTER

District 50; Demo. Born 7/12/06; assessor (1941-72); married (Mary Grace Shannon). Graduate, Morgan City public schools; attended Soule Business Coll. and Tulane Univ. Parish Demo. Exec. Com. (1934 to date); deputy assessor (1931-41); bd. of trustees, La. Assessors' Retirement Fund; past pres. and chm., Insurance Committee (1959-72), of La. Assessors' Assn.; Lions Club Civic Award (1946). Catholic. Address: 107 Main St., Franklin 70380. Phone: (318) 828-3685.



MARY E. WISHAM

District 67; Demo. Born 3/29/36; teacher; single. Graduate, Clinton public schools; B.A., Leland Coll.; M. A. and post graduate work, Southern Univ. Dir., YWCA (1968-73). Pres., Eden Park Action Com. Voter League; La. and Nat'l Education Assns.; NAACP; PTO; Red Cross; Demo. Alliance of La.; PAR; Mental Health Assn. Baptist. Address: 920 S. 18th St., Baton Rouge 70802. Phone: (504) 344-9682.



LANTZ WOMACK

District 20; Demo. Born 1/11/14; farmer; married (Alice Black). Graduate, Pioneer public schools. State rep. (1958 to date). Chamber of Commerce; Lion. Baptist. Address: Winnsboro, La. 71295. Phone: (318) 722-3271 (Winnsboro); (318) 467-5707 (Newellton).



MARY KELLER ZERVIGON

Appointed by Governor to represent public at large; Demo. Born 12/4/38; staff assistant to mayor (1972 to date). Graduate, New Orleans private schools; attended Swarthmore

Coll.; fellow, Loyola Institute of Politics. City welfare bd., (1969-72). Sec., Interracial Council for Business Opportunity; 1st v. pres. and past treas., Independent Women's Organization; Ad Hoc Political Support Com., New Orleans Goals to Grow Program; state steering com., Nat'l Endowment for the Humanities; bd., Inst. of Politics. Address: Mayor's Office, City Hall, New Orleans 70112. Phone: (504) 522-6191.

Where to Find It

The convention headquarters is located in the State Capitol, and most committee meetings and staff activities will continue to take place in and around the capitol until the convention convenes for formal sessions in July 1973. Key offices currently in the capitol building include those of the convention chairman and chief clerk and the research staff. (The research staff is expected to relocate to offices in the LSU Law Center in April 1973).

The chairman, House Speaker E. L. "Bubba" Henry, will continue to use the House speaker's office on the first floor of the capitol. His telephone number is (504) 389-2392.

The chief clerk also occupies an office on the first floor of the capitol and will continue to do so throughout the convention. The telephone number is (504) 389-2137.

The convention public relations office and research staff are also located in the capitol building and their respective telephone numbers are (504) 389-5034 and 389-6141.

Current plans envision that formal sessions, beginning on July 5, will be

held in the White House Inn's "Independence Hall," with staff activities taking place in the "Treaty Room." The White House Inn is located at 1575 N. Third Street, Baton Rouge, and the hotel's telephone number is (504) 348-0111. Persons or groups wishing to express an opinion on the convention or on the constitution may call toll free (1-800) 272-9860. For Baton Rouge residents the number is 389-2282.

General information about the convention may be obtained from the public information office. Specific information about committee hearings and meetings, if unavailable from the public information office, may be obtained from the chief clerk. As the various substantive committees begin to hold hearings on issues throughout the state, information will be available through local news media. For persons or groups having an interest in particular committee activities, the chief clerk's office will provide advance notification of hearings and meetings. Interested parties should forward a written request for advance notification of those activities in which they are interested to the chief clerk.

Official publications of the convention, to be available from the office of the chief clerk, include the Rules of the Convention, the Convention Calendar, the Convention Journal and proposals.

The Rules of the Convention have been previously published and are expected to have a second printing.

The Convention Calendar will be printed periodically and will include scheduled meetings and hearings and the status of various proposals and items on the convention agenda.

The Convention Journal will be printed daily and will comprise the primary official record of convention proceedings. It will include convention and committee meetings and hearings, actions taken, the text of amendments to proposals and the record of delegates' individual votes on final approval of all proposals.

Proposals will be printed individually as they are generated.

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November 1972

Cover by John Chase, Cartoonist, WDSU-TV, New Orleans

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INTRODUCTION

Background information and new ideas on constitutional revision can be found in the material listed. Designed as a convenient reference aid, the suggested titles should help those involved and interested in the revision of the Louisiana Constitution.

Location of material has been coded as follows: C, when in the library of the Louisiana Legislative Council; L, when available from the Louisiana State Library; and P, when in the library of the Public Affairs Research Council of Louisiana.

The Legislative Council's materials will form a part of the research tools available for use to the Constitutional Convention -- its delegates and staff.

Materials in the library of the Public Affairs Research Council may be used there by the delegates and staff.

Materials desired from the State Library may be borrowed through local libraries on interlibrary loan. Delegates and staff of the Constitutional Convention may borrow by direct request.

Photocopy facilities are available in all three libraries.

Louisiana State Library
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P. O. Box 131
760 Riverside Mall
Baton Rouge, Louisiana 70821

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CONSTITUTIONS AND THE REVISION PROCESS

Procedure, State Revision Efforts

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Arizona	C	Maryland	C P	Oklahoma	C P
Arkansas	C P	Massachusetts	C P	Oregon	C
California	C P	Michigan	C P	Pennsylvania	C
Colorado	C	Minnesota	C	Rhode Island	C
Florida	C P	Mississippi	C	South Carolina	C
Georgia	C	Missouri	C	South Dakota	C
Hawaii	C P	Montana	C	Tennessee	C
Idaho	C	Nebraska	C	Texas	C P
Illinois	C P	Nevada	C	Utah	C
Indiana	C	New Hampshire	C	Vermont	C
Iowa	C	New Jersey	C	Virginia	C
Kansas	C P	New Mexico	C	Washington	C
Kentucky	C P	New York	C P	West Virginia	C P
Louisiana	C	North Carolina	C	Wiscorsin	C
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1. Committee Documents

NOTES

The Committee on Committees met on January 24 and January 25, 1973, and made assignments to substantive and procedural committees. The assignments to substantive committees are reported as I Journal, 60-61. Procedural committee assignments were not reported but may be found below.

The meetings of January 24 and January 25, 1973, were recorded but not transcribed. The Committee used delegate preference lists as the starting point for committee assignment discussions.

No other meetings were held by the Committee on Committees after their report of January 30, I Journal, 60-61.

Procedural Committees

Legislative Liason and Transitional Measures

Edward F. LeBreton, Jr.
Mary Zervigon
Edward Joseph D'Gerolamo
R. Harmon Drew
Calvin C. Fayard
Henry G. Hardee, Jr.
Johnny Jackson, Jr.
Louis Joseph Lambert, Jr.
Walter I. Lanier, Jr.
Conway LeBlew
Edward N. Lennox
Robert Jackson Munson
Benjamin R. "Sixty" Rayburn
Jasper K. Smith
Richard S. Thompson
Kendall L. Vick
Lantz Womack

Public Information

Patrick F. Juneau, Jr.
John Clyde Fontenot
Joe N. Silverberg
Judy Gardner Dunlap
Robert J. Aertker
Philip Olden Gerderon
Ethan J. Chatelain
Norman F. "Pete" Heine
Kenneth Dale Kilpatrick
Louis George Reicke, Sr
Charles E. Roemer, III
Dorothy M. Taylor
Harold Joseph Toca
Joseph Francis Toomy
Risley Claiborne Triche
Shady R. Wall

Rules, Credentials and Ethics

James L. Stovall
Walter Gregory Arnette, Jr.
Heloise C. Corne
Clyde F. Bel, Sr.
Donald T. "Boysie" Bollinger
Rudolph M. Elkins
Gordon Flory
J. K. Haynes
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Pegram J. Mire
Lawrence B. Sandoz, Jr.
Varyon C. Shannon
Alvin D. Singletary
Tom Stagg
Thomas A. Velazquez
George Ethel Warren

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AMENDMENTS

See Constitution.

BANKING

Restructuring Louisiana's Banking Department. PAR Analysis No. 182. April 1972. 44 pp. — $ .50

CONSTITUTION

See also Elections.

*__Citizen's Guide to the 1973 Constitutional Convention.__ April 1973. 58 pp. (Plus supplement covering changes through October 16, 1973.) — .50

Constitutional Convention, 1973—A Preview. July 1972. 29 pp. — .50

Constitutional Revision Within Our Reach. PAR Analysis No. 110. March 1963. 20 pp. — .50

PAR Conference—1963: A New Approach to Constitutional Revision. PAR Analysis No. 111. April 1963. 20 pp. — .50

PAR Convention Commentary. (A series of 11 reports)

- No. 1. **The Legislature.** July 25, 1973. 12 pp. — .50
- No. 2. **The Executive Branch.** August 1, 1973. 10 pp. — .50
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- No. 5. **The Judiciary.** August 21, 1973. 12 pp. — $ .50
- No. 6. **Preamble and Declaration of Rights.** August 29, 1973. 12 pp. — .50
- No. 7. **Local Government.** September 14, 1973. 12 pp. — .50
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- No. 10. **Revenue and Finance (Excludes Property Tax).** December 16, 1973. 12 pp. — .50
- No. 11. **Natural Resources and Environment.** December 19, 1973. 8 pp. — .50

*__PAR's Voter's Guide to the 1974 Proposed Constitution.__ March 1974. 44 pp. — .50

Philosophies in the Proposed Constitution. PAR Analysis No. 196. February 1974. 16 pp. — .50

A Procedure for Revising Louisiana's Constitution. October 1969. 104 pp. (Summarized in PAR Analysis No. 160. October 1969. 20 pp. $.50) — 2.00

Vote on Constitutional Amendments. PAR Analysis No. 73. November 1958. 8 pp. — .50

Voter's Guide to the Amendments. (First issued in 1952, published preceding elections at which amendments are proposed—generally every two years.) — .25

*__Voting on Constitutional Amendments, November 2, 1954 Election.__ January 10, 1955. (PAR Report No. 10.) 8 pp. — .10

CRIME

Crime in Louisiana. PAR Analysis No. 165. March 1970. 16 pp. — .50

* Out of print.

* Out of print.

LOUISIANA LEGISLATIVE COUNCIL
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December 10, 1979

SENATOR CHARLES C. BARHAM
CHAIRMAN
REPRESENTATIVE VERNON GREGSON
VICE CHAIRMAN

DEVAN D. DAGGETT
EXECUTIVE DIRECTOR
MRS. NORMA M. DUNCAN
ASSISTANT DIRECTOR

Ms. Bina Harris
Library Assistant
Legislative Reference Library
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Harris:

Your request on behalf of Mr. Guy Van Doren for information concerning the constitutional convention in Louisiana, 1973-74 was referred to this office. Mrs. Norma Duncan, our assistant director, was the research director of the convention. She suggests that you contact Paul Hardy, Secretary of State, P.O. Box 44125, Baton Rouge, LA 70804 if you are interested in obtaining the Convention Records. This is a 14 volume set which includes the Proceedings and Committee Documents. I am sending you some pages from the bibliography PAR Publications, June 1951-March 1979 which include a description of the Public Affairs Research Council and a list of their publications which deal with the convention. Enclosed is a copy of one of these publications; A Citizens Guide to the 1973 Constitutional Convention. If you are interested in obtaining the others, they should be ordered directly from PAR.

Act No. 2 of the 1972 Regular Session of the Louisana Legislature is the call for the constitutional convention. Committee Resolution 1 of the convention specifies the convention rules. The page from the Committee Documents gives the procedural committees and their members. Also included is a reference guide prepared at the time of the convention.

I hope that this information will be of service to you.

Yours truly,
Valerie Richardson
Valerie Richardson
Librarian

Enrolled

Constitutional Convention of Louisiana of 1973

Committee Resolution No. 1

By Mr. Stagg on behalf of the Temporary Committee on Rules

A RESOLUTION

To provide for the standing rules of the Constitutional Convention.

BE IT RESOLVED by the Louisiana Constitutional Convention of 1973 that the following be adopted as the standing rules of the Convention until otherwise amended or rescinded as herein provided:

CHAPTER 1

General Provisions

Quorum and Majority

Rule No. 1. Call to Order. The Convention shall convene at such time as ordered on the preceding working day by a majority of the delegates and the chairman shall call the Convention to order at that time. If a quorum is in attendance, the chairman shall cause the Journal of the preceding day to be read unless otherwise ordered by the Convention, to the end that any mistake may be corrected.

Rule No. 2. Quorum. Sixty-seven delegates to the Convention shall constitute a quorum for the transaction of business.

Rule No. 3. Roll Call. The secretary shall call the roll at the opening of each session of the Convention and announce whether or not a quorum is present. He shall announce the names of the delegates absent with leave of the

Convention and the names of delegates absent without leave, and enter the names of all those present and absent upon the Journal. If a voting machine is provided, the machine shall be used whenever a roll call or a vote by yeas and nays is directed by or in accordance with these rules.

Rule No. 4. Quorum Calls. A quorum call may be demanded by any delegate during any session of the Convention. When, upon such call, it is found that less than a quorum is present, the chairman shall order the doors of the Convention closed and direct the secretary to call the roll of the Convention and to note the names of the absentees. After such roll call the names of the absentees shall again be called and those for whose absence no excuse, or an insufficient excuse, is made, may, by order of a majority of delegates present, be sent for and taken into custody by the Sergeant-at-Arms, or by his assistants appointed for the purpose, and brought to the floor of the Convention.

Rule No. 5. Absence from Convention Service. No delegate shall absent himself from the service of the Convention while in session without obtaining leave of the Convention. Leave for absence from a daily session may be obtained from the chairman as provided in Rule 34.

Rule No. 6. Absent Delegates. At any time the Convention is in session, whether upon first convening of the day's session or at any time after the hour has arrived to which the Convention stood adjourned, the chairman is authorized to send the Sergeant-at-Arms for any or all absent delegates as the majority of such delegates present shall agree.

Rule No. 7. Expense of Compelling Attendance. Any expenses involved in compelling the presence of an absent delegate shall be borne by such delegate, unless such excuse of non-attendance has been made as a majority of a quorum shall judge sufficient, in which case the expense shall be paid out of the appropriated funds to the Convention.

Admission to Floor

Rule No. 8. Persons Admitted. No person shall be admitted on the Convention floor while the Convention is in session or during the period five minutes before the time set for the convening of each session or the period five minutes after the adjournment of each session, except that delegates and members of the Convention staff may remain on the floor. Representatives of the news media shall be admitted to the floor as provided in Rule 11. Written messages may be delivered to the delegates by a sergeant-at-arms from persons outside the restricted area. The Convention floor, for purposes of these rules, is defined as the entire enclosed seating area of the delegates.

Rule No. 9. Restrictions on the Convention Floor. One chair shall be allowed each delegate on the Convention floor and no other chairs shall be permitted in this section.

Rule No. 10. Special Permission. Special permission to sit on the Convention floor may be granted by the chairman of the Convention to visiting officials of other states or of the United States or of foreign countries.

Rule No. 11. News Media. A designated place in the Convention Hall shall be provided for the news media, who shall have free access thereto. Accreditation of members of the press and of members of any news media for admission shall be administered by the Chairman. No member of the press or of any news media shall conduct any interview with a delegate on the Convention floor while the Convention is in session.

Rule No. 12. Administration of Rules. The Chairman of the Convention shall provide for the administration of the rules governing admission to the Convention as provided herein.

Rule No. 13. Regulation of Convention Area. The Chairman shall have the regulation and control of such parts of the Convention Hall and its passage or any other places of general assembly as are or may be set apart for the use of the Convention, its officers and employees.

Rule No. 14. Restrictions on Non-Delegates. No motion shall be deemed in order, except a motion to suspend the rules or a motion to go into the Committee of the Whole, to admit any person not a delegate to the Convention floor to present any petition, memorial or address, or to read same, except in the Committee of the Whole as may be provided by the Convention in accordance with Rule No. 65.

Rule No. 15. Open Meetings. All meetings of the Convention shall be open to the public and the news media.

CHAPTER 2

Officers, Employees, and Duties

Officers

Rule No. 16. Convention Officers. The officers of the Convention shall be a Chairman, who shall be Chairman of the Convention, a First Vice-Chairman, three Vice-Chairmen, a Secretary, and a Treasurer. There shall be an Executive Committee which shall be composed of the officers of the Convention and sixteen delegates, with two delegates to be elected from each congressional district in which they resided at the time of qualification or appointment. Such voting shall be in separate congressional caucuses. The Chairman of the Convention shall serve as Chairman of the Executive Committee. No member of the Executive Committee, other than the Chairman of the Convention shall serve on the Committee on Committees nor shall the Executive Committee serve as the Committee on Committees. The officers of the Convention shall be delegates to the Convention and shall each be elected in separate elections by a majority vote of all the delegates of the Convention.

Employees

Rule No. 17. Convention Employees.

A. A Chief Clerk and a Sergeant-at-Arms shall be employed by the Chairman of the Convention subject to the approval of a majority vote of the entire Convention; they shall not be delegates to the Convention.

B. All other employees, necessary to aid the Convention,

shall be employed by the Executive Committee of the Convention in accordance with Act 2 of the 1972 Regular Session.

Executive Committee

Rule No. 18. Duties. The Executive Committee shall:

A. Employ a research director, research assistants, secretarial and/or clerical personnel and such other employees as it deems necessary, in accordance with provisions of Act 2 of the 1972 Regular Session. The Executive Committee shall be a committee on administration, which shall consider research materials and personnel, convention budget and finance and other administrative details, facilities and physical arrangements for the Convention, for committee hearings and for the staff, outside grants and assistance to the Convention, purchases and rental of equipment, supplies and services, printing and related matters.

B. Assist the Chairman of the Convention in the assignment of delegates to their seats.

C. Serve as the executive board of the Convention in all matters requiring official sanction.

D. Assist the Chairman of the Convention in his capacity as supervisor of the research staff of the Convention.

E. Any other provision in these rules to the contrary notwithstanding the Executive Committee may, when performing the duties assigned it in this rule, with respect to personnel matters, meet in Executive Session but no committee action shall be taken while in Executive Session.

F. Any delegate may attend any executive session held by the Executive Committee or any other committee.

The Chairman

Rule No. 19. Duties. The Chairman shall be the presiding officer and the Chief Executive Officer of the Convention, and as such, Chairman of the Executive Committee. He shall:

A. Preside at sessions of the Convention and exercise the usual powers and perform the usual duties of a presiding officer;

B. Preserve order and decorum;

C. Speak to points of order, and subject to an appeal to the Convention, decide all points of order;

D. Confine delegates in debate to the question, prevent personal reflections, and determine the order of recognition when two or more delegates rise at the same time;

E. Designate the First Vice-Chairman to preside in his absence and establish the order of the Vice-Chairmen to preside in the absence of both the Chairman and the First Vice-Chairman;

F. Name a delegate to preside as chairman on each occasion when the Convention sits as a Committee of the Whole;

G. Assign, with the assistance of the Executive Committee, the delegates to their seats;

H. At the request of at least twenty-seven delegates, a recorded yea and nay vote shall be ordered by the Chairman;

I. Sign all official documents of the Convention, attested by the Secretary;

J. Make corrections of the official journal of the Convention, if necessary, attested by the Secretary with notification of any substantive changes being made to the Convention at large;

K. Direct the Convention in its official activities, including naming delegates to perform duties connected with the business of the Convention;

L. Not engage in debate when sitting as Chairman, nor shall he vote on appeals from his rulings;

M. Maintain general control of the Convention Hall, its environs, and all rooms set apart for use of the Convention;

N. Sign all warrants;

O. Supervise the Convention staff, provided that he may delegate certain of this function to members of the staff;

P. On his own initiative or at the direction of the Convention appoint such special committees as may be necessary to perform special functions.

First Vice-Chairman

Rule No. 20. Duties. The First Vice-Chairman shall serve as First Vice-Chairman of the Convention, and as such, shall:

A. Preside as acting Convention chairman, when requested to do so by the Convention Chairman, or in the absence or inability of the Chairman to serve;

B. Serve as a member of the Executive Committee of the Convention, and carry out such other duties as are assigned by the Chairman;

C. Serve as an ex officio member of the Committee on Rules, Credentials, Ethics and Schedules, but shall have no vote therein and shall not be counted for the purpose of obtaining a quorum thereof.

Vice-Chairmen

Rule No. 21. Duties. The Vice-Chairmen shall:

A. Preside in the absence of the Chairman and the First Vice-Chairman in the order established by the Chairman as provided in Rule No. 19E;

B. Serve as members of the Executive Committee and carry out such duties as are assigned by the Chairman.

C. The Chairman shall designate Vice-Chairmen to serve ex officio on each of the three remaining procedural committees, no Vice-Chairman shall have a vote on the committee to which he is assigned and shall not be counted for the purpose of obtaining a quorum thereof.

Secretary

Rule No. 22. Duties. The Secretary shall:

A. Exercise responsibility for the accuracy of the Convention Journal of Proceedings, and the daily publication and distribution of the Journal;

B. Keep a verbatim written record and a sound recording of all sessions of the Convention and of the Committee of the Whole;

C. Prepare a daily calendar of business and notices of schedules of all committee meetings;

D. Receive, reproduce, number, and distribute all resolutions, delegate and committee proposals;

E. Read to the Convention all proposals, resolutions, petitions, memorials and communications;

F. Exercise responsibility for roll calls of the delegates;

G. Attest where necessary all official documents of the Convention;

H. Preserve and safeguard all original copies of official documents and be responsible for the preservation of all proceedings of the Convention and its committees, and see that all records are properly preserved in archives of the state;

I. Serve as a member of the Executive Committee;

J. Perform such other duties as may be designated by the Chairman or the Executive Committee.

Rule No. 23. Delegation of Secretary's Duties to Chief Clerk. Except for certification of official acts, documents and vouchers, and service on the Executive Committee, the Secretary may delegate his duties to the Chief Clerk, subject to supervision by the Secretary.

The Treasurer

Rule No. 24. Duties. The Treasurer shall:

A. Exercise responsibility for the accuracy of the Convention's financial records and the monthly distribution of financial statements to the delegates of the Convention;

B. Co-sign, with the Convention Chairman, all warrants;

C. Serve as custodian of all Convention financial records;

D. Assist in the preparation of the Convention's budget;

E. File quarterly audits and the final audit of financial records with the State Treasurer, Clerk of the House of Representatives and the Secretary of the Senate;

F. Make financial records of the Convention available for audit to the Louisiana Legislative Auditor quarterly and at

the end of the Convention;

C. Serve as a member of the Executive Committee, and carry out such other duties as may be assigned by the Chairman.

Chief Clerk

Rule No. 25. Duties. The Chief Clerk:

A. Shall not be a delegate to the Convention;

B. Shall perform general administrative duties of the Convention subject to supervision of the Chairman, and when he assumes the duties of the Secretary as provided in Rule No. 22, he shall do so under the supervision of the Secretary;

C. Shall be answerable to the entire Convention for faithful execution of his duties and the smooth functioning of the Convention in assembly as a deliberative body;

D. Shall serve as Parliamentarian of the Convention and shall be advisor and counsel to the Chairman and committee chairmen on all matters of parliamentary procedure; however, all parliamentary rulings shall be the responsibility of, and shall be made by, the Chairman or Committee Chairmen in committee.

Rule No. 25.1. Signing of Checks. All checks shall be signed by the Chairman or the first Vice-Chairman and by the treasurer or the chief clerk.

Sergeant-at-Arms

Rule No. 26. Duties. The Sergeant-at-Arms shall:

A. Attend the Convention during its sitting, to execute commands as directed to him by the chairman, including signing for and delivery of correspondence addressed to delegates;

B. Maintain order in the Convention Hall and execute Rules of the Convention concerning admission to the floor;

C. Maintain order at committee hearings and assist committee chairmen in their duties.

D. Exercise supervisory control over his assistants, subject to direction of the chairman.

Rule 26.1. Vacancies. If a vacancy occurs in the office of Chairman, the first Vice-Chairman shall temporarily preside

until the Convention elects a Chairman to fill the office in the same manner in which the officer was first elected.

If a vacancy occurs in the office of any of the Vice-Chairmen or in the office of the Secretary or Treasurer, the Chairman shall appoint a delegate to exercise the powers of that vacant office until the Convention fills the vacancy in the same manner in which the officer was first elected.

CHAPTER 3

Delegates

Rule No. 27. Delegates Oath. No delegate shall be qualified to serve unless and until he has taken the prescribed oaths.

Rule No. 28. Recognition in Debate. When any delegate desires to speak in debate or present any matter to the Convention, he shall rise and address himself to the chair. He shall not speak until recognized, and when recognized, he shall confine himself to the question under debate.

Rule No. 29. Transgression of Rules. If any delegate in speaking or otherwise, transgresses the rules of the Convention, the chairman shall call the delegate to order; in which case the delegate shall sit down and shall not proceed without leave of the chairman or the Convention.

Rule No. 30. Limits on Debate. Delegates shall not speak more than once to the same question, nor more than fifteen minutes, without leave of the Convention, unless the delegate is the mover, proposer or introducer of the matter pending, in which case, either the delegate and/or his designees shall be permitted to speak in reply, but not until every delegate choosing to speak shall have spoken, except where the previous question or the previous question on the entire subject matter has been ordered. When the previous question has been ordered, the mover, proposer or introducer shall nonetheless have the right to speak or reply as provided in Rule No. 76. The time for reply shall not exceed a total of fifteen minutes.

Rule No. 31. Prohibited Behavior. No delegate shall walk off of the Convention floor during roll calls, nor shall any delegate in any way impede the business of the Convention by interrupting delegates who are speaking, by use of objectionable language, or by engaging in any way in discourteous conduct.

Rule No. 32. Questions of Order. Every question of order shall be decided by the chairman, without debate, subject to an appeal. The chairman may call for the sense of the Convention on any question of order, but when an appeal has been taken from the decision of the chair, any subsequent question of order which may arise from the decision of such appeal by the Convention shall be decided by the chairman without debate, and all appeals therefrom shall also be decided by the Convention without debate. Appeals from any ruling of the chairman shall be affirmatively put, and to overrule the chairman, shall require the same vote required to suspend the rules. (See Rule No. 85.)

Rule No. 33. Answering Roll Calls. Every delegate must be at his desk when a roll call is being taken, and answers to roll calls from other locations on the Convention floor shall not be counted.

Rule No. 34. Absence from Daily Sessions. A delegate may be excused from attendance at daily sessions only with leave from the chairman, and no delegate shall be compensated for a day on which he is absent from Convention sessions.

Rule No. 35. Vacancies. By a vote of at least two-thirds of the delegates to the Convention, the seat of a delegate may be declared vacant by the Convention if the delegate has been absent for at least fifteen unexcused, consecutive, opening roll calls. In the event of the death of, or written resignation by a delegate, the seat may be immediately declared vacant by the Chairman. The Chairman shall notify the Governor of any vacancy.

Rule No. 36. Voting in Person. No person other than

the delegate himself, will be permitted to vote to answer any roll call or quorum call.

CHAPTER 4

Proposals

Rule No. 37. Proposal. Any original suggestion, proposition, or draft intended to become a part of the Constitution shall be referred to as a proposal. A proposal introduced by a delegate shall be designated as a delegate proposal, and a proposal submitted by a committee shall be designated as a committee proposal. An amendment shall be designated as an amendment.

Rule No. 38. Resolutions. All matters of general convention business, other than proposals intended to become a part of the Constitution, shall be proposed through the instrument of a resolution, which instrument shall be so designated and may be introduced at any time.

A resolution introduced by a delegate shall be designated as a delegate resolution, and a resolution submitted by a committee shall be designated as a committee resolution.

Resolutions shall be subject to the same rules of readings, committee referral and adoption as proposals. Resolutions shall contain a short title which shall be reflective of its purpose and substance, and shall comply with the form requirements of Rule No. 41.

Rule No. 39. Introduction. A proposal may be introduced by a delegate or delegates or by a committee on behalf of a majority of its membership.

Rule No. 40. Introduction of Committee Proposals. Committee proposals prepared and approved by the several committees of the Convention prior to July 5, 1973, shall constitute the first proposals to be introduced in the Convention and shall be introduced by the chairman of each committee or his designee and shall bear the signature of a majority of the members of the committee. These proposals as far as completed shall be mailed to all

Convention delegates on or before June 22, 1973.

Rule No. 41. Form of Proposals. Delegate proposals shall be distinguished from committee proposals and all proposals shall be separately numbered. All proposals shall be introduced or submitted in eight copies. All proposals must be typed, double spaced on 8-1/2-by-14-inch paper in a type face with excellent reproduction qualities. A margin of one inch on the left and right side and at the top and bottom shall be preserved. The lines on each page shall be numbered consecutively from top to bottom at the left margin, and the left typing margin shall be two spaces to the right of the line numbers. Pages commencing with page two shall be numbered at the top center of the page. The original of all proposals shall remain in the custody of the Convention. The secretary shall, as soon as any proposal is printed, place it on the desks of the delegates. The caption of each proposal shall be substantially in the following form:

Constitutional Convention of Louisiana of 1973

_____ PROPOSAL _____

(Committee or Delegate) (Number)

Introduced by _____

(Name of Delegate or Committee Chairman)

Each proposal shall also contain a short title stating concisely the general nature of its subject matter.

Rule No. 42. Deadline on Proposals. No proposals may be introduced by delegates or committees after the first sixty days following July 5, 1973. Amendments to proposals may be offered any time.

Rule No. 43. Printing. Each proposal introduced shall be immediately printed and distributed to the delegates and shall be available to the general public and other interested parties. No final action may be taken on any proposals until printed copies have been distributed to the delegates for at least forty eight hours.

Rule No. 44. Order of Processing. The order of Convention procedure in processing each proposal shall be as follows:

A. Introduction, which shall constitute the first reading.

B. Committee referrals: Committee proposals shall be referred to the Committee offering the proposal. Delegate proposals shall be referred by the Chairman of the Convention to the appropriate committee based on the subject matter of the proposal. The chairman shall announce his referral to the delegates and if no objection is raised, the proposal shall be referred to the Committee designated by the chairman; if objection is raised, the referral shall be made by the Convention. Referrals shall be made the day following introduction. Committee referral shall commence the second reading.

C. Committee reports.

D. Consideration of and voting on the substantive committee report by delegates in general assembly.

E. If recommitted, reconsideration by substantive committee or committee of the whole.

F. Reference to Committee on Style and Drafting.

G. Engrossment, which shall complete the second reading.

H. Third reading and final passage.

I. Enrollment.

J. Referral to Committee on Style and Drafting.

K. Convention approval of final styling.

L. Final enrollment.

Each of the three required readings shall occur on three different days.

Rule No. 45. Order of Proposals. When a proposal is up for third reading and final passage, it shall be read, debated, and acted upon separately by sections. Each section shall be considered a separate question for the purpose of "limits on debate" provided for in Rule

No. 91.

Rule No. 46. Amendments. Amendments shall be submitted in writing, and a copy of every such amendment shall be distributed to each delegate before a vote occurs thereon.

Rule No. 47. Styling and Drafting. When all proposals have been processed, the entirety of those adopted shall be sent to the Committee on Style and Drafting for orderly arrangement in the new proposed Constitution, to the end that the document shall be properly coordinated and uniform in style, and such final draft must be approved by a majority of the delegates to the Convention.

Rule No. 48. Distribution. For the purpose of these rules "distribution" shall mean that a copy of any document is placed on the desk or chair of each delegate.

CHAPTER 5

Committees

Substantive, Procedural and Other

Rule No. 49. Substantive Committees.

A. The following substantive committees are hereby created:

1. Committee on Bill of Rights and Elections, which shall consider the Preamble, Bill of Rights, Human Rights, Obligations of Citizenship, distribution of powers, suffrage and elections, the amendment process, and future constitutional conventions;

2. Committee on Executive Department, which shall consider the offices comprising the executive department, reorganization, term of the Governor and other elected officials, and impeachment;

3. Committee on Legislative Powers and Functions, which shall consider the Legislative Department, apportionment, qualifications, regular and special sessions;

4. Committee on Judiciary, which shall consider the judiciary, tenure and selection of judges, the Department of Justice, district attorneys, sheriffs, clerks of court

and corporations;

5. Committee on Local and Parochial Government, which shall consider local and parochial government, home rule, special districts, consolidation of governments and intergovernmental cooperation;

6. Committee on Revenue, Finance and Taxation, which shall consider revenue, finance, taxation, assessors and assessment, exemptions, state debts and management of state funds;

7. Committee on Education and Welfare, which shall consider public education, welfare, consumer affairs, civil service, labor and industry; and

8. Committee on Natural Resources and Environment which shall consider public lands, minerals, water resources, wildlife, environmental concerns, recreation and agriculture.

B. Other provisions that may not be covered by the areas of responsibility shown above may be assigned by the Coordinating Committee to the appropriate substantive committee.

Rule No. 50. Procedural Committees.

The following procedural committees are hereby created:

1. Committee on Rules, Credentials and Ethics, which shall consider rules, credentials of delegates, questions of ethics, news media and employees, and shall consider all questions on any procedural disputes referred to it by the Chairman or by the Convention;

2. Committee on Style and Drafting, which shall have control over literary style, consistency, arrangement and numbering. The committee shall have authority to rephrase or to reprocess proposed language, but shall have no authority to change the intent or purpose of any proposal referred to it. If a proposal referred to it is inconsistent or in conflict with a proposal already voted on favorably by the Convention the committee shall at the third reading (Rule 44) so notify the Convention of that inconsistency or conflict and wait upon its instructions.

3. Committee on Legislative Liaison and Transitional Measures, which shall maintain liaison with the legislative branch and the Louisiana Law Institute and provide for coordination of the transition of subject matter from the Constitution to the appropriate law; and

4. Committee on Public Information, which shall consider and implement measures to inform the people on the actions, procedures, recommendations and activities of the Convention. It shall plan and implement the report to be given to the voters of Louisiana on the result of the Convention's work, and shall direct the effort to obtain approval of the new Constitution and the form and manner of presentation.

Rule No. 51. Appointment of Committees.

The selection of delegates to serve on the substantive and procedural committees shall be determined as follows:

Within twenty-four hours after the adoption of these rules by the Convention, each delegate shall submit in writing to the Convention the committee or committees in order of preference to which he or she desires to be appointed.

A Committee on Committees shall select from among said delegates the delegates to serve on each committee based primarily on the preference of each delegate and giving due consideration to the qualifications, experience and residence of each delegate so as to provide as nearly as possible a fair and balanced representation on each committee of this Convention.

Rule No. 52. Committee on Committees.

The Committee on Committees shall be composed of the Chairman of the Convention who shall be chairman of the Committee on Committees and sixteen delegates, with two delegates to be elected from each congressional district by the delegates voting in the congressional district in which they resided at the time of qualification or appointment. Such voting shall be in separate caucuses.

No member of the Committee on Committees shall be elected a Chairman or a Vice-Chairman of a substantive or procedural committee.

Rule No. 53. Service on Committees.

Each substantive and procedural committee shall be composed of at least ten delegates and no more than thirty. The Committee on Committees shall determine the size of each substantive and procedural committee within such limitations. Each delegate except the Convention Chairman shall serve on at least one and only one substantive committee and may serve on no more than one procedural committee. Each committee shall elect a chairman, vice-chairman, and such other officers as the committee deems necessary. No delegate serving on the Executive Committee shall serve as Chairman or Vice-Chairman of any substantive committee. The Chairman of the Convention shall designate the date and place of the original meeting of each committee at which committee meeting officers are to be elected and each committee member is to be notified in person or by certified mail of such designation.

The Chairman of the Convention shall be ex officio a member of all substantive committees, but shall have no vote therein and shall not be counted for the purpose of obtaining a quorum thereof.

Rule No. 54. Coordinating Committee. The Coordinating Committee shall be composed of the Chairman and First Vice-Chairman of the Convention, and the chairmen of the respective substantive committees. The Coordinating Committee shall consider any issues regarding overlap and/or conflict which might arise concerning the jurisdiction of any substantive committee or any subject matter; call joint meetings of any substantive committees for the purpose of discussing any overlap and/or conflict which might arise and make recommendations to the respective substantive committees as to possible resolution thereof and shall assure that each provision of the Constitution of 1921,

as amended, shall have been considered by at least one substantive committee.

Rule No. 55. Other Committees. The Convention, by a majority vote of the delegates present and voting, shall have authority to create other committees, including special advisory committees, as it deems necessary, and all substantive and procedural committees may create such subcommittees as each deems necessary, provided that all such sub-committees shall be created only by a majority vote of the creating body.

Rule No. 56. Proposals. The various articles of the proposed draft of a Constitution shall be prepared under the direction and supervision of the respective substantive committees. The research staff shall be assigned to the respective committees by the Chairman of the Convention after consultation with the chairman of the committee to which the staff will be assigned.

Committee Meetings and Hearings

Rule No. 57. Quorum and Rules of Committees. A majority of any committee constitutes a quorum. The rules of the Convention shall be observed in all committees as far as may be applicable, and, if applicable, may not be suspended. Any committee may adopt its own rules of procedure. No committee rule shall conflict with the Rules of the Convention, except that any committee may establish a different rule with respect to limits on debate.

Rule No. 58. A. Public Hearings, Records. No committee shall sit during sessions of the Convention or of the Committee of the Whole without special leave of a majority of Convention delegates present and voting. All committee meetings and hearings shall be publicized, shall be open to the public, and may be recorded verbatim, including the testimony of those wishing to be heard. Minutes of the committee meetings shall be recorded. All committees shall, and are hereby authorized to, hold public hearings at such as a

committee or through a designated sub-committee, said hearings to be conducted at such localities throughout the State as the committee may designate.

B. Appearance of Delegates or Witnesses. Any person wishing to be heard before a committee shall have a right to be heard subject to the rules of that committee.

C. Testimony. Committees and sub-committees may take testimony under oath or affirmation, and the chairman of any committee or sub-committee is authorized to administer the oath.

D. Any person not a delegate appearing before a committee or sub-committee shall identify himself by name and address and shall state whether or not he is representing any other person or interest.

Rule No. 59. Calling of Committees and Agenda. Each committee shall meet at the call of its chairman, who shall also set its agenda, subject to the approval of a majority of the Committee. One-third of the members of a committee may in writing request the chairman to call a meeting of that committee, and, upon his failure to do so within forty-eight hours not including Saturdays, Sundays, and legal holidays, a majority of the members of the committee shall have the right to call a meeting of the committee and set its agenda and place of meeting under the appropriate notice requirements. Each proposal referred to a committee must appear on the committee's agenda at least once.

Rule No. 60. Reports. All proposals submitted to a substantive or procedural committee shall be reported from that committee indicating committee action provided that a majority of the committee membership present and voting must approve the committee report; a minority report may also be made by any member of a substantive committee.

No resolution, petition, memorial or proposal shall be reported by a committee unless a public hearing on the measure first has been held by the committee. No committee shall report a measure to the Convention pursuant to a

procedure, referred to as a "round robin."

Rule No. 61. Form of Reports. The chairman of a substantive committee shall write after each proposal or resolution only the words "reported favorably," "reported unfavorably," "reported with amendments," "reported without action," "reported without action with recommendation that it be recommitted to the Committee on _____," "reported by substitute," as the case may be, which report shall be signed by the chairman. Should amendments be proposed, such amendment or amendments shall be written on a separate paper, original and two copies, numbered consecutively, and attached to the proposal or resolution, and under no circumstances shall words or sentences be interlined on the body of the measure, and the same be marked while in possession of committees.

Rule No. 62. Notice of Committee Meetings. A. No committee meetings may be held unless notice thereof is given in the following manner: The chairman of the committee or one of the members of the committee calling the meeting under the authority of Rule 59 shall notify the Secretary of the Convention of the time, date, place and agenda of the committee meeting. Within twenty-four hours thereafter the Secretary shall mail notices of such meeting to all members of the committee, all persons who have filed written requests for notice with the Secretary, and to all members of the Convention who have introduced proposals on the subject matter to be considered. The committee hearing shall not be scheduled less than four days from the date of notice to the Secretary. This rule shall apply only when the convention is not in session.

B. Committee and sub-committee meetings called while the Convention is in session may be called by the chairman or by a majority of the committee members upon twenty-four hour notice given by announcement from the floor of the Convention and by posting the notice thereof on a designated bulletin

board in the vicinity of the floor of the Convention at least twenty-four hours before such meeting.

Rule No. 63. Subcommittees. A committee, by the affirmative vote of the majority of its members, may provide for the appointment by the committee chairman of sub-committee composed of members of the committee. Reports of sub-committees shall be considered by the entire committee before any committee recommends any action thereon by the Convention. All rules applicable to committees shall be applicable to sub-committees.

Rule No. 64. Records. All written records and reports of committees of the Convention shall be subject to provisions of the Public Records Act.

Committee of the Whole

Rule No. 65. Procedure. The Convention by a majority vote of the delegates present and voting may resolve itself into a Committee of the Whole for a specified time and purpose. The motion of the Committee of the Whole shall specify the maximum time during which the Committee shall sit.

A. The chairman shall designate a delegate to serve as chairman of the Committee of the Whole. The rules of procedure of the Convention shall apply insofar as applicable, except that delegates may speak more than once unless the chairman imposes limits on debate, actions will be governed by a majority of those present and voting, matters cannot be referred to other committees, no question may be laid on the table, the previous question cannot be ordered, and motions to adjourn will not be entertained.

B. Proposals in the Committee of the Whole shall be read through, debated and acted upon by sections. All amendments shall be in writing and reported to the Convention by the chairman.

C. A motion that the Committee of the Whole rise shall always be in order unless a delegate is speaking or a vote

is being taken. The motion is not debatable and shall be decided by a majority vote of those present and voting.

CHAPTER 6

Transaction of Business

Daily Business

Rule No. 66. Order. The daily business of the Convention shall proceed as follows:

Morning Hour

1. Roll call.
2. Prayer.
2A. Pledge of Allegiance.
3. Reading and adoption of Journal.
4. Petitions, Memorials, and Communications.
5. Introduction of resolutions.
6. Report of Committees.
7. Proposals on Introduction and First Reading.
8. Resolutions on Second Reading and Referral.
9. Proposals on Second Reading and Referral.
10. Reports of Committees Lying Over.
11. Reconsideration

Regular Order of the Day

12. Unfinished Business.
13. Special Order.
14. Resolutions on Third Reading and Final Passage.
15. Proposals on Third Reading and Final Passage.
16. Proposals on calendar for approval of final styling.

Rule No. 67. Change in Daily Order. The order of daily business set forth in the above rule shall be adhered to unless the consent of the convention shall be otherwise given by majority vote of the delegates present.

Rule No. 68. Time of Committee Referral. Where appropriate, all petitions and memorials shall be referred to the proper committees by the chairman as soon as read, where reference may be necessary or is requested by a delegate.

Rule No. 69. Privileged Motions. When a question is

under debate, no motion shall be received except:

1. To fix the time to which to adjourn.

2. To adjourn.

3. To take a recess.

4. To call for the Orders of the Day.

5. To lay on the table.

6. For a Call of the Convention.

7. To limit debate.

8. To move the previous question on the entire subject matter.

9. To move the previous question.

10. To postpone to a day certain.

11. To commit, refer, or recommit.

12. To amend.

13. To postpone indefinitely.

The motions listed in this rule shall take precedence in the order which they stand arranged. All of them shall be decided by the affirmative vote of a majority of those present and voting, a motion for the previous question and the previous question on the entire subject matter shall require a vote of a majority of the delegates present and voting, and a motion to postpone indefinitely requires the affirmative vote of a majority of all delegates to the Convention. Before calling for the vote on the previous question or on the previous question on the entire subject matter, the Chairman shall announce the names of those delegates who have requested to speak and shall state the number of amendments or motions which are still pending. When a recess is taken while a question is pending, consideration of such question shall be resumed when the Convention reassembles, unless it determines otherwise. No motion to postpone to a day certain, or to commit, having been decided by the Convention, shall again be in order on the same day or at the same stage of the question. Whenever a proposal is being considered and a motion is then made, either to postpone indefinitely

or to commit, any pending amendments to the proposal shall first be in order before any vote is taken on any such motion.

Rule No. 70. Motions Not Debatable. A motion to adjourn is always in order except when a motion to fix the time to which to adjourn, or a motion to amend the calendar and agenda, is pending. A motion to adjourn, a motion to lay on the table, a motion for recess pending the consideration of other business and all matters relating to questions of order shall be decided without debate.

Rule No. 71. Withdrawal. Any motion may be withdrawn by the mover at any time before decision, amendment or ordering of the yeas and nays, except a motion to reconsider, which may not be withdrawn without consent of the Convention.

Rule No. 72. Format of Motions and Seconds. Motions shall be presented in the following manner:

A. No motion listed in Rule No. 69 need be in writing. Where a motion is in writing the delegate shall attach his or her name thereto before it is received by the Chairman or read by the Secretary, or before it is debated, if debate is in order.

B. No motion need be seconded.

Rule No. 73. Motion for Reconsideration. Any member may move for a reconsideration of any question at the same session of the Convention or the next succeeding session. The Committee on Style and Drafting may move for reconsideration on any subsequent day if one session day's notice of its intention to do so is given in writing to the Secretary and is entered upon the Journal. A motion to reconsider shall be taken up in its regular order and shall be decided upon by a majority vote of those members present and voting.

A motion to reconsider shall not be renewed on the same day.

Rule No. 74. Motion to Call from the Table. A motion which has been laid on the table shall be called from the table only by the affirmative vote of two-thirds of the

delegates to the Convention.

Rule No. 75. Division of a Question. Any delegate may call for a division of the question, which shall be divided if it includes propositions which are so distinct in substance that, when one is removed or deferred, a substantive proposition remains for the decision of the Convention. A motion to strike out and insert shall not be subject to division within the meaning of this rule. The limits on debate as set forth in Rule No. 30 of these rules shall apply to the debate on each division of a question.

Rule No. 76. Previous Question. A. Previous Question. This undebatable motion is applicable only to the pending amendment, or amendments, if more than one amendment is under discussion; and it shall be admitted when ordered by a favorable vote as provided in Rule 69, and when carried its effect shall be to put an end to the debate and bring the Convention to a vote on the pending amendments only, without prejudice to further debate on, or subsequent amendments to, the main question. If there has been any discussion on the amendments, the proponent, or delegates designated by him, shall have the right to close, even after the previous question is ordered, which closing speech shall be limited to fifteen minutes.

B. Previous question on the entire subject matter. It shall only be admitted when ordered by a favorable vote as provided in Rule 69, and when carried, its effect shall be to put an end to all debate, and bring the Convention or any committee to a direct vote--

(1) Upon the pending amendment and so on back to the first amendment offered;

(2) Upon amendment reported by a committee, if any; and,

(3) Upon the main question. But in all questions involving length of time, amount of interest, questions of quantity, and similar questions, such questions involving

the longest time, the largest interest or quantity shall be put first regardless of the order in which motions, amendments or substitutes, may have been made.

(4) The motion for the previous question and the previous question on the subject matter shall, during the consideration of any proposal, extend only to the individual section under discussion in accordance with Rule No. 45.

On a motion for the previous question on the entire subject matter, and prior to the ordering of the same, a call of the Convention shall be in order; but after the Convention shall have ordered such motion no call shall be in order prior to a decision of the main question. On a motion for the previous question on the entire subject matter, there shall be no debate. All incidental questions of order, arising after a motion is made for the previous question on the entire subject matter, and pending such motion, shall be decided whether on appeal or otherwise, without debate. After a call for the previous question on the entire subject matter has been sustained, the question shall be put and determined in order as above, without debate on either amendments or the main question, provided that the proponents of the amendments and measure, or delegates designated by him, shall respectively have the right to close the debate, after the previous question on the entire subject matter is ordered, which closing speeches shall be limited to a total of fifteen minutes.

Rule No. 77. Adjournment and Recess. A motion to adjourn or recess shall always be in order, except when, on a call for the previous question and previous question on the entire subject matter, the question shall have been ordered, or when a delegate has the floor, and shall be decided without debate.

Yeas and Nays

Rule No. 78. Voting after Decision is Announced. When the Yeas and Nays are taken on any question, no delegate

shall be permitted, under any circumstances whatever, to vote after the decision has been announced by the chairman. The names of absentees on all calls of the yeas and nays shall be placed on a separate list.

Rule No. 79. Explanation of Vote. No delegate shall be permitted to explain his or her vote except as hereafter provided. Any delegate may explain his or her vote in writing or reasons for not voting in writing and request that such explanation be made part of the record.

Rule No. 80. Tie Votes. When the Convention is equally divided, the vote of the chairman shall be taken to break the tie, provided that the chairman, in this event, shall not have previously voted as a delegate on the question.

Rule No. 81. Recording the Vote. On the passage on third reading of every proposal, section, or article the yeas and nays shall be entered in the Journal, and no proposal, section, or article shall be declared passed unless a majority of all the delegates to the Convention shall have voted in favor of the passage of same.

Special Orders

Rule No. 82. Consent. No proposal, resolution or other subject shall be made a special order for a particular day without the consent of two-thirds of the delegates present and voting.

Rule No. 83. Precedence. When two or more subjects shall have been specially assigned for consideration, they shall take precedence according to the order of time for which they were severally made or assigned, and said orders shall at no time be lost or changed except by direction of the Convention.

Rule No. 84. Change in Rules. Any standing rule of the Convention may be rescinded, altered, or amended in the following manner: notice shall be given in writing of the motion therefor, which motion shall be referred immediately by the chairman to the Committee on Rules, which shall file

its report to the Convention within twenty-four hours of receipt of the motion. Two days after the filing of the proposed change, the motion shall be considered by the Convention with or without the report of the Committee on Rules, and for passage shall require a favorable vote of a majority of the delegates to the Convention.

Rule No. 85. Suspension of Rules. One or more rules may be suspended for a specified purpose by the affirmative vote of two-thirds of the delegates present and voting or a majority of delegates to the Convention, whichever constitutes the lesser number.

Rule No. 86. Consideration of Proposals without Committee Recommendation. After one day's notice the Convention, on motion passed by the affirmative vote of a majority of the delegates present and voting, may require a committee to return, with or without a recommendation, any proposal referred to the committee.

Rule No. 87. Notice. Whenever notice is required to be given by these rules, the following shall constitute notice:

(a) If the Convention is in session, an announcement made by the Secretary in open session shall constitute notice for all purposes.

(b) If the Convention is not in session, the Secretary shall give notice to the delegates by U. S. Mail, certified, postage prepaid. The date of mailing said notice shall constitute the date of the notice for all purposes under these rules.

Rule No. 88. Authority. On any question of order and parliamentary practice, when these rules are silent or inexplicit, Mason's Manual of Legislative Procedure shall be considered authority.

Rule No. 89. Name Abbreviation. In all correspondence, news releases, memoranda and other similar writings, it shall be permissible to refer to the Constitutional Convention

of 1973 by the abbreviation "C.C./'73."

CHAIRMAN OF THE CONSTITUTIONAL CONVENTION

ATTEST:

SECRETARY OF THE CONSTITUTIONAL CONVENTION

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ACT No. 2

House Bill No. 181.

By: Messrs. McLeod, LeBreton, Guidry, Triche, Hollins, M. J. Laborde, Bares, Booker, Borrello, Brady, Breaux, Brinkhaus, T. A. Casey, Chabert, Charbonnet, LeBleu, Martin, Abadie, Accardo, Ackal, Alario, Angelle, Anzalone, Christian, Connor, Cooper, Crisler, Deen, D'Gerolamo, Dischler, Doucet, Dunn, Dupuis, Ensminger, Folkes, Fowler, Fox, Freeman, Gaudin, Grisbaum, Gunter, Hainkel, Hebert, Humphries, A. Jackson, John, Jones, R. J. Laborde, Lancaster, Landry, LeBlanc, Leithman, Long, Marchand, Marullo, Munson, Randolph, Reilly, Rice, Robillard, Schmitt, Scogin Shannon, Sheridan, Simon, Stephenson, Strain, Tauzin, M. Thompson, R. S. Thompson, Toca, Turnley, Ullo, Womack, Mills, Lottinger, Bagert and Henry and Mrs. Johnson and Senators Carter, Williamson, Jones, W. D. Brown, Bauer, Blair, C. M. Brown, J. H. Brown, DeBlieux, Duplantier, Duval, Dykes, Fontenot, Foshee, Gerald, Guillory, Hardy, Hickey, Jumonville, Kiefer, Kilpatrick, Knowles, Montgomery, Mouton, Nicholson, Osterberger, Peltier, Poston, Tassin, Tiemann and Windhorst.

AN ACT

To provide for the holding of a constitutional convention for the purpose of framing a new constitution; to fix the time and place for said convention; to provide for the qualifications and election or appointment of delegates thereto; to provide for the organization and staff of the convention; to place restrictions on said convention; to require the constitution as drafted and adopted by such convention, including any alternative provisions, to be submitted to the qualified electors for adoption, to provide the manner of such submission, and to provide with respect thereto; to fix penalties for violations in connection with the holding of elections; to provide with respect to the disbursement of the funds appropriated for the convention and for the retention thereof; to fix the effective date of the new constitution if approved by the electorate, and otherwise to provide with respect to said convention and the constitution prepared by it.

Be it enacted by the Legislature of Louisiana:

Section 1. A. (1) A constitutional convention is hereby called, to convene on January 5, 1973 at 12:00 o'clock noon, which shall be held for the purpose of framing a new constitution for the state of Louisiana, subject to the terms, conditions and provisions hereinafter set forth.

There shall be one hundred thirty-two delegates to the convention. One delegate shall be elected from each of the districts from which members of the House of Representatives of the Louisiana Legislature were elected at the last election for members of that body. One delegate shall be appointed by the governor to represent each of the following: industry, labor, education, civil service, wildlife and conservation, law enforcement, the judiciary, the professions, consumers, agriculture, youth, and racial minorities. Fifteen additional delegates shall be appointed by the governor from the public at large.

(2) Each delegate to the convention shall be an elector of the state of Louisiana, shall be at least eighteen years of age and shall be a resident of the state of Louisiana. In addition, each delegate elected from a representative district shall be a resident of the district from which he is elected at the time he qualifies as a candidate for election as a delegate. Any public official of the governmental subdivisions of the state, whether holding office by election or appointment, if otherwise qualified, shall be eligible for election or appointment as a delegate to the convention.

(3) The election or appointment of any public official as a delegate to the convention and his service in the convention, or the appointment of any public official to the staff of the convention and his service on such staff, as authorized and provided in this Act, shall not be construed to constitute dual office holding within the prohibitions of the laws of the state. Provided, however, delegates elected from the representative districts shall be considered state elected officials within the scope of and subject to the provisions of Part III of Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950, and all delegates and members of the staff who are not elected officials shall be considered as state employees within the scope of and subject to the provisions of Part II of Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950, and provided further, that both the delegates to the convention and the staff of the convention shall be subject to the public bribery provisions of the laws of this state.

(4) Any attorney at law serving as a delegate to the convention shall be entitled to the absolute right of the continuance of any case in which he is bona fide counsel of record in any court of the state during his attendance upon the sessions and work of the convention.

B. (1) The election for the one hundred five delegates to the convention to be elected from representative districts shall be held at the congressional election to be held on Saturday, August 19, 1972. The governor shall make proclamation and give notice of the election to be held under this section not less than forty-five days before the date of said election as herein fixed. Each person desiring to become a candidate for election

as a delegate from a representative district shall qualify as a candidate from the particular representative district he seeks to represent by filing a statement of candidacy with the secretary of state not later than July 19, 1972. Qualification as a candidate shall be without regard to party affiliation. Except as herein otherwise provided, the election for which provision is hereinabove made shall be conducted and the results thereof published and promulgated in accordance with the general election laws of the state. All qualified electors shall be entitled to vote in the election in their respective election precincts and without regard to party affiliation.

(2) Delegates shall be elected by the qualified electors participating in the election. The candidate receiving a majority of the total vote in each district and candidates who are unopposed shall be declared elected. In the event no candidate receives a majority of the votes cast on August 19, 1972, a run-off between the two candidates with the highest number of votes shall be held on Tuesday, November 7, 1972. The candidate receiving the highest number of votes cast in the run-off shall be declared elected. In the event more than one candidate receives the highest number of votes in a district, the candidates in that district who have received the same number of votes, that number being the highest number of votes in the district, shall, under the supervision of the Board of Supervisors of Election, draw lots to determine who shall be elected as a delegate. If one of such candidates dies or withdraws the remaining candidates who received the same number of votes in the district shall draw lots and if only one such candidate remains he shall be declared elected.

Section 2. A. At the election for the one hundred five delegates to the constitutional convention elected from representative districts, it shall be the duty of the commissioners and the clerks of election to tabulate correctly and to make return of the legal vote cast therein the same as in the case of any candidate for any office.

B. Whoever violates the provisions of this section by intentionally making false, fictitious or fraudulent returns on the election of delegates to the convention, upon conviction, shall be imprisoned for not less than two years nor more than five years. Any fraudulent vote by a voter at the election of delegates shall subject said voter to prosecution and punishment as provided in the general election laws of the state. All other offenses, prosecutions, penalties and punishments arising out of or in connection with the elections provided for by this Act shall be governed by the existing applicable laws of the state.

Section 3. In the event of the death, inability or unwillingness of any elected delegate elected from a representative district to serve, whether before or during the convention, the governor shall fill such vacancy by the appointment of a person from the same representative district who possesses the qualifications hereinabove provided for delegates. In the event of the death or the inability or unwillingness to serve of any other delegate, the vacancy shall be filled in the same manner as the original appointment.

Section 4. The convention shall have full authority to frame a new constitution for the state, including such alternative provisions as it deems appropriate, which shall be submitted to the electors of the state for their approval or rejection; however, the convention is prohibited from framing any article or provision whereby:

(1) The bonded or other indebtedness of the state or of any parish, municipality, district or other political subdivision or authority of the state shall be impaired;

(2) The terms of office of the members of the legislature or of any other elected or of any appointed official of the state or of any political subdivision thereof shall be reduced or shortened prior to the expiration of the term of office being held at the time of the adoption of the new constitution, or the salaries of any such official reduced prior to the expiration of the term of office being held at the time of the adoption of a new constitution; however, retention in office beyond the date of the general state election for state officials who will take office in 1976 shall depend upon the provisions of such constitution or upon provisions of law enacted pursuant thereto;

(3) The state capitol is removed or may be removed from Baton Rouge.

Section 5. A. The delegates chosen as herein provided shall meet in convention in the Chamber of the House of Representatives at the state capitol, or at such other suitable location in the capital city as shall be determined by the governor, at 12:00 o'clock noon on Friday the fifth day of January, 1973. The chief justice, or in his absence any associate justice of the supreme court designated by said court, shall attend the convention at the opening thereof and shall preside until a presiding officer has been elected. The Secretary of State shall attend the opening of the convention and call the roll of the delegates, whereupon the temporary presiding officer shall administer to the delegates the following oath:

"I hereby solemnly swear that I will support the constitution and laws of the United States; that I will well and faithfully perform all duties as a member of the convention, and that I will observe and obey the limitation of authority contained in the Act under which this convention has assembled. So help me God."

No delegate shall be qualified to serve as such unless and until he has taken and subscribed to the above oath.

B. After the oath has been administered the delegates shall proceed to effect the permanent organization of the convention and shall:

(1) adopt rules of procedure for the convention, which rules shall not be inconsistent with the provisions of this Act and which may, in the discretion of the convention, create and establish such substantive and procedural committees as the delegates may deem appropriate;

(2) elect from among their number a chairman, a vice chairman and such other officers as they deem necessary;

(3) elect from among their number an executive committee, the membership of which shall be determined by the delegates but which shall include among its members the chairman and vice chairman of the convention;

(4) take such other actions as they deem necessary to effect a permanent organization of the convention.

After completing these organizational activities the convention shall adjourn until July 5, 1973.

The rules of procedure adopted by the convention shall be subject to later change as the delegates shall provide therein. Provided, however, no delegate shall be allowed to vote by proxy.

C. As soon as possible after the members of the executive committee are elected, the executive committee shall employ a research director, research assistants and secretarial and/or clerical personnel in accordance with the provisions regarding the composition and qualifications of such staff in Subsection D of this section and may also employ such other professional, research, technical, clerical and stenographic employees as the committee shall deem necessary. In addition, the committee shall prepare, as soon as possible, a budget of salaries and other anticipated expenses of the convention, based on the amount of the appropriation for the convention and any other funds available for expenditure.

D. The staff of the constitutional convention shall include, but not be limited to, the following who shall not be delegates to the convention except as provided in Paragraph (5) and (6) below:

(1) a director of research, who shall possess at least the qualifications outlined below for research assistants;

(2) fourteen research assistants, who shall possess the following qualifications:

(a) a bachelor's degree from an accredited college or university;

(b) not less than one year in an accredited law school or in substitute thereof, not less than two years work experience which shall include legal research or comparable work experience in a related field;

(c) is not an elected or appointed public official, except those listed below in Paragraphs (5) and (6);

(3) four research supervisors, who shall be the deans of the Louisiana State University, Tulane University, Loyola University and Southern University law schools, or a representative of any of such deans chosen by him from the faculty of the law school of which he is dean, all of whom shall serve without compensation;

(4) such secretarial and/or clerical personnel as the executive committee deems necessary and whose salaries shall be set by the executive committee;

(5) six members of the House of Representatives of the Legislature of Louisiana, who shall be appointed by the governor and who shall receive no compensation for such staff service.

(6) five members of the Louisiana Senate, who shall be appointed by the governor and who shall receive no compensation for such staff service.

(7) four members of the Louisiana State Law Institute, who shall be appointed by the governor and who shall receive no compensation;

E. The Secretary of State shall advertise for applicants for the staff of the constitutional convention and shall receive such applications for staff service prior to the first meeting of the convention. He shall present the applications he has received to the executive committee on the day the convention convenes. If the executive committee deems necessary it may receive additional applications after the convention convenes.

F. The convention also shall have full authority to use the facilities and services of any board, commission, department or agency of the state and of any political subdivision of the state, and all such agencies shall cooperate with the convention to the fullest extent in furnishing services, facilities and employees upon request. In addition, the convention may use the facilities and services of other persons and organizations.

G. The convention shall have full authority to accept grants, moneys, aid, facilities and/or services from public or private sources for the purpose of accomplishing its task of framing a new constitution and any such grants, moneys, facilities, services and donations, as well as the names of the donors thereof, shall be recorded in the record of the proceedings of the convention and such records shall be open to inspection by any person.

H. Working under the direction of the convention, the staff shall proceed immediately to perform the necessary research and to prepare a preliminary draft of a new constitution for the state. The staff shall complete this work on or before July 5, 1973.

I. The delegates shall reconvene July 5, 1973, to receive the report of the staff, to hold some public hearings and draft a proposed constitution for the state of Louisiana. The final draft shall be completed no later than January 4, 1974.

Section 6. The delegates to the convention shall receive a per diem of fifty dollars for each day of actual attendance at meetings of the convention or of committees thereof, but no delegate shall be paid a per diem after January 4, 1974. No delegate may accept any other compensation for work performed for the convention from any source while serving as a delegate and engaged in the work of the convention. However, where a delegate is engaged in regular, bona fide employment, should his employer choose to continue to pay the usual compensation while the delegate is engaged in the work of the convention, nothing herein shall prevent the said delegate from accepting that compensation.

Section 7. Any appropriation shall be used solely to defray the necessary expenses of the constitutional convention for which provision is made herein, including the payment of per diem of delegates, salaries and expenses of necessary em-

ployees, supplies, materials and equipment, printing and reproduction of materials and all other necessary expenses incurred in connection with said convention and its work in drafting a new constitution for the state of Louisiana.

Section 8. A. Any funds appropriated shall be withdrawn from the state treasury in accordance with warrants signed by the chairman of the convention, and all checks for the disbursement of funds shall be signed by the chairman and the vice chairman of the convention or by the chairman or vice chairman and such other person as shall be designated by the convention.

B. For so long as the convention remains in existence and for so long thereafter as is necessary to assure the payment of all expenses incurred in connection with the work of the convention, no unexpended portion of the funds herein appropriated shall ever revert to the state general fund. The convention shall not be deemed to be a budget unit of the state and therefore shall not be subject to the provisions of Chapter 1 of Title 39 of the Louisiana Revised Statutes. The financial books and records of the convention, however, shall be subject to audit by the legislative auditor.

Section 9. A. The convention shall submit a proposed draft of a new constitution for the state to the governor upon completion of its work. At the discretion of the convention it also may propose and submit at the same time such alternative provisions as it deems appropriate. The constitution as drafted by the convention, together with any alternative provisions proposed for submission, shall be submitted to the people for their adoption or rejection. Within thirty days after submission of the proposed draft to the governor, he shall by proclamation call an election, to be held at the same time as the next regularly scheduled general election or, at the governor's discretion, at a special election to be held at a time fixed by him in his proclamation prior to the next regularly scheduled general election, for the purpose of submitting the proposed draft to the people for their adoption or rejection.

The election shall be held and the results shall be promulgated under the general election laws of the state. All electors duly qualified to vote in this state at the time of the election shall be entitled to vote without regard to party affiliation in their respective precincts on the proposition for or against adoption of the constitution and on the question or questions of adoption of such alternative provisions as may be proposed by the convention.

B. The convention may submit to the electors of the state the proposal of acceptance or rejection of the constitution or any alternative proposals in such form and manner as it may determine and may direct the proper election officials to take the necessary steps to effectuate the determination of the convention in presenting the proposal or alternate proposals to the electors.

C. The constitution, if ratified and adopted by the people in the election for which provision is made herein, including such alternative provisions as are adopted by the people at said election, shall become effective at twelve o'clock midnight on the thirtieth day after the date on which the Secretary of State promulgates the results of the election.

Section 10. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 11. All laws or parts of laws in conflict herewith are hereby repealed.

Section 12. The necessity for the immediate passage of this Act having been certified by the governor to the legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the Governor.

Approved by the Governor: May 26, 1972, at 10:47 A.M.

A true copy:

WADE O. MARTIN, JR.
Secretary of State.

Certified by the Governor as Emergency Legislation. May 18, 1972.

WADE O. MARTIN, JR.
Secretary of State.

LOUISIANA LEGISLATIVE COUNCIL
BOX 44012, CAPITOL STATION
BATON ROUGE, LOUISIANA 70804
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REPRESENTATIVE CLAUDE LEACH, JR.
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ASSISTANT DIRECTOR

October 24, 1979

Ms. Bina E. Harris
Library Assistant
Legislative Reference Library
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Harris:

This will acknowledge receipt of your request dated October 11, 1979, relative to the Louisiana Constitutional Convention.

Please be advised that this has been assigned to a member of our staff who will forward the information to you.

With all good wishes and kindest regards, I remain

Cordially yours,

DeVan D. Daggett
Executive Director

DDD/koa

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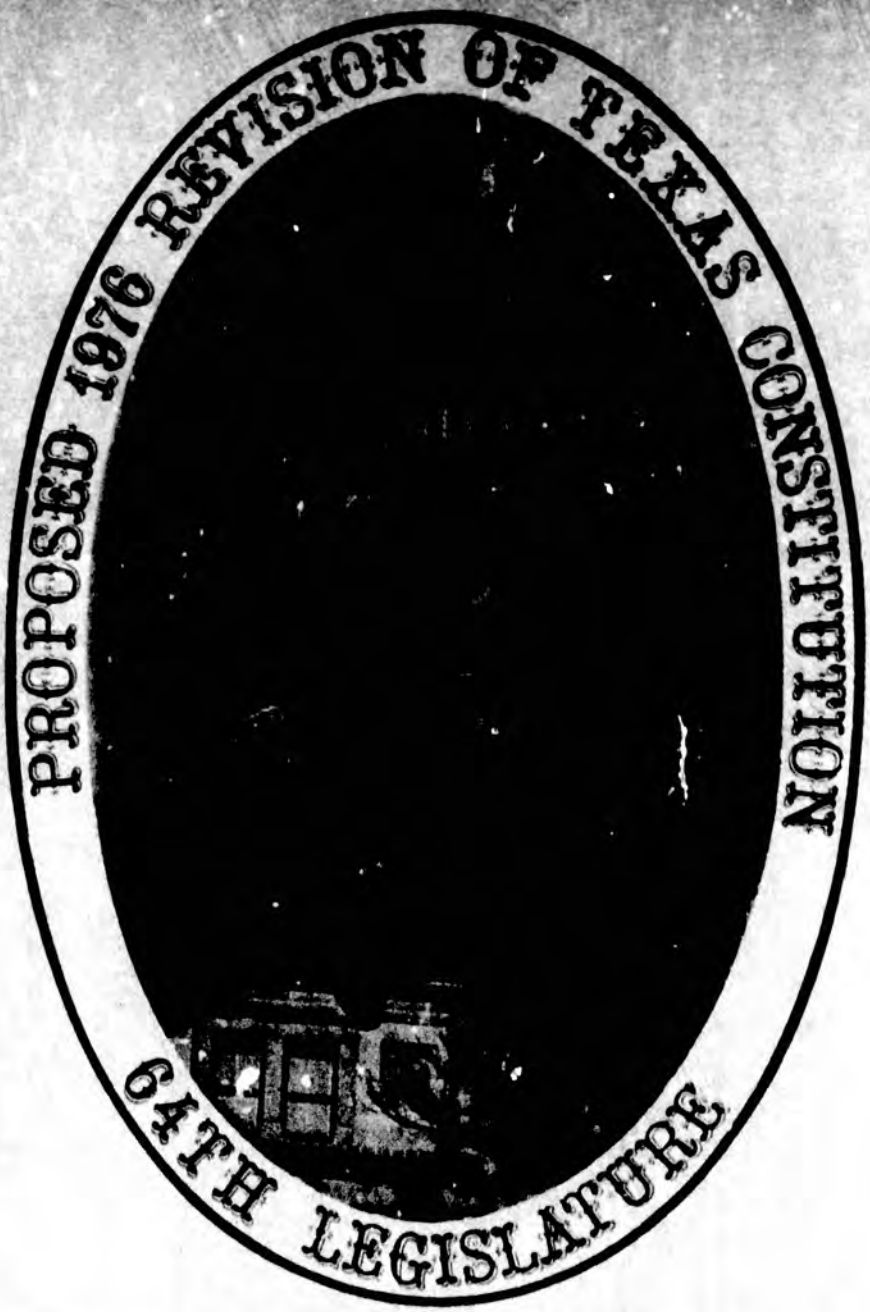

INFORMATIONAL BOOKLET

INFORMATIONAL BOOKLET

ON THE

PROPOSED 1976 REVISION OF THE

TEXAS CONSTITUTION

64th LEGISLATURE

Approved by: The Senate Committee on the Texas Constitution
The House Committee on Constitutional Revision

The Honorable William P. Hobby
Lieutenant Governor
The State of Texas

Senate Committee on The Texas Constitution
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Senator Max Sherman, Vice Chairman

Senator Don Adams	**Senator Bob Gammage**
Senator Ray Farabee	**Senator Roy Harrington**

Senator Tati Santiesteban

The Honorable Bill W. Clayton
Speaker of the House
The State of Texas

House Committee on Constitutional Revision
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Representative Chris Miller, Vice Chairman

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Representative Matt Garcia	Representative Ron Waters

Representative Joe Wyatt

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I.

A HISTORY OF CONSTITUTIONAL REVISION IN TEXAS

Texans have lived under six different constitutions since 1836 when the first document was adopted to form the independent Republic of Texas. Each constitution has been a product of its era in the state's history. A second constitution was written in 1845 when Texas was admitted as the 28th state in the United States. When Texas seceded from the Union in 1861, another constitution was written to allow its accession to the Confederate States. That document was rewritten twice in the four years following the Civil War, first in 1866 and then again in 1869 to comply with the demands of Congressional Reconstruction.

The present Texas Constitution was drafted by a constitutional convention that met in 1875, and since its adoption by the voters in 1876, the document has been amended 220 times and now contains approximately 63,000 words.

In 1876 the governor, in a message to the legislature, spoke of the need for constitutional amendments to the new document, particularly in the Judiciary Article. Between 1879 and 1890, numerous unsuccessful attempts were made to create a joint committee to prepare a resolution encompassing suggested changes in the constitution. A single amendment substantially revising the entire Judiciary Article was adopted by the voters in 1891, culminating the movement for revision of that article.

The first recorded attempt to call a constitutional convention occurred eleven years after the ratification of the 1876 Constitution with the introduction of a joint resolution in 1887, the first of many resolutions proposing a convention. However, not until 1917 did both houses of the legislature succeed in passing a resolution that called for a constitutional convention. This senate concurrent resolution called the convention without voter approval but instructed the governor to issue a proclamation for the election of delegates and required submission of any proposed document to the voters for ratification. The governor stopped this revision effort by refusing to issue the proclamation.

Two years later the legislature tried a different approach. The 36th Legislature passed a senate concurrent resolution providing for the submission of the question of a constitutional convention to a public referendum. In November of 1919 the voters overwhelmingly defeated the convention proposition (23,549 for

to 71,376 against) with approximately ten percent of the voters going to the polls.

Between 1919 and 1949 the Texas Legislature regularly considered proposals for a constitutional convention. Four house concurrent resolutions, three senate concurrent resolutions, eight house joint resolutions, and four senate joint resolutions were introduced. Beginning in 1941 proposals for the creation of a revision commission were consistently introduced. However, no resolution calling a constitutional convention or creating a revision commission received legislative approval during this period.

In 1949 the governor called together a group of citizens to form the Citizens Committee on the Constitution, which recommended to the legislature that a commission be created to study the need for constitutional revision. A resolution embodying this recommendation and appropriating money to fund the commission died in a house committee.

A concurrent resolution was passed in 1957 requiring the Legislative Council to begin a study of the 1876 Constitution and to submit its recommendations on revision of the document. Although the legislature did not provide supplemental appropriations for the Legislative Council until 1959, an unpaid 18-member Citizens Advisory Committee was authorized, with the governor, lieutenant governor, and the speaker of the house each appointing six members. In 1959 the Citizens Advisory Committee issued an interim report, which indicated that some type of revision was necessary, subject to further research. The Legislative Council submitted a report to the 57th Legislature in 1961 indicating that no constitutional convention or revision commission was necessary.

Gubernatorial support for calling a constitutional convention was announced in 1966. In 1967 the legislature passed a resolution to create a Constitutional Revision Commission. The commission consisted of 25 members, ten appointed by the governor and five each by the chief justice, lieutenant governor, and speaker of the house. When the lieutenant governor refused to make his appointments, those commission members who had been appointed named the final five members. The commission presented a draft of a revised and simplified constitution to the 61st Legislature in 1969. The legislature did not submit that draft constitution to the voters but did submit an amendment repealing more than 50 obsolete sections of the Texas Constitution, which was approved by the voters in August of 1969.

In 1971 the legislature proposed a constitutional amendment, adopted by the voters on November 7, 1972, calling for the Texas Legislature to sit as a constitutional convention in 1974. This amendment also required the legislature to establish and fund a constitutional study commission before convening as a convention. After nine months of study and public hearings held throughout the state by 37 citizen-members, the Texas Constitutional Revision Commission submitted its recommended new state constitution to the legislature on November 1, 1973.

On January 8, 1974, a constitutional convention, composed of the state's 31 senators and 150 representatives, sitting as a unicameral body, began work on a revised state constitution. Using the 1973 revision commission's recommended document as a starting point, the convention developed several versions of a revised constitution. However, none of the convention proposals garnered the two-thirds vote necessary for submission. Thus, in accordance with the constitutionally mandated deadline, the convention dissolved on July 30, 1974, without submitting a new state charter to the voters.

The 64th Legislative Session convened in January, 1975, with constitutional revision a major issue in both the senate and the house. Over 30 bills and resolutions were introduced that proposed constitutional conventions or constitutional amendments revising one or more articles of the constitution. Early in the session, companion resolutions (House Joint Resolution No. 56 and Senate Joint Resolution No. 11), proposing a series of amendments to revise the entire Texas Constitution except the Bill of Rights, were introduced and referred to the House Committee on Constitutional Revision and the Senate Committee on the Texas Constitution. The house version was amended by the house committee and reported favorably on March 24. Two days later the senate committee incorporated the house committee's amendments into a committee substitute for SJR 11 and favorably reported the substituted resolution. The committee substitute for SJR 11 was amended and passed the Senate on April 1. In the house SJR 11 took the place on the calendar of HJR 56 and passed, with house amendments, on April 8 and 9. SJR 11 was finally passed when the senate concurred in the house amendments on April 16, 1975.

The voters of Texas have the opportunity to vote on a revised constitution for the first time in 100 years on November 4, 1975. The proposed revision of the constitution is submitted in the form

of eight separate amendments, each of which revises a particular portion of the constitution and may be individually adopted or rejected by the voters. The Bill of Rights is retained in full, unaltered except for the technical amendments required because of changes in other parts of the constitution.

II.

PROPOSED 1976 REVISION

OF THE

TEXAS CONSTITUTION

This copy of the proposed 1976 Revision of the Texas Constitution is based on the assumption that all eight amendments on the November 4, 1975 ballot are adopted by the voters. Equally possible is the adoption of several of the amendments and rejection of others. If this occurs, the Texas Constitution will combine those amendments which are adopted with the parts of the current constitution which were not affected by the amendments adopted.

PREAMBLE

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

ARTICLE I

BILL OF RIGHTS

Retained in full. The only changes are minor technical ones to conform certain provisions to the new court system provided in the revised Article V, The Judiciary.

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 1. FREEDOM AND SOVEREIGNTY OF STATE. Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Section 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Section 3. EQUAL RIGHTS. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Section 3a. EQUALITY UNDER THE LAW. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

Section 4. RELIGIOUS TESTS. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on

account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Section 5. **WITNESSES NOT DISQUALIFIED BY RELIGIOUS BELIEFS; OATHS AND AFFIRMATIONS.** No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Section 6. **FREEDOM OF WORSHIP.** All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. **APPROPRIATIONS FOR SECTARIAN PURPOSES.** No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Section 8. **FREEDOM OF SPEECH AND PRESS; LIBEL.** Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 9. **SEARCHES AND SEIZURES.** The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause,

supported by oath or affirmation.

Section 10. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

Section 11. BAIL. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Section 11a. MULTIPLE CONVICTIONS; DENIAL OF BAIL. Any person accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor may, after a hearing, and upon evidence substantially showing the guilt of the accused, be denied bail pending trial, by any judge of a court of record or magistrate in this State; provided, however, that if the accused is not accorded a trial upon the accusation within sixty (60) days from the time of his incarceration upon such charge, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to a court of appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder.

Section 12. HABEAS CORPUS. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall

enact laws to render the remedy speedy and effectual.

Section 13. EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 14. DOUBLE JEOPARDY. No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Section 15. RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the appropriate court without the necessity of a trial by jury.

Section 15-a. COMMITMENT OF PERSONS OF UNSOUND MIND. No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of the court where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

Section 16. BILLS OF ATTAINDER; EX POST FACTO OR RETROACTIVE LAWS; IMPAIRING OBLIGATION OF CONTRACTS. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Section 17. TAKING, DAMAGING OR DESTROYING PROPERTY FOR PUBLIC USE; SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Section 18. IMPRISONMENT FOR DEBT. No person shall ever be imprisoned for debt.

Section 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Section 20. OUTLAWRY OR TRANSPORTATION FOR OFFENSE. No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Section 21. CORRUPTION OF BLOOD; FORFEITURE; SUICIDES. No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Section 22. TREASON. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Section 23. RIGHT TO KEEP AND BEAR ARMS. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Section 24. MILITARY SUBORDINATE TO CIVIL AUTHORITY. The military shall at all times be subordinate to the civil authority.

Section 25. QUARTERING SOLDIERS IN HOUSES. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Section 26. PERPETUITIES AND MONOPOLIES; PRIMOGENITURE OR ENTAILMENTS. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Section 27. RIGHT OF ASSEMBLY; PETITION FOR REDRESS OF GRIEVANCES. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Section 28. SUSPENSION OF LAWS. No power of suspending laws in this State shall be exercised except by the Legislature.

Section 29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II

SEPARATION OF POWERS

Section 1. SEPARATION OF POWERS. The powers of government of the State of Texas are divided among three distinct branches: legislative, executive, and judicial. Except as otherwise authorized by this constitution, members of one branch may not exercise any power properly attached to either of the others.

ARTICLE III

THE LEGISLATURE

Section 1. THE LEGISLATIVE POWER. The legislative power of the State of Texas is vested in a senate and a house of representatives, together styled "The Legislature of Texas."

Section 2. COMPOSITION. The senate consists of 31 members. The house of representatives consists of 150 members.

Section 3. QUALIFICATION OF MEMBERS. (a) To be eligible to serve in the senate, a person must be a qualified voter at least 25 years old and immediately preceding election have been a resident of this state for five years and of the senatorial district for one year.

(b) To be eligible to serve in the house, a person must be a qualified voter at least 21 years old and immediately preceding election have been a resident of this state for two years and of the representative district for one year.

(c) In the general election following a redistricting, a person is eligible to the legislature from any new district that contains a part of the district in which that person was eligible for election immediately preceding the redistricting, but only if within 60 days after election that person becomes a resident of the new district.

(d) The office of a member of the legislature becomes vacant if the member changes residence from the district from which the member was elected unless the change is to comply with Subsection (c) of this section.

(e) A member of the legislature may not hold any other office or position of profit or trust under this state, the United States, or a foreign government, except as a member of the National Guard, National Guard Reserve, or any of the armed forces reserves of the United States, as a retired member of the armed forces or of the armed forces reserves of the United States, or as a notary public.

(f) A person holding a lucrative office under this state, the United States, or a foreign government, is not eligible to serve in the legislature during the term of that lucrative office.

Section 4. ELECTION AND TERMS OF MEMBERS. (a)

Senators and representatives are elected by the qualified voters of their respective districts at a statewide general election.

(b) Each senator serves a term of four years beginning on the date prescribed by law for convening the legislature in regular session following election. The qualified voters elect a new senate after each statewide senatorial redistricting. The senators shall decide by lot which serve four-year terms and which serve two-year terms, so that one-half will be elected every two years thereafter.

(c) Each representative serves a term of two years beginning on the date prescribed by law for convening the legislature in regular session following election.

(d) Vacancies in the senate and house of representatives are filled by special election in the manner prescribed by law.

Section 5. **REDISTRICTING.** (a) Before December 15 following publication of each federal decennial census, the legislature by law shall divide the state into single-member senatorial, single-member representative, and single-member congressional districts.

(b) Senatorial, representative, and congressional districts must be composed of compact and contiguous territory and contain, respectively, as nearly as practicable an equal number of inhabitants except that a county is not to be divided unless necessary to prevent a significant population variance among districts.

(c) County lines are to be respected in drawing district lines. If the population of a county is sufficient to provide for one or more districts, only population in excess of that required for complete districts may be added to population of other counties to form districts. If the excess population in a county equals 50 percent or more of that required for a district, the excess must be kept in a single district.

(d) If the Supreme Court of Texas or a federal court enters a final decree concluding legal action that invalidates a redistricting plan or prior to entry of the decree orders a redistricting plan into effect, the legislature shall consider enacting a new redistricting plan. If the legislature is in regular session on the day that the final decree is entered or the order takes effect, a new redistricting bill may be passed only within 30 days thereafter. If the final decree is

entered or the order takes effect within 45 days prior to the convening of a regular session, a new redistricting bill may be passed only within the first 30 days after the convening of the session. If the decree is entered or the order takes effect at any other time, the legislature convenes in a redistricting special session within 14 days thereafter, either on a date set by the secretary of state or on the 14th day.

(e) If the legislature fails to pass a new redistricting bill to replace an invalidated plan or if a new redistricting bill does not become law, a legislative redistricting board consisting of the lieutenant governor, speaker of the house of representatives, attorney general, comptroller of public accounts, and commissioner of the general land office shall convene. The board shall convene within 10 days after the legislature fails to act or a new redistricting bill fails to become law and within 30 days thereafter shall redistrict the state. The legislature shall provide funds for the board's clerical, technical, and other expenses.

Section 6. COMPENSATION. (a) Compensation and allowances for members of the legislature may not exceed the amounts recommended by the salary commission established by this section. No change in compensation may take effect prior to the first regular session following a statewide general election.

(b) The salary commission consists of nine members. The governor, lieutenant governor, speaker of the house of representatives, attorney general, and Chief Justice of Texas, acting together, appoint the members of the commission and designate the chairman. Members must be selected on a nonpartisan basis with due regard to representation of both sexes and of the ethnic groups and geographical regions of the state. No person may be appointed who is related by blood or marriage to, or who has or has had a business association with, an appointing officer. No person may be appointed who has served a full term on the commission.

(c) Members serve six-year terms. One-third of the members are appointed every two years. The appointing officers fill vacancies for the unexpired term.

(d) No member while serving on the commission may hold any other public office, be an employee of the state, or hold an office in a political party.

(e) The commission shall review legislative compensation and

allowances annually and at that time may recommend changes.

Section 7. SESSIONS. (a) The legislature shall convene in regular session each year on a date prescribed by law. Sessions may not exceed 140 consecutive days in odd-numbered years and 90 consecutive days in even-numbered years.

(b) Special sessions may not exceed 30 consecutive days. Veto sessions may not exceed 15 consecutive days.

(c) Sessions of the legislature must be open to the public.

(d) Neither house may adjourn or recess for more than 10 days without the consent of the other.

(e) The legislature shall meet at the seat of government unless otherwise provided by law.

(f) The legislature by petition of three-fifths of the membership of each house may convene in veto session on the first Monday following the 50th day after adjournment solely to reconsider bills or resolutions for passage over a veto. Bills or resolutions that may be reconsidered are (1) bills, resolutions, or appropriation items that the governor vetoed within 10 days of adjournment and that the legislature did not reconsider before adjournment and (2) bills, resolutions, or appropriation items that, by virtue of action of the governor after adjournment, did not become law.

Section 8. ORGANIZATION AND PROCEDURE. (a) Each house is the judge of the qualifications and election of its own members, but contested elections are determined as provided by law.

(b) The legislature may provide by law for assembling and organizing either or both houses prior to the convening of a regular session. If the assembly precedes the regular session following a statewide general election, the assembly is composed of the members of either or both houses of the next legislature.

(c) At an organizational assembly prior to or at the beginning of the regular session in an odd-numbered year, each house by majority vote may adopt or amend its rules of procedure. The legislature by majority vote of the membership of each house shall adopt joint rules. Rules of procedure and joint rules, once adopted, remain in effect until changed by the same or succeeding

legislatures.

(d) At an organizational assembly or on convening in regular session, at the beginning of other sessions, and at the end of each session, the senate shall elect from its members a president pro tempore who performs the duties of lieutenant governor when the lieutenant governor is absent or disabled, or when the office is temporarily vacant.

(e) At an organizational assembly prior to or at the beginning of the regular session in an odd-numbered year, the house of representatives shall elect a speaker from its members. The legislature may limit by law the number of terms a person may serve as speaker.

(f) Two-thirds of the membership of each house constitutes a quorum for transacting business, but fewer members may recess or adjourn from day to day and may compel the attendance of absent members.

(g) Each house shall prepare and publish a journal of its proceedings while in session. At the request of any three members present, the votes on any question must be recorded in the journal.

(h) Each house may punish a member for disorderly conduct or other cause deemed sufficient by that house and may expel a member by an affirmative two-thirds vote of its membership, but not a second time for the same offense.

Section 9. LEGISLATIVE IMMUNITY. (a) A member may not be questioned in any other place for speech or debate during a legislative proceeding.

(b) Except for treason, felony, or breach of the peace, a member is privileged from arrest while attending a session of the legislature and while traveling to and from its meeting place for that purpose.

Section 10. CONFLICT OF INTEREST. (a) No member may be appointed to an office that is filled by the legislature.

(b) During the term for which elected, a member is ineligible for appointment to (1) any civil office of profit under this state that is created or the emoluments of which are substantially increased during that term, or (2) any office or position the

appointment to which is made by either house of the legislature. The ineligibility terminates on the last day in December of the last full calendar year of the member's term.

(c) A member privately interested in a bill, resolution, or other matter before the legislature shall disclose that interest and not vote on the bill, resolution, or other matter.

(d) No member may enter into a contract with the state during the term for which the member is elected unless the contract is a renewal ukder an existing state program.

Section 11. BILLS AND RESOLUTIONS. (a) A law may be enacted only by bill.

(b) A bill may originate in either house. After a bill passes one house, the other may amend or reject it, but neither house may so amend a bill as to change its original purpose.

(c) A bill must be limited to a single subject. The subject must be expressed in the title of the bill. If a bill that becomes law embraces a subject that is not expressed in the title, only the portion of the law concerning the subject not expressed in the title is void. A general appropriations bill must be limited to the subject of appropriations. A statutory revision bill must be limited to that subject.

(d) A bill, amendatory in form, must set out the complete section, as amended, of the statute it amends.

(e) Before a house considers a bill, it must have been referred to a committee of that house and reported at least five days before adjournment of the session, but either house by a record affirmative four-fifths vote of the members present and voting may suspend this five-day requirement.

(f) Before a bill becomes law, it must be read in each house on three separate days. Either house by a record affirmative four-fifths vote of the members present and voting may suspend this requirement.

(g) If a bill or resolution is defeated by a vote of either house, no bill or resolution containing the same substance may be passed during the same session.

(h) The presiding officer of each house shall certify the final

passage of each bill and the final passage of each resolution that requires the concurrence of both houses. The fact of certification must be recorded in the journal.

(i) No law except general appropriations acts and redistricting acts may take effect until 90 days after adjournment of the session at which it was enacted. The legislature by a record affirmative two-thirds vote of the membership of each house may authorize an earlier effective date.

Section 12. ACTION ON BILLS AND RESOLUTIONS. (a) Each bill that passes both houses of the legislature must be presented to the governor. The governor may approve the bill by signing it, in which event it becomes a law. The governor may veto the bill by returning it with objections to the house in which it originated. That house shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill passes that house by a record affirmative three-fifths vote of the membership, it must be sent with the governor's objections to the other house, which shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill likewise passes that house by a record affirmative three-fifths vote of the membership, the bill becomes a law. If the governor fails to veto a bill within 10 days (Sundays excepted) after it is presented, the bill becomes a law. If the legislature by its adjournment prevents a veto, a bill becomes a law unless within 20 days after adjournment the governor files the bill and objections with the secretary of state and gives public notice thereof by proclamation. If the legislature meets in veto session, the secretary of state shall return the bill with the governor's objections to the house in which the bill originated for reconsideration in the manner provided above. Bills that become law are filed with the secretary of state.

(b) The governor may veto any item of appropriation in a bill. Portions of a bill not vetoed become law. An item vetoed, together with the governor's objections, must be returned to the house in which the bill originated and may become law in the same manner as a vetoed bill.

(c) Resolutions requiring the concurrence of both houses of the legislature must be presented to the governor. The governor may approve a resolution by signing it or permit it to become effective by filing it with the secretary of state. The governor may disapprove a resolution by returning it to the house in which it originated. In that case the resolution does not become effective unless repassed by both houses in the same manner as a vetoed

bill. Presentation to the governor is not required if a resolution pertains to (1) an amendment to the state or federal constitution, (2) a referendum, (3) adjournment, (4) legislative rules, (5) an investigation or study, (6) internal administration of the legislative branch, or (7) removal by address.

Section 13. LOCAL AND SPECIAL LAWS. (a) Except as expressly authorized by this constitution, the legislature may not enact a local or special law if a general law is or can be made applicable. Whether a general law is or can be made applicable is a question subject to judicial determination.

(b) No local bill may be passed unless notice of the intention to introduce the bill has been given in the affected locality in the manner prescribed by law. Evidence that the notice was given must be exhibited in the legislature before the bill is passed. Compliance with these notice requirements is subject to judicial review.

(c) A local law must identify the area to which it applies by the name or other official designation of the area.

(d) No bill may be considered and no law enacted that limits or defines the area to which it applies by the use of population figures or other statistical data except general laws that have statewide application and classify all of one or more types of political subdivisions on the basis of population.

Section 14. IMPEACHMENT. (a) The house of representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by a record majority vote of its membership, to impeach officers of the executive department, the Chief Justice of Texas, or justices of the supreme court. The house of representatives by petition of a majority of its members may convene and conduct impeachment proceedings.

(b) An officer against whom articles of impeachment have been preferred is suspended from the exercise of the duties of the office during the pendency of the impeachment. If the governor is suspended, the lieutenant governor acts as governor. If the lieutenant governor is suspended, the president pro tempore of the senate acts as lieutenant governor. In other cases the governor may make a temporary appointment to fill the vacancy during suspension.

(c) Impeachments are tried by the senate. The senate shall convene for this purpose upon presentation of articles of impeachment by the house of representatives. Senators shall affirm or take an oath to try impartially the party impeached. If the governor or lieutenant governor is tried, the Chief Justice of Texas shall preside. A person may be convicted of impeachment charges only by a record affirmative two-thirds vote of the membership of the senate.

(d) On conviction by the senate, the office becomes vacant. A judgment of conviction may not extend beyond removal from office and disqualification to hold any office of honor, trust, or profit of this state. An impeached person, whether convicted or acquitted, is amenable to prosecution, trial, judgment, and punishment according to law.

Section 15. ADVICE AND CONSENT OF THE SENATE. An affirmative two-thirds vote of the members present constitutes consent to any appointment which this constitution requires to be with the advice and consent of the senate. A person appointed to an office requiring the advice and consent of the senate does not take office until confirmed by the senate unless the appointment is made when the senate is not in session, in which case the person ceases to serve on rejection by the senate or, if the appointment fails to be voted on at the session to which the appointment is submitted, on adjournment sine die. A person not confirmed by the senate may not be appointed again to fill the same vacancy. An appointment made when the senate is not in session must be submitted to the senate within 10 days after it convenes.

ARTICLE IV

THE EXECUTIVE

Section 1. OFFICERS. The governor is the chief executive officer of the state. Officers of the executive department of the executive branch are the governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, secretary of state, and other officers as provided by law.

Section 2. SELECTION AND TERMS OF OFFICERS. (a) The governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, and other elected officers of the executive department provided for by law are elected by the qualified voters of the state for four-year terms. Separate votes are cast for candidates for governor and lieutenant governor. Quadrennial elections for officers of the executive department start with the statewide general election in 1978.

(b) The secretary of state and other appointed officers of the executive department are appointed by the governor with the advice and consent of the senate and serve at the pleasure of the governor.

(c) The governor appoints officers to state agencies unless otherwise provided by law. Officers appointed by the governor to state agencies are appointed with the advice and consent of the senate.

(d) In addition to other procedures provided by law for the removal of appointed officers, officers appointed by a governor with the advice and consent of the senate and not serving at the pleasure of the governor may be removed by the governor only for stated reasons. Prior to removal and not less than 45 days prior to the required adjournment of a regular session or not more than two days after the convening of a special session, the governor shall advise the senate in writing of the reasons for the proposed removal. If within 45 days after receipt of the governor's statement of reasons the senate by majority vote of the membership rejects the governor's proposed removal, the governor may not remove the officer for those stated reasons.

(e) The term of an officer appointed by the governor to a statutory state agency expires on a date prescribed by law, but the

date must fall between February 1 and May 1 of an odd-numbered year. The terms of officers of multimember state agencies must be staggered.

(f) Only an appointed officer of a multimember statutory state agency having appointed members may serve as its chairman, unless a law designates a member of the executive department as chairman. The governor designates the chairman in odd-numbered years to serve for a term of two years and in the event of a vacancy designates a new chairman to serve for the remainder of the term. If the governor designates a new appointee as chairman and the officer is not confirmed by the senate, the governor designates a new chairman. If the governor fails to designate the chairman prior to May 1, the appointed members designate the chairman.

Section 3. RETURNS OF ELECTION. Election returns for executive officers must be canvassed and certified in a public forum in the manner prescribed by law.

Section 4. GOVERNOR'S ELIGIBILITY AND INSTALLATION. (a) To be eligible to serve as governor, a person must be a citizen of the United States at least 30 years old and have been a resident of the state for at least five years immediately preceding election. A person serving as governor in the second of two consecutive four-year terms is not eligible for a third consecutive term.

(b) The legislature shall provide an appropriation for assistance to a governor-elect prior to inauguration. A governor-elect is entitled to receive any information and reports that the incumbent governor is entitled to require from officers and state agencies.

(c) The governor is inaugurated on the second Thursday in January or as soon thereafter as practicable.

Section 5. GUBERNATORIAL SUCCESSION. (a) If the governor-elect is disqualified, dies, or refuses the office prior to inauguration, the lieutenant governor-elect becomes governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect acts as governor. If the governor-elect does not assume office by the end of the first year of the term, the lieutenant governor becomes governor and serves for the remainder of the term.

(b) If after inauguration the office of governor becomes vacant, the lieutenant governor becomes governor. An elected lieutenant governor who becomes governor serves for the remainder of the term. An appointed lieutenant governor who becomes governor serves until the next statewide general election.

(c) If the offices of both governor and lieutenant governor become vacant, the speaker of the house of representatives, if eligible, becomes governor and serves for the remainder of the term.

(d) The office of governor or lieutenant governor becomes vacant if the person holding the office dies, resigns, becomes permanently disabled, is removed from office, or comes to the end of a period of appointment.

(e) If the governor is absent from the state or temporarily disabled, the lieutenant governor acts as governor until the governor returns or is no longer disabled. If the lieutenant governor is also absent from the state or temporarily disabled, the president pro tempore of the senate acts as governor until either the governor or lieutenant governor returns or is no longer disabled.

(f) While serving or acting as governor a person receives only the compensation payable to a governor.

(g) The legislature shall provide by law for further succession to the office of governor.

Section 6. DISABILITY OF ELECTED OFFICERS OF EXECUTIVE DEPARTMENT. (a) The governor may notify the Chief Justice of Texas in writing of the governor's temporary disability. If, because of the disability, the governor fails to send notification to the chief justice, a majority of the following officers may jointly send the notification: the lieutenant governor attorney general, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, speaker of the house of representatives, and president pro tempore of the senate. A temporary disability ends on the delivery to the chief justice of the governor's sworn statement to that effect. The governor's sworn statement may not be denied by another notification to the chief justice. The same procedure applies in the case of the temporary disability of the lieutenant governor except that the governor and not the lieutenant governor is one of the eight officers voting on a notification. At the end of

one year a temporary disability becomes a permanent disability without a determination by the Supreme Court of Texas.

(b) Whether an elected officer of the executive department is permanently disabled and unable to discharge the duties of office is to be determined only by the Supreme Court of Texas in a proceeding conducted under rules of procedure prescribed by that court. The proceeding may be initiated only by a majority vote of the governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, speaker of the house of representatives, and president pro tempore of the senate. If the supreme court determines that the officer is permanently disabled and unable to discharge the duties of office, it shall declare the office vacant.

Section 7. COMPENSATION OF OFFICERS OF EXECUTIVE DEPARTMENT. The compensation of the officers of the executive department may not be diminished during their term of office. The governor has the use of the Governor's Mansion.

Section 8. DUAL OFFICE HOLDING AND EMPLOYMENT. An officer of the executive department may not hold any other civil or corporate office and, for compensation or the promise of compensation, may not practice any other profession or hold any other employment.

Section 9. COMMANDER-IN-CHIEF; CALLING FORTH MILITIA. The governor is commander-in-chief of the military forces of the state except when they are called into actual service of the United States. The governor may call forth the militia to execute the laws of the state, suppress insurrections, repel invasions, and protect life and property in cases of disasters.

Section 10. EXECUTION OF LAWS; CONDUCT OF BUSINESS WITH OTHER STATES, THE UNITED STATES, AND FOREIGN NATIONS. The governor shall cause the laws to be faithfully executed and shall conduct, in person or in the manner prescribed by law, all intercourse and business of the state with other states, the United States, and foreign nations.

Section 11. CONVENING THE LEGISLATURE IN SPECIAL SESSION. The governor, on extraordinary occasions may convene the legislature in special session, stating specifically the purpose of the session. The legislature may consider only those

matters that the governor specifies in the call or subsequently presents to the legislature.

Section 12. GOVERNOR'S MESSAGE. At the beginning of each legislative session the governor shall, and at other times may, give the legislature information on the condition of the state and may recommend legislative action.

Section 13. CHIEF PLANNING OFFICER. The governor is the chief planning officer of the state and may require written information or written reports from all state agencies and executive branch officers on any subject relating to their duties, conditions, management, and expenditures.

Section 14. BUDGET PREPARATION. At the beginning of each session at which appropriations are to be made for the general operation of the government, the governor shall submit to the legislature a budget for all proposed state expenditures for the applicable fiscal period.

Section 15. BUDGET EXECUTION. (a) The legislature by law may authorize or direct the governor to exercise fiscal control over the expenditure of appropriated money.

(b) The governor shall ensure that items of appropriation for the executive branch, except items for the other elective offices of the executive department, are expended only as directed by the legislature. The legislature by law may remove the exception.

Section 16. ADMINISTRATIVE REORGANIZATION. (a) At the regular session held in odd-numbered years, the governor shall submit to the legislature a report on the organization and efficiency of the executive branch.

(b) In recommending plans for reorganization of the executive branch, the governor may submit to the legislature one or more reorganization bills limited to consolidating, abolishing, or transferring functions among statutory state agencies in the executive branch. The legislature must consider those bills but may amend them. A submitted reorganization bill, whether amended or not, must be brought to a vote of each house during the session at which the bill is submitted.

Section 17. REPRIEVES, COMMUTATIONS, AND PARDONS; REMISSION OF FINES AND FORFEITURES. (a) The legislature shall prescribe by law the number of members and

the terms of office of the Board of Pardons and Paroles. The governor, the Chief Justice of Texas, and the attorney general each appoint an equal number of members of the board. Appointments are made with the advice and consent of the senate. A vacancy is filled by the officer who made the original appointment.

(b) The governor may grant one reprieve in a capital case for a period not to exceed 30 days. The governor, on the written signed recommendation and advice of a majority of the Board of Pardons and Paroles, may grant pardons, reprieves, and commutations of punishment; remit fines and forfeitures; and revoke paroles and conditional pardons.

Section 18. LIEUTENANT GOVERNOR. The lieutenant governor must be eligible to serve as governor. The lieutenant governor, by virtue of the office, is president of the senate but may vote only to cast a deciding vote when the senate is equally divided.

Section 19. ATTORNEY GENERAL. The attorney general represents the state in those civil actions before the Supreme Court of Texas in which the state may be a party and, except as otherwise provided by law, represents the state in all other civil actions in which the state may be a party. The attorney general shall especially inquire into the charter rights of private corporations and shall take such action in the courts as may be proper and necessary to prevent a private corporation from exercising a power not authorized by law. When sufficient cause exists and unless otherwise expressly directed by law, the attorney general shall seek a judicial forfeiture of a corporate charter. The attorney general shall give legal advice in writing to the governor and other executive officers when requested by them and perform such other duties as may be required by law. The attorney general has the powers of the office as at common law except as expressly provided by law to the contrary. The attorney general must be qualified to practice before the Supreme Court of Texas.

Section 20. COMMISSIONER OF THE GENERAL LAND OFFICE. The commissioner of the general land office shall administer at the seat of government a general land office in which all land titles that emanate from the state must be registered and shall perform other duties as provided by law.

Section 21. OTHER OFFICERS OF THE EXECUTIVE DEPARTMENT. The comptroller of public accounts, the treasurer, the commissioner of agriculture, and the secretary of

state shall perform the duties required by this constitution and other duties as provided by law.

Section 22. RAILROAD COMMISSION. The railroad commission consists of three commissioners elected at a statewide general election for six-year terms. One commissioner is elected every two years. The legislature by law may prescribe qualifications for the office of commissioner. The commission has the authority and performs the duties prescribed by law. The legislature by law may abolish the commission.

Section 23. VACANCIES IN STATEWIDE ELECTIVE OFFICES. Unless otherwise provided by this constitution, vacancies in elective statewide offices are filled by appointment of the governor with the advice and consent of the senate. If the office of lieutenant governor becomes vacant, the governor shall call the senate into session within 20 days to confirm the appointment of a lieutenant governor. If the senate rejects the appointee, the governor shall continue to submit appointments until a lieutenant governor is confirmed. The senate shall then adjourn sine die. The term of an officer appointed to a vacancy in an elective statewide office ends at the next statewide general election.

Section 24. STATE AGENCIES. (a) State agencies include all boards, commissions, departments, institutions, and other executive or administrative agencies of state government. State agencies are a part of the executive branch unless otherwise provided by law.

(b) Statutory state agencies with statewide jurisdiction having appointed officers, except institutions related to higher education, have a life of not more than 10 years unless renewed by law for not more than 10 years at a time. Unless otherwise provided by law, appointed officers serving on the effective date of a renewal continue to hold office for the terms for which they were appointed. A bill to renew an agency or agencies, the life of any one of which expires in less than two years from the beginning of the session in which the bill was introduced, must be reported from committee in the house and senate and brought to a vote in each house not less than 20 days before adjournment.

(c) Subsection (b) of this section does not end the life of a state agency with outstanding bonds unless the legislature by law first provides for the administration of property under the control of the agency and makes adequate provision for servicing the

outstanding debt to ensure that the bond obligations are not impaired.

Section 25. SEAL OF STATE. The seal of the state is a star of five points encircled by olive and live oak branches and the words "The State of Texas." The seal of the state is kept by the secretary of state and used by that officer officially under the direction of the governor.

ARTICLE V

THE JUDICIARY

Section 1. JUDICIAL POWER. (a) The judicial power of the state is vested in the judicial branch. The state unified judicial system is composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts have jurisdiction as provided by law, but jurisdiction of courts of the same level within the unified judicial system must be uniform throughout the state. No courts may be created except those authorized by this article.

(b) The legislature by law may grant the supreme court the power to answer questions of state law certified from a federal court.

(c) Courts that have original jurisdiction of criminal cases may (1) subject to regulation by law, suspend imposition or execution of sentence and place a defendant on probation, or (2) if authorized by law, modify, set aside, or reimpose sentence.

Section 2. SUPREME COURT. The supreme court is the highest court of the state and consists of the Chief Justice of Texas and at least eight other justices. The court may sit en banc or in sections of not fewer than five justices. The concurrence of a majority of the justices sitting is necessary to decide a case.

Section 3. COURTS OF APPEALS. The legislature by law shall establish one or more districts and in each provide for a court of appeals consisting of a chief judge and at least two other judges. The court may sit in sections if authorized by law. The concurrence of a majority of the judges sitting is necessary to decide a case.

Section 4. DISTRICT COURTS. The state is divided into judicial districts, each with one district court having one or more judges. The legislature from time to time may determine by law the number and location of districts and the number of judges in each district.

Section 5. CIRCUIT COURTS. The legislature by general or local law may provide for circuit courts, each with one or more judges, and from time to time shall determine the number and location of circuit courts. A circuit court may serve one or more counties, but no county may be served by more than one circuit court.

Section 6. OTHER COURTS. (a) The county courts in existence on August 31, 1976, are continued unless otherwise provided by general or local law. The county courts have jurisdiction as provided by general law. The county judge is the presiding officer of the county court and has judicial functions as provided by general law.

(b) The governing body of each county shall (1) divide the county from time to time into not fewer than four nor more than eight justice precincts and (2) establish and maintain one or more justice courts, each serving one or more precincts in the manner prescribed by general law.

(c) Municipal courts may be established by general law or by charter as authorized by general law.

Section 7. COURT ADMINISTRATION AND RULEMAKING AUTHORITY. (a) The supreme court shall provide for the efficient administration of the judicial branch. The supreme court may delegate administrative authority to the chief justice and the administrative judges.

(b) The supreme court may direct the transfer of cases between courts of the same level. The supreme court may temporarily assign justices or judges within or between levels.

(c) Each court of appeals district constitutes an administrative district for the management of trial courts. The Chief Justice of Texas with the advice and consent of the senate shall designate a judge to serve as the administrative judge of each district.

(d) The legislature by law may provide for an agency of the judicial branch to propose rules for administration of the unified judicial system and to perform other duties as provided by law. Members of this agency are not subject to the provisions of Article II of this constitution.

(e) A rule of administration may not be inconsistent with general law or rules of procedure and does not take effect until approved by the supreme court.

(f) The supreme court may promulgate rules of civil procedure for all courts but may not promulgate other procedural rules except as provided by law. A rule of civil procedure promulgated by the court may not be inconsistent with general

law and has no effect if expressly disapproved by the legislature.

Section 8. QUALIFICATIONS OF JUDGES. To be eligible to serve as a justice, judge, or justice of the peace, a person must be a citizen of the United States, a resident of this state, and otherwise qualified as prescribed by law. No person may serve as a justice or judge in the unified judicial system unless licensed to practice law in this state.

Section 9. SELECTION AND TERMS OF JUDGES. (a) The justices of the supreme court are elected for six-year terms by the qualified voters of the state. The judges of each court of appeals are elected for six-year terms by the qualified voters of the court-of-appeals district. A district judge is elected for a four-year term by the qualified voters of the judicial district. A circuit judge is elected for a four-year term by the qualified voters within the geographical area served by the circuit court. The legislature may prescribe by law a mandatory retirement age for justices and judges of these courts.

(b) A justice of the peace is elected for a four-year term by the qualified voters of the precinct or precincts. A municipal court judge is selected in the manner prescribed by law or by charter as authorized by law.

(c) A vacancy in the office of justice of the supreme court or judge of a court of appeals, district court, or circuit court is filled by appointment of the governor with the advice and consent of the senate. A vacancy in the office of justice of the peace is filled by appointment of the governing body of the county. A justice, judge, or justice of the peace appointed to a vacancy serves until the next statewide general election.

(d) Justices, judges, and justices of the peace are elected in the manner prescribed by law.

Section 10. REMOVAL AND DISCIPLINE OF JUDGES. (a) The governor shall remove a justice of the supreme court on the address of two-thirds of the members of each house of the legislature for willful neglect of duty, incompetency, oppression in office, or other reasonable cause not a sufficient ground for impeachment.

(b) The legislature by law (1) shall provide for a judicial qualifications commission and (2) may provide for the removal, suspension, or censure of justices of the supreme court, judges,

and justices of the peace.

Section 11. DISTRICT ATTORNEYS. (a) In each district as defined by law, the qualified voters elect a district attorney for a four-year term.

(b) Each county must be served by a district attorney. The district attorney shall represent the state in all criminal cases in courts below the level of court of appeals, except municipal courts or justice courts, but in counties in which there is a county attorney, the duties and functions of the district and county attorneys are as provided by law. The district attorney performs other duties and functions provided by law.

(c) A district attorney must be licensed to practice law in this state. Other qualifications of district attorneys, the grounds and procedure for disqualification, suspension, and removal, and the filling of vacancies in office are as provided by law.

Section 12. DISTRICT CLERKS. (a) The qualified voters of each county elect a district clerk for a four-year term. The legislature may provide by law for the election of a single clerk to perform the duties of both a county clerk and a district clerk.

(b) The district clerk is the clerk of the district and circuit courts of the county and performs such duties as provided by law.

(c) A clerk holding office under this section may be removed on a jury finding of incompetence, official misconduct, or other cause defined by law. A vacancy in the office is filled by appointment by the judges of the district and circuit courts of the county in the manner prescribed by law. A clerk appointed to a vacancy serves until the next statewide general election.

Section 13. JURIES. (a) The grand jury is impaneled only in the district court and consists of 12 persons. Nine members of a grand jury constitute a quorum. At least nine members must concur in a bill of indictment.

(b) A party has a right to a trial by jury on demand made in the manner prescribed by law. The legislature by law shall provide for trial juries.

(c) A jury verdict must be unanimous except that in civil cases the legislature by law, or the supreme court by procedural rule promulgated under this article, may authorize a jury verdict

to be rendered by not less than three-fourths of the jurors sitting in the case. Alternate jurors are not permitted unless authorized by law.

Section 14. APPEAL BY STATE. Subject to the guarantees of the Bill of Rights of this constitution, the state may appeal in a criminal case only (1) from a trial court ruling that a law is unconstitutional or (2) from a court of appeals decision to the supreme court, which appeal is at the discretion of the supreme court unless otherwise provided by law.

Section 15. APPEAL BY ACCUSED. (a) A person convicted of a criminal offense in a trial court has a right to an appeal to the court having jurisdiction.

(b) An appeal to the supreme court in a criminal case is at the discretion of the supreme court unless otherwise provided by law.

Section 16. APPEALS FROM ADMINISTRATIVE ACTION. Notwithstanding any other provision of this constitution, the legislature may provide by law for the method of appeal to the courts from rulings, decisions, or other actions of state agencies or political subdivisions of the state.

Section 17. FINANCING. The state shall pay the basic compensation of justices and judges of the unified judicial system and district attorneys and shall pay such other expenses of the system as provided by law.

ARTICLE VI

VOTER QUALIFICATIONS AND ELECTIONS

Section 1. QUALIFICATIONS FOR VOTING. (a) A citizen of the United States who is at least 18 years old and who meets the registration and residence requirements provided by law is a qualified voter unless the person has been convicted of a felony and for that felony is incarcerated, on parole, or on probation or unless the person is mentally incompetent as determined by a court.

(b) The legislature may provide by law for additional limitations on voting by persons convicted of a felony.

(c) The legislature by law may require property ownership as an additional qualification for voting (1) in an election held by a political subdivision for the purpose of authorizing property taxes or issuing bonds that are payable from property taxes or (2) in an election held by a special district or authority that principally engages in special or limited activities that have a disproportionate effect on property owners.

Section 2. ELECTIONS. (a) Voting by the people in all elections must be by secret ballot.

(b) The legislature shall provide by law for residence, registration, and absentee voting requirements, for the administration of elections, and for the protection of the integrity of the electoral process.

(c) The general election for state and county officers is to be held in even-numbered years on a date prescribed by law.

ARTICLE VII

EDUCATION

Section 1. EQUITABLE SUPPORT OF FREE PUBLIC SCHOOLS. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, the legislature has the duty to establish and provide by law for the equitable support and maintenance of an efficient system of free public schools below the college level. The system must furnish each individual an equal educational opportunity, but a school district may provide local enrichment of educational programs exceeding the level provided by the state consistent with general law.

Section 2. PERMANENT AND AVAILABLE SCHOOL FUNDS. (a) The Permanent School Fund consists of the property set apart, before or after this article takes effect, for the support of free public schools; the proceeds from sale and mineral development of the property; and the property purchased with the proceeds.

(b) The Permanent School Fund is held in perpetual trust for the free public schools. The principal of the fund may not be spent. The land of the permanent fund may be sold, leased, or exchanged as provided by law. The State Board of Education shall direct the investment of all Permanent School Fund money in the manner prescribed by law.

(c) The Available School Fund consists of the income from the Permanent School Fund and the state taxes dedicated to the Available School Fund.

(d) The State Board of Education shall set aside from the Available School Fund an amount sufficient to provide the free textbooks, and other instructional materials authorized by law, that are required in educational programs in the free public schools. The remainder of the Available School Fund must be distributed among the counties according to their respective scholastic populations and must be spent for the support of free public schools in the manner prescribed by law.

Section 3. COUNTY PUBLIC SCHOOL FUND. (a) The County Public School Fund of each county consists of the property transferred to the county for the support of free public schools in that county, the proceeds from sale and mineral

development of the property, and the property purchased with the proceeds.

(b) Title to the property is in the county and may not be divested by limitation. A county may sell, lease, or exchange the property and invest the proceeds in the manner prescribed by law. A county may annually spend the income from the fund for the support of its free public schools in the manner prescribed by law.

(c) The governing body of a county may transfer in the manner prescribed by law all or part of the property in its County Public School Fund to the school districts of the county for use by them to reduce their bonded indebtedness or to make permanent improvements. State financial aid to a school district may not be reduced because of a transfer under this subsection.

Section 4. STATE BOARD OF EDUCATION. The legislature shall provide by law for a State Board of Education composed of elected members.

Section 5. SCHOOL AND COMMUNITY JUNIOR COLLEGE DISTRICTS. The legislature shall provide by general law for school districts and community junior college districts.

Section 6. FIRST CLASS COLLEGES AND UNIVERSITIES. The legislature shall provide by law for a system of higher education of the first class.

Section 7. PERMANENT AND AVAILABLE UNIVERSITY FUNDS. (a) The Permanent University Fund consists of the land set apart for The University of Texas by Article VII, Section 15, of the Constitution of 1876, as amended and as it existed on November 4, 1975, and the Legislative Act of April 10, 1883; the proceeds from sale and mineral development of the land; and the property purchased with the proceeds.

(b) The Permanent University Fund is held in perpetual trust for the people of Texas and for the use and benefit of The Texas A&M University System and The University of Texas System. The principal of the fund may not be spent. The Board of Regents of The University of Texas System may sell, lease, exchange, or otherwise manage the assets of the fund in the manner prescribed by law and shall invest all proceeds.

(c) The Board of Regents of The University of Texas System shall make full disclosure of all investments as provided by law.

The board of regents shall invest the Permanent University Fund in accordance with generally accepted fiduciary standards but may invest only in stocks or bonds, debentures, or other obligations and may not:

(1) invest in the stock of a corporation that is not incorporated in the United States;

(2) invest in the stock of a corporation unless:

(A) the corporation or its predecessors have paid dividends on common stock for at least five years preceding investment; and

(B) the stock is either:

(i) listed on an exchange registered with the Securities and Exchange Commission or its successor; or

(ii) issued by a bank or insurance company with capital and surplus of not less than $5 million and admitted assets of not less than $50 million;

(3) invest more than one percent of the fund in the securities of any one corporation;

(4) permit the fund to own more than five percent of the voting stock of any one corporation; or

(5) invest in the obligations of any state or its political subdivisions other than the State of Texas or its political subdivisions.

(d) The Available University Fund consists of the income from the Permanent University Fund less administrative expense and less the net income from grazing leases of permanent-fund land. Out of one-third of the Available University Fund the legislature shall appropriate an annual sum sufficient to service Permanent University Fund bonds or notes issued by the governing board of The Texas A&M University System under authority of this article. The legislature shall appropriate the remainder of that one-third for the support and maintenance of Texas A&M University in the County of Brazos. Out of two-thirds of the Available University Fund the legislature shall appropriate an annual sum sufficient to service Permanent University Fund bonds or notes issued by the Board of Regents of The University

of Texas System under authority of this article. The legislature shall appropriate the remainder of that two-thirds and the net income from grazing leases of permanent-fund land for the support and maintenance of The University of Texas at Austin.

Section 8. **PERMANENT UNIVERSITY FUND BONDS AND NOTES.** (a) The governing boards of The Texas A&M University System and The University of Texas System each may issue negotiable bonds or notes for the benefit of the institutions included in their respective systems on the date this article is adopted. The aggregate principal amount of bonds and notes issued for The Texas A&M University System may not exceed 10 percent, and for The University of Texas System may not exceed 20 percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance. The bonds or notes may be issued to acquire real property, construct permanent improvements, repair or rehabilitate existing permanent improvements, acquire library books or library materials, acquire capital equipment, or refund bonds.

(b) Bonds and notes issued under this section are payable only out of the Available University Fund and must mature not more than 30 years from the date of issuance.

(c) The governing boards of The Texas A&M University System and The University of Texas System each may pledge in whole or in part their respective interests in the Available University Fund to secure payment of bonds or notes issued under this section. No bonds or notes may be issued under this section without the prior approval of the attorney general. After approval the bonds and notes are incontestable.

Section 9. **HIGHER EDUCATION FUND FOR TEXAS AND BONDS AND NOTES.** (a) There is hereby established the Higher Education Fund for Texas.

(b) A state ad valorem tax is hereby levied on real property and tangible personal property of 10 cents on the $100 assessed valuation for the Higher Education Fund for Texas. The rate of the tax may be changed by law, but not to exceed 10 cents on the $100 assessed valuation. For purposes of this tax, the legislature shall establish by law an assessment ratio that must be applied uniformly throughout the state.

(c) The legislature shall provide by law for an annual assessment of needs, according to which the fund is to be allocated

among the state systems of higher education (except institutions in The University of Texas System and The Texas A&M University System) and the state senior institutions not included in a system. The fund must be allocated under equitable formulas based on statewide higher education needs. If in any year the total allocations are less than the revenue generated by the tax levied in this section, the surplus revenue accumulates in the fund and is to be invested as provided by law. Income from the fund is allocated as provided in this subsection.

(d) The fund, income from the fund, or proceeds from bonds or notes issued under this section may be used to acquire real property, construct permanent improvements, repair or rehabilitate existing permanent improvements, acquire library books or library materials, acquire capital equipment, or service debt incurred under this section.

(e) The governing boards of the state systems of higher education (except institutions in The University of Texas System and The Texas A&M University System) and the governing boards of the state senior institutions not included in a system may issue negotiable bonds or notes for the benefit of their systems or institutions based on allocations to their systems or institutions under Subsection (c) of this section. Bonds or notes issued under this subsection are secured by and payable only from the fund. Bonds or notes may be issued to refund bonds issued under this section. No bonds or notes may be issued under this section without the prior approval of the attorney general. After approval the bonds and notes are incontestable.

(f) The legislature may provide by law for allocation of a portion of the fund to state-owned vocational and technical institutes that do not grant academic degrees.

ARTICLE VIII

FINANCE

Section 1. STATE TAXATION. (a) State taxes may be levied and collected only by general law.

(b) No state ad valorem tax on real property or tangible personal property may be levied for state purposes except (1) the tax of 10 cents on the $100 assessed valuation levied under Article VII of this constitution and (2) a tax of two cents on the $100 assessed valuation that is hereby levied to provide funds for the State Building Fund. This two-cent tax may be reduced by law.

Section 2. AD VALOREM TAXATION. (a) Except as otherwise permitted in this article, all real property and tangible personal property must be taxed equally and uniformly in proportion to market value.

(b) The legislature by general law shall provide for the establishment and enforcement of standards and procedures for appraisal of property for ad valorem tax purposes. These standards and procedures must be applied uniformly throughout the state. Except as limited by general law, a taxing authority levying a tax on property within a county may seek countywide enforcement of these standards and procedures.

(c) Each county shall provide for appraisal of all taxable property within its boundaries in the manner prescribed by law. Each taxing authority imposing a tax on property within the county shall tax in proportion to, but not in excess of, this appraisal. The costs and expenses of appraisals are to be allocated among the taxing authorities in the manner prescribed by general law.

(d) Ad valorem taxes delinquent less than 10 years may not be released.

Section 3. AD VALOREM TAX EXCEPTIONS. (a) The legislature by general law shall establish separate formulas for appraising land to promote the preservation of open-space land devoted to farm or ranch purposes and by general law may establish separate formulas for appraising land to promote the preservation of forest land devoted to timber production. The legislature by general law may provide limitations and impose sanctions in furtherance of the appraisal policy of this subsection.

(b) The legislature by general law may permit the rolling stock of railroads to be assessed for ad valorem tax purposes by the county in which the principal office of the railroad is located and require the comptroller of public accounts to apportion on the basis of track mileage the assessed value of the rolling stock among the counties through which the railroad runs.

Section 4. AD VALOREM TAX EXEMPTIONS. (a) The following property is exempt from ad valorem taxation:

(1) property of the state except as otherwise provided by law;

(2) property of political subdivisions of the state used for public purposes;

(3) household goods not used for the production of income;

(4) personal effects not used for the production of income; and

(5) farm products in the hands of the producer and family supplies for home and farm use.

(b) Each residential homestead is exempt from state ad valorem taxation in the amount of $3,000 of appraised value. The legislature by law may increase this amount.

(c) The residential homestead of persons at least 65 years old is exempt from ad valorem taxation in the amount of $3,000 of assessed value in each taxing political subdivision except that a person may elect in writing to be excluded from the exemption. A political subdivision may increase this amount within its jurisdiction. In a political subdivision that has pledged its ad valorem tax for the payment of debt, a residential homestead exemption does not become effective if the exemption would impair the obligation of the contract under which the tax was pledged.

(d) Subject to such limitations, classifications, or exclusions as it may prescribe, the legislature by law may exempt from ad valorem taxation:

(1) property used exclusively for educational or charitable purposes;

(2) nonresidential property owned and used exclusively by organizations chartered by both the State of Texas and the United States and whose membership is composed solely of former members of the armed services of the United States;

(3) places of burial not held for profit;

(4) property owned by a disabled veteran of the armed services of the United States, by the surviving spouse or minor children of a disabled veteran of the armed services of the United States, or by the surviving spouse or minor children of a member of the armed services of the United States whose life was lost while on active duty;

(5) actual places of religious worship;

(6) property owned by a church or a strictly religious society for exclusive use as a dwelling place for the ministry of the church or religious society if the property yields no revenue to the church or religious society, but the exemption may not extend to more property than is reasonably necessary for a dwelling place and in no event to more than one acre of land; or

(7) property that is owned by a nonprofit water supply corporation whose board of directors is elected by the members it serves, that is not held for profit, and that is reasonably necessary for and is used in the acquisition, storage, transportation, or distribution of water or in providing sewage or waste water treatment service.

Section 5. AD VALOREM TAX RELIEF. (a) The legislature by law may grant relief from residential ad valorem taxes payable by persons determined to be in need of relief because of economic circumstance and either age or disability. A law granting relief must provide either (1) that political subdivisions are reimbursed for revenue losses caused by the relief or (2) that relief applies to the ad valorem taxes of a political subdivision only if the political subdivision approves.

(b) The legislature by law may provide for the preservation of cultural, historical, or natural history resources by:

(1) granting relief from state ad valorem taxes on appropriate property so designated in the manner prescribed by law; or

(2) authorizing political subdivisions to grant relief from ad valorem taxes on appropriate property so designated by the political subdivision in the manner prescribed by general law.

Section 6. AD VALOREM TAX ACTIONS. (a) Notwithstanding other remedies provided by law, an owner of property may pay under protest ad valorem taxes due on that property and sue for a refund in a district court.

(b) In a suit for a refund of taxes, a court has the duty of entering those orders necessary to ensure equal treatment under the law for the complaining property owner, including refund of taxes and equalization of property appraisal and assessment.

(c) Subject to limitations provided by law, the court has the additional duty of entering all other orders necessary to ensure equal treatment under the law for all property owners within the taxing authority, including refunds of taxes and equalization of property appraisals and assessments.

Section 7. ALLOCATIONS AND USES OF CERTAIN REVENUES. (a) Each county receives from the net revenue derived annually from motor vehicle registration fees attributable to the county an amount prescribed by general law but that amount must be at least equal to all fees collected up to $50,000 and 50 percent of the next $250,000 of fees collected.

(b) All net revenue from motor vehicle registration fees not retained by the counties and three-fourths of all net revenue derived from taxes on motor fuels and lubricants used to propel motor vehicles over public roadways, except gross production, petroleum products manufacturing, and ad valorem taxes, may be appropriated only for the following purposes:

(1) acquiring rights-of-way for public roadways;

(2) constructing or maintaining public roadways;

(3) administering laws pertaining to the supervision of traffic or safety on public roadways; or

(4) policing public roadways.

(c) One-fourth of all net revenue from the motor fuel tax and from state occupation taxes is dedicated to the Available School Fund.

(d) No revenue from taxes on motor fuels and lubricants or from motor vehicle registration fees not retained by counties may be appropriated for payment of principal or interest on bonds or warrants issued by political subdivisions.

Section 8. STATE DEBT. (a) State debt may not be incurred except as authorized by this constitution.

(b) "State debt" means bonds or other evidences of indebtedness that are secured by the general credit of the state or are to be repaid from taxes, fees, tuition, or other charges of the state, a state senior college or university, or a state agency or institution having statewide jurisdiction. "State debt" does not include bonds or other evidences of indebtedness issued to finance a project if the debt is authorized by law and is payable solely from revenues generated by the project to be financed.

(c) State debt may be authorized by law if approved by a record affirmative two-thirds vote of the membership of each house of the legislature and submitted to and approved by a majority of the qualified voters of the state voting on the question.

(d) State debt may be authorized by law to refund outstanding state debt.

Section 9. APPROPRIATIONS. (a) No money may be drawn from the State Treasury except in accordance with specific appropriation made by law. No law may appropriate money from the State Treasury for a purpose not previously authorized by law.

(b) No appropriation of money from the State Treasury may be made for a period longer than two years.

(c) On the convening of the legislature in regular session, the comptroller of public accounts shall submit to the governor and the legislature a report that shows (1) the condition of the treasury at the end of the preceding fiscal period, (2) an estimate of the probable receipts and disbursements for the current fiscal year, (3) an itemized estimate of anticipated revenues for the next applicable fiscal period, and (4) other information required by law. On the convening of a special session of the legislature, the comptroller of public accounts shall submit a report showing changes from the regular report previously submitted. In the event of changes at other times, the comptroller of public accounts shall report the changes to the governor and to the members of the

legislature.

(d) No bill containing an appropriation may be considered as passed or be presented to the governor unless the comptroller of public accounts has certified that the amount appropriated is within the estimated revenue for the applicable fiscal year or unless the appropriation is made in response to imperative public necessity and approved by a record affirmative four-fifths vote of the membership of each house of the legislature.

Section 10. PUBLIC FUNDS. Public funds and public credit may be used only for public purposes. No public funds or public credit may be used to influence the election of a public officer.

Section 11. REPORT OF DEDICATED FUNDS. The legislature shall provide by law for an annual report of the receipts and expenditures of constitutionally dedicated funds.

Section 12. EXEMPTION FROM RETAIL SALES TAX. No retail sales tax may be imposed on (1) agricultural machinery or parts, fertilizer, feed or seeds, (2) prescription drugs or medicine, or (3) food for human consumption except food sold by restaurants or comparable establishments for immediate consumption.

Section 13. REFUNDABLE MARINE FOOD OR AGRICULTURAL ASSESSMENTS. An assessment voted by marine food or agricultural producers on their product sales is not a tax if provision is made for the individual producer to receive a refund of the assessment when the producer does not desire to be assessed.

ARTICLE IX

LOCAL GOVERNMENT

Section 1. COUNTIES. (a) The counties of the state are those that exist on the date of adoption of this article.

(b) Under procedures prescribed by general law, (1) county boundaries may be changed if approved by a majority of the qualified voters in each affected county who vote on the question, and (2) counties may be merged or county seats relocated if approved by two-thirds of the qualified voters in each affected county who vote on the question.

Section 2. POWERS OF COUNTY GOVERNMENT. Counties have only the powers of government granted by the constitution and general laws of this state.

Section 3. COUNTY OFFICERS. (a) The governing body of each county is the county commission, consisting of a county judge elected by the qualified voters of the county, and four county commissioners, each elected by the qualified voters of separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The county judge is the presiding officer of the county commission.

(b) The qualified voters of each county elect a sheriff, treasurer, tax assessor-collector, and county clerk. The qualified voters elect a county attorney in those counties designated by general or local law.

(c) The county commission shall provide for the election of one or more constables.

(d) The qualifications, duties, and functions of county officers and the grounds and procedure for disqualification, suspension, and removal are as provided by general law except that (1) among other qualifications the county attorney must be licensed to practice law in this state and (2) among the duties and functions of the county clerk are those of county recorder and clerk of the county commission.

(e) Under methods and procedures established by general law, the qualified voters of a county by a majority vote of those voting on the question may create additional offices, eliminate

offices, or combine the duties and functions of offices. In the case of a coun y commission this power is limited to reducing or increasing the number of county commissioners. If the duties and functions of an office named in Subsections (b) and (c) of this section are combined with another office, the holder of the combined offices must be elected. The county commission shall designate the officer to perform the duties required by law to be performed by an officer whose office is eliminated.

(f) Vacancies in county offices are filled as provided by general law.

Section 4. **COUNTY ORDINANCES.** (a) Under procedures prescribed by general law, the qualified voters of a county, by a majority of those voting on the question, may grant to or withdraw from the county commission a general or limited power to enact ordinances. If this power is granted, the county commission may enact ordinances that are not inconsistent with the constitution or laws of this state. The legislature by general law may provide procedures by which the qualified voters of a county may repeal ordinances.

(b) If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance prevails within its jurisdiction as defined by law.

Section 5. **GENERAL LAW CITIES.** Cities and towns having a population of 1,500 or less may be chartered only under general law.

Section 6. **CITY CHARTERS.** Cities and towns having more than 1,500 inhabitants, by a majority vote of the qualified voters voting on the question, may adopt, amend, or repeal their charters in the manner prescribed by law. No charter or ordinance may be inconsistent with the constitution or laws of this state. No tax may be levied unless authorized by law or charter. No city loses the power to amend or repeal its charter because its population drops below 1,500.

Section 7. **SPECIAL DISTRICTS AND AUTHORITIES.** (a) The legislature may provide by general or local law for special districts or authorities.

(b) Counties, cities, and towns may provide for special districts or authorities within their boundaries but only if authorized by general law. No local law may create a special

district or authority wholly within a county, city, or town if a general law authorizes the county, city, or town to create a special district or authority for the same purpose.

(c) Special districts or authorities may be created only for public purposes.

(d) The provisions of this section are not applicable to school districts or community junior college districts.

Section 8. TERMS OF OFFICE. Constitutional county officers are elected for four-year terms. Other elected county officers and elected officers of other political subdivisions are elected for terms as provided by law or charter.

Section 9. COMPENSATION OF OFFICERS. Elected officers of political subdivisions are not to be compensated on a fee basis.

Section 10. TAX RATES AND DEBT LIMITATIONS. (a) The maximum annual tax rate established by law or charter for ad valorem taxes levied by a city or town for purposes other than debt service may not exceed $2 on the $100 of assessed valuation. The maximum annual tax rate established by law for ad valorem taxes levied by a county for purposes other than debt service may not exceed $1.25 on the $100 of assessed valuation.

(b) No school district, community junior college district, or special district or authority may levy an annual ad valorem tax for purposes other than debt service unless a maximum annual tax rate, not exceeding the maximum rate permitted by law, has been approved by a majority of the qualified voters of the district or authority voting on the question at an election held for that purpose.

(c) A political subdivision may levy an additional annual ad valorem tax at a rate not greater than necessary to provide an annual amount sufficient to service debt payable from ad valorem taxes.

(d) The legislature shall establish by general law the maximum amount of interest-bearing obligations payable from ad valorem taxes that may be issued by cities, towns, counties, school districts, and community junior college districts.

(e) No interest-bearing obligations payable from ad valorem

taxes, other than refunding obligations, may be issued by school districts, community junior college districts, or special districts or authorities unless authorized by a majority of the qualified voters of the district or authority voting on the question at an election held for that purpose.

(f) No interest-bearing obligations for mass transportation purposes and payable from ad valorem taxes may be issued by a political subdivision unless authorized by a majority of the qualified voters of the political subdivision who vote on the question.

(g) The power of a political subdivision to levy taxes or issue interest-bearing obligations previously voted is not lost by any change in its boundaries. If boundaries are changed by annexation or by merger or consolidation of two or more political subdivisions of the same type, the surviving political subdivision may levy taxes at the highest rate previously voted by any of the affected political subdivisions and may issue interest-bearing obligations to the extent previously approved by each of the affected political subdivisions. The legislature shall provide by general or local law for the assumption of outstanding obligations of political subdivisions whose boundaries are changed.

(h) No interest-bearing debt may be created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.

(i) Ad valorem taxes levied by school districts, community junior college districts, or special districts or authorities are not to be counted as part of the ad valorem tax limits imposed on counties, cities, and towns.

Section 11. **INTERGOVERNMENTAL COOPERATION.** The legislature shall prescribe by law the manner in which a political subdivision, by act of its governing body, may cooperate or contract with other political subdivisions, the state, or the United States for the performance of functions required or authorized by the constitution or laws of this state.

Section 12. **CONSOLIDATION OF OFFICES AND TRANSFER OF FUNCTIONS.** Political subdivisions may be authorized only by general law to consolidate offices, transfer functions of government, or cancel a consolidation or transfer. A law may not authorize a consolidation or transfer among political subdivisions of more than one geographical county. No

consolidation or transfer may take effect unless it is approved by a majority of the qualified voters in each affected political subdivision who vote on the question except that the legislature by general law may provide for the consolidation of the function of collection of taxes in a county.

ARTICLE X

GENERAL PROVISIONS

Section 1. OFFICIAL OATH. State and local officers shall take the following oath before entering on the duties of public office:

"I, , do solemnly swear (or affirm) that I will faithfully execute the duties of the office of and will to the best of my ability preserve, protect, and defend the constitution and laws of the United States and of this state; and I furthermore solemnly swear (or affirm) that I have not directly or indirectly paid, offered, or promised to pay, contributed or promised to contribute any money or valuable thing, or promised any public office or employment, as a reward for the securing of this office, so help me God."

Section 2. RESIDENCE OF CIVIL OFFICERS. Public officers shall reside within the state. Officers of a political subdivision or district shall reside and shall keep their offices at the locations prescribed by law. An office becomes vacant if the officer does not comply with this section.

Section 3. FORFEITURE OF RESIDENCE BY ABSENCE ON PUBLIC BUSINESS. A person's absence from the state, a political subdivision, or a district on business of the United States, this state, or the political subdivision or district does not forfeit a residence for purposes of suffrage or of election or appointment to public office.

Section 4. CONTINUATION IN OFFICE. An officer of this state continues to perform the duties of office until a successor has assumed office, but an officer appointed by the governor to a statutory state agency may not perform those duties beyond December 31 of the year in which the term expires.

Section 5. VACANCIES FILLED FOR UNEXPIRED TERM. A person elected to fill a vacancy in office serves for the remainder of the term.

Section 6. DISQUALIFICATION, SUSPENSION, AND REMOVAL FROM CONSTITUTIONAL OFFICE. The legislature by law may provide grounds and procedures for the disqualification, suspension, or removal of those constitutional officers whose removal is not provided for elsewhere in this

constitution and for the temporary filling of vacancies.

Section 7. PROTECTION OF THE ENVIRONMENT. The quality of the environment of the State of Texas is to be protected. The legislature by law shall implement and enforce this policy.

Section 8. CONSERVATION AND DEVELOPMENT OF NATURAL RESOURCES. (a) It is the policy of this state to promote the conservation and development of the natural resources in the state. The legislature by law shall implement and enforce this policy. In furtherance of this policy the legislature shall provide by law for (1) the control, storage, preservation, and distribution for useful purposes of storm, flood, river, and stream waters; (2) the reclamation, irrigation, and drainage of land; (3) the abatement of subsidence; (4) the conservation of the atmosphere; (5) the collection and disposal or recycling of wastes; (6) the conservation and development of the energy resources and forests; and (7) the navigability of the waters.

(b) No state fund established for purposes of water development, transmission, transfer, or filtration may be used to finance a project that contemplates or results in removing surface water from the river basin of origin if the surface water is necessary to supply the reasonably foreseeable water requirements of the basin for the ensuing 50 years. This subsection does not apply to a removal of water (1) that is sufficiently replaced to the point of removal from outside the state or (2) that is on a temporary, interim basis.

Section 9. COASTAL NATURAL RESOURCES. (a) In order to preserve the coastal natural resources of the state, the state holds in perpetual trust for the use and benefit of the people of this state the beaches and those coastal submerged lands belonging to the state and may not by sale transfer a fee simple absolute title in these lands.

(b) Subject to such reasonable limitations as prescribed by law, the public, individually and collectively, has the free and unrestricted right of use and benefit of the beaches. The state and its political subdivisions shall provide reasonable access avenues to the beaches and coastal public waters. An illegal entry on private property to gain access to a beach is not permitted by virtue of this section.

(c) In this section "beach" means the land on the seaward

shore of the open Gulf of Mexico, whether island or mainland, that extends inland from the line of mean low tide to the natural line of vegetation or the larger contiguous area to which the public has (1) acquired a right of use by dedication, prescription, or estoppel or (2) retained a continuous right of use recognized by law or custom since time immemorial.

Section 10. PROTECTION OF WILDLIFE RESOURCES. The legislature may enact local laws to regulate the taking of wildlife resources.

Section 11. SEPARATE AND COMMUNITY PROPERTY OF SPOUSES. (a) The property owned or claimed by a spouse before marriage and that acquired by a spouse during marriage by gift, devise, or descent is the separate property of the spouse. The legislature by law may prescribe more precise rules within the principles of this definition and may more clearly define the rights of each spouse in relation to separate and community property.

(b) The definition in Subsection (a) of this section does not limit the power of spouses to enter into written contracts or other written transactions between themselves that affect their property rights. Spouses may enter into written contracts or other written transactions (1) that change their community property into separate property if the change does not prejudice the rights of preexisting creditors or (2) that create between themselves a right of survivorship in community property. The form, manner of execution, and recordation requirements of the written contracts or other written transactions are as prescribed by law.

Section 12. HOMESTEAD. (a) The homestead is the home of a family or single adult. The place used for conducting the occupation of the claimant of an urban homestead may also be a homestead.

(b) The rural homestead consists of not more than 200 acres of land in one or more parcels, with improvements, located outside a city, town, or village. Not more than 50 acres on which the home is located is a residential homestead; the rest is a nonresidential homestead. A rural homestead may not be changed to an urban homestead without the claimant's consent so long as the land is used for agricultural purposes.

(c) The urban homestead consists of land, with improvements, located in a city, town, or village; but the value of

the land, without improvements, at the time of establishment as homestead may not exceed $10,000, or a larger sum if prescribed by law. The urban homestead is a residential homestead if used as a home and a nonresidential homestead if used as a place for conducting the occupation of the claimant.

(d) The homestead is not subject to forced sale for the payment of debt except for (1) purchase money for the homestead, (2) taxes due on the homestead, and (3) the value of improvements made on the homestead under a written contract (A) to which the claimant consents or (B) in the case of a homestead of spouses, to which both spouses consent in the manner prescribed by law for the conveyance of a homestead. A pretended sale of a homestead involving a defeasance or a condition nullifying the sale is void.

(e) A mortgage, trust deed, or other lien on a residential homestead is void except for (1) the purchase money for the homestead or (2) the value of improvements as provided in Subsection (d) of this section. A lien on a nonresidential homestead may be created but only in the manner prescribed by law for the conveyance of a homestead.

(f) Except as otherwise provided by law, a homestead of spouses may not be sold or abandoned without the consent of both spouses. A temporary renting of a homestead does not change its character if no other homestead is acquired.

(g) A homestead of spouses descends and vests like other real property but may not be partitioned so long as the homestead is used or occupied as a home by either a surviving spouse or minor child if that use has been granted the child by a proper court.

Section 13. PROTECTION OF PERSONAL PROPERTY FROM FORCED SALE. The legislature shall provide by law for the protection from forced sale of certain personal property belonging to each adult and each head of family.

Section 14. PROTECTION OF WAGES FROM GARNISHMENT. Current wages for personal service are not subject to garnishment.

Section 15. PRIVATE CORPORATIONS. A private corporation may not be chartered except under general law.

Section 16. BANKING. (a) No bank may engage in business

at more than one place in this state. A bank shall designate in its charter the place at which it will engage in business.

(b) The legislature by law shall provide for the regulation of bank holding companies.

(c) No foreign corporation except a bank chartered by the United States and domiciled in Texas may exercise banking or discounting privileges in this state.

Section 17. ALCOHOLIC BEVERAGES. (a) The legislature by law shall provide for the regulation of the manufacture, packaging, sale, possession, and transportation of alcoholic beverages and mixed alcoholic beverages.

(b) This regulation must preserve the right of local option by counties, justice precincts, or incorporated cities or towns but may not provide for local option by other political subdivisions. Local option is a determination of whether to legalize or prohibit the sale of these beverages and a determination of the various types and various alcoholic contents of these beverages that may be sold.

(c) A local-option determination by a county, justice precinct, or incorporated city or town may be made only by a majority of the qualified voters who vote on the question at an election in that political subdivision.

(d) The local-option status of a county, justice precinct, or incorporated city or town on the effective date of this article, may be changed only by a majority of the qualified voters who vote on the question at an election in that political subdivision.

Section 18. PRACTITIONERS OF MEDICINE. The legislature shall pass laws to prescribe the qualifications of practitioners of medicine and to punish persons for malpractice. No preference may be given by law to any schools of medicine.

Section 19. LOTTERIES AND GIFT ENTERPRISES. The legislature by law shall prohibit lotteries and gift enterprises except that the legislature by law may authorize bingo or raffles conducted for the benefit of a nonprofit charitable organization if (1) all proceeds are spent in this state for the purposes of the organization and (2) the games are limited to one location as defined by law.

Section 20. LIENS OF MECHANICS, ARTISANS, AND MATERIALMEN. Mechanics, artisans, and materialmen have a

lien on the buildings or articles made or repaired by them. The lien is for the value of labor or material furnished. The legislature by law shall provide for the efficient enforcement of the lien.

Section 21. RETIREMENT BENEFITS FOR PUBLIC EMPLOYEES. (a) General Provisions. (1) The legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.

(2) A person may not receive benefits from more than one system for the same service, but the legislature may provide by law that a person with service covered by more than one system or program is entitled to a fractional benefit from each system or program based on service rendered under each system or program calculated as to amount upon the benefit formula used in that system or program. Transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas may also be authorized by law.

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.

(4) General laws establishing retirement systems and optional retirement programs for public employees and officers in effect on the date of adoption of this article, remain in effect, subject to the general powers of the legislature established in this subsection.

(b) State Retirement Systems. (1) The legislature shall establish by law a Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state. Other employees may be included under the system by law.

(2) The legislature shall establish by law an Employees Retirement System of Texas to provide benefits for officers and employees of the state and such state-compensated officers and employees of the unified judicial system as may be included under the system by law.

(3) The legislature shall establish by law the amount to be contributed by persons participating in the Employees Retirement System of Texas and the Teacher Retirement System of Texas. The amount contributed by the state must be at least six percent of the aggregate compensation paid to individuals participating in the system. The legislature may appropriate such additional sums as are actuarially determined to be required to fund benefits authorized by law.

(c) Local Retirement Systems. (1) The legislature shall provide by law for:

(A) the creation by any city or county of a system of benefits for its officers and employees;

(B) a statewide system of benefits for the officers and employees of counties of other political subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and

(C) a statewide system of benefits for officers and employees of cities in which cities may voluntarily participate.

(2) Benefits under these systems must be reasonably related to participant tenure and contributions.

(d) Judicial Retirement System. (1) Notwithstanding any other provision of this section, the system of retirement, disability, and survivors' benefits heretofore established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is continued in effect. The legislature shall provide for inclusion in the system of judges of all courts in the unified judicial system. Contributions required and benefits payable are to be as provided by law.

(2) General administration of the Judicial Retirement System of Texas is by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

Section 22. REGULATION OF INTEREST AND LENDING. (a) Except as otherwise provided by law, a contract providing for a rate of interest in excess of 10 percent a year is usurious. If a contract does not specify a rate of interest, the rate under the contract may not exceed six percent a year.

(b) The legislature may not delegate the power to classify loans or lenders, define interest, or fix maximum interest rates.

Section 23. EQUAL TREATMENT OF THE HANDICAPPED. A person may not be denied a right, benefit, or opportunity because of a physical or mental handicap as defined by law except (1) as otherwise provided in this constitution, (2) as prescribed by law in the regulation of commerce, or (3) to the extent a handicap prevents work performance in employment. This guarantee is self-operative.

Section 24. ACCESS TO HEALTH CARE. A goal of this state is to provide every resident access to adequate, comprehensive health care as may be provided by law.

ARTICLE XI

MODE OF AMENDING

THE CONSTITUTION OF THE STATE

Section 1. AMENDMENTS TO THE CONSTITUTION. (a) The legislature may propose amendments to this constitution by a record affirmative two-thirds vote of the membership of each house. The legislature shall limit a proposed amendment to the revision of all or part of one article except that the amendment may revise parts of other articles that are germane to the revision of the principle article.

(b) A proposed amendment must be submitted to the people at the next statewide general election or at a special election held on a date specified by the legislature. In no event is an election on a proposed amendment to take place less than 90 days after the legislature proposes the amendment.

(c) Proposed amendments must be publicized in the English language and any other language prescribed by law. The legislature shall prescribe by law the procedure for publicizing proposed amendments.

(d) A proposed amendment is adopted if approved by a majority of the qualified voters voting on the question and becomes a part of this constitution on the date that the statewide returns of the election are canvassed.

Section 2. CONSTITUTIONAL CONVENTION. (a) The legislature by a record affirmative two-thirds vote of the membership of each house may submit to the people the question of whether to call a constitutional convention and may stipulate in the question the articles of the constitution that the convention may consider. The question must be submitted at the first statewide general election occurring at least six months after the legislature approves the submission. A constitutional convention must be called if approved by a majority of the qualified voters voting on the question.

(b) The question of whether to call a constitutional convention must be submitted to the people at least once every 30 years.

(c) At the next legislative session following approval of a call,

the legislature shall provide by law for the election of delegates and the filling of vacancies; for the convening of the convention on a date no later than three months after the election of delegates; for the meeting place and duration of the convention; for the pay, allowances, and expenses of delegates and officers; and for the other expenses of the convention.

(d) No public officer is prohibited from serving as a delegate by virtue of any provision in this constitution.

(e) The constitutional convention by a record affirmative two-thirds vote of its membership, in the case of an unlimited call, may propose any revision of or amendments to the constitution or, in the case of a limited call, may propose any revision of or amendments to the articles stipulated in the call. The convention shall determine the manner of submitting and publicizing its proposals and fix the date of the election. Convention proposals must be publicized in the English language and in any other language specified by the convention.

(f) A revision or amendment proposed by the constitutional convention becomes effective, as the convention provides, if approved by a majority of the qualified voters voting on the question.

TRANSITION SCHEDULE

The following schedule provisions remain part of this constitution until executed. Once each year the attorney general shall review the schedule and certify to the secretary of state which remaining provisions have been executed. A provision so certified is to be removed from and no longer published as part of the constitution.

Section 1. EXISTING LAWS, RIGHTS, AND PROCEEDINGS. All laws not inconsistent with the 1976 revision of this constitution continue in effect until they expire by their own limitation or until amended or repealed. All existing writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles, and rights continue unaffected except as modified in accordance with the revised provisions of this constitution.

Section 2. VALIDITY OF ISSUED BONDS. Bonds or other evidences of indebtedness validly issued by or on behalf of the state or any agency or political subdivision thereof under authority previously granted by the Constitution of 1876, as amended and as it existed prior to November 4, 1975, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions notwithstanding the repeal of such authority by virtue of the 1976 revision of this constitution. The state, agency, or political subdivision, as the case may be, shall continue to provide for a source or sources of payment in accordance with the terms of the bonds or other evidences of indebtedness, whether from taxes or otherwise, until the bonds or other evidences of indebtedness are paid in full.

Section 3. DELAYED EFFECTIVE DATE. Notwithstanding the general effective date of each article revised in 1976, as provided in each amendment, the following provisions become effective on the date indicated, or earlier if provided by law:

(1) Section 5 of Article III on January 1, 1981;

(2) Section 9 of Article VII on January 1, 1979;

(3) Subsections (b) and (c) of Section 2 of Article VIII on January 1, 1978; and

(4) Subsection (c) of Section 6 of Article VIII on January 1, 1979.

Section 4. PROVISIONS OF THE CONSTITUTION OF 1876. Until January 1, 1980, unless earlier enacted, repealed, or superseded by law, the following provisions of the Constitution of 1876, as amended and as it existed on November 4, 1975, continue in effect as if statutes, but only to the extent that they are not in conflict with the 1976 revision of this constitution:

(1) Article III, Section 13;

(2) Article III, Section 29;

(3) Article III, Section 36–insofar as it refers to revival of bills;

(4) Article III, Section 52e (as added in 1967);

(5) Article IV, Section 3–insofar as it relates to tie votes and prescribes a procedure for the canvassing of the votes for the governor and lieutenant governor;

(6) Article IV, Section 11–insofar as it provides for the number of members and the terms of the Board of Pardons and Paroles;

(7) Article IV, Section 20;

(8) Article IV, Section 24–insofar as it relates to information under oath and perjury penalties;

(9) Article V, Section 18–insofar as it requires the county commission to divide the county into commissioners precincts;

(10) Article VII, Section 6b–insofar as it requires county permanent school funds to be distributed on a per scholastic basis;

(11) Article VIII, Section 1-d;

(12) Article VIII, Section 1-e, Subsections (4) and (5);

(13) Article VIII, Section 9–insofar as it authorizes each county to put all tax money collected by the county into one general fund without regard to the purpose or source of each tax;

(14) Article XI, Section 11;

(15) Article XVI, Section 11–insofar as it authorizes trial de novo for those whose permits have been denied or cancelled by a regulatory agency;

(16) Article XVI, Sections 12, 33, and 40;

(17) Article XVI, Section 14;

(18) Article XVI, Section 26;

(19) Article XVI, Section 30–insofar as it provides that the duration of all offices not fixed by law or the Constitution of Texas is not to exceed two years;

(20) Article XVI, Section 41;

(21) Article XVI, Section 59, Subsections (d) and (e);

(22) Article XVI, Section 61;

(23) Article XVI, Section 64;

(24) Article XVI, Section 65; and

(25) Article XVII, Section 1–insofar as it provides a procedure for publicizing amendments to the constitution.

Section 5. **TERMS OF OFFICE.** Elected officers in this state continue in office until the end of their terms unless their offices are sooner abolished in accordance with this constitution or laws enacted pursuant thereto.

Section 6. **ANTICIPATORY LEGISLATION.** Laws may be enacted in anticipation of the effective date of revised articles, but those laws may not become effective prior to September 1, 1976.

Section 7. **POWERS OF THE SECRETARY OF STATE UNDER AMENDMENTS ADOPTED NOVEMBER 4, 1975.** Regarding nonsubstantive matters, the secretary of state, after the review and approval of the attorney general, shall: (1) number, locate, amend, or delete articles, sections, or subsections, and change cross-references in the Constitution of Texas in accordance with constitutional amendments adopted by the voters of the state on November 4, 1975; (2) number, locate, amend, or delete portions of the transition schedule of the constitution in accordance with constitutional amendments adopted by the voters

of the state on November 4, 1975; and (3) make other nonsubstantive changes in the constitution or amendments to the constitution as required to assure an orderly revision of the Texas Constitution from amendments adopted by the voters of the state on November 4, 1975.

Section 8. REDISTRICTING. Until January 1, 1981, unless earlier enacted, repealed, or superseded by law, Sections 25, 26, and 28 of Article III of the Constitution of 1876, as amended and as it existed on November 4, 1975, continue in effect as if statutes, but only to the extent that they are not in conflict with court rulings.

Section 9. LEGISLATIVE SALARY COMMISSION. When making the initial appointments to the legislative salary commission, the appointing body shall determine which three members serve until October 15, 1977, which three members serve until October 15, 1979, and which three members serve until October 15, 1981.

Section 10. CONVENING THE LEGISLATURE. The legislature convenes in regular session at 12 noon on the first Monday in January, 1976. The 1976 regular session of the legislature is limited to considering those matters that are submitted by the governor or such matters as the legislature considers necessary to effect implementation occurring as a result of the adoption of one or more amendments revising one or more articles of the constitution.

Section 11. RESIDENCE OF EXECUTIVE DEPARTMENT OFFICERS. Until enacted, repealed, or superseded by law, the requirements of the Constitution of 1876, as amended and as it existed on November 4, 1975, that certain officers of the executive department reside at the seat of government, or maintain an office or their records at the seat of government, continue in effect as if by statute.

Section 12. ALIGNMENT OF TERMS OF OFFICE. Subject to a law or laws establishing terms within the guidelines of Article IV, Section 2, Subsection (e), the terms of all officers appointed by the governor to statutory state agencies are extended to February 1, 1979, 1981, and 1983, if they expire prior to those dates but after January 31, 1978, 1980, and 1982, respectively; are shortened to April 30, 1977, 1979, and 1981, if they expire subsequent to those dates but prior to February 1, 1978, 1980, and 1982, respectively; and are extended to February 1, 1977, if

they expire after December 31, 1976, and prior to February 1, 1977. The foregoing adjustments are applicable only to offices that are not abolished.

Section 13. STATE AGENCY RENEWAL. (a) Within two years of January 1, 1976, the Texas Legislative Council, or its successor, shall submit to each house of the legislature a suggested agency disposition list for Subsection (b) of Section 24 of Article IV. This disposition list is to contain as nearly as possible a complete listing of all state agencies affected by Subsection (b) of Section 24.

(b) An affected agency not included on the disposition list shall register with the Legislative Council prior to May 31, 1978, listing its membership, statutory authorization, and who appoints its members. The Legislative Council shall transmit this information to the speaker of the house of representatives and the lieutenant governor, who shall add the agency to the disposition list.

(c) Beginning in the 1979 regular session, the legislature shall consider individually each agency on the disposition list.

Section 14. REORGANIZATION. Within two years after January 1, 1976, the governor shall submit to the legislature at least one bill of reorganization in conformity with Section 16 of Article IV.

Section 15. LEGISLATIVE COMPENSATION. Until the legislative salary commission makes its recommendations and new rates of compensation and allowances are set in conformity with Article III, Section 6 of this constitution, members of the legislature receive the compensation and allowances in effect on December 31, 1975.

Section 16. JUDICIARY TRANSITION ON EFFECTIVE DATE. On September 1, 1976:

a) SUPREME COURT; COURT OF CRIMINAL APPEALS. The chief justice of the supreme court becomes the Chief Justice of Texas. The presiding judge and the other judges of the court of criminal appeals and the associate justices of the supreme court become justices of the supreme court. Each commissioner of the court of criminal appeals becomes a commissioner of the supreme court.

(b) COURTS OF APPEALS DISTRICTS AND JUDGES. The supreme judicial districts of the state become court of appeals districts and the courts of civil appeals become courts of appeals, except that supreme judicial districts which occupy the identical territory become a single court of appeals district and the courts of civil appeals which exercised jurisdiction within that territory become a single court of appeals. Chief justices and associate justices of courts of civil appeals become, respectively, chief judges and judges of courts of appeals, except that where a court of appeals would have two or more chief judges the Chief Justice of Texas shall designate from among them one to be the chief judge of that court.

(c) DISTRICT AND CIRCUIT JUDGES. (1) Until otherwise provided by law, each district judge or judge of a criminal district court, domestic relations court, special juvenile court, or specially designated probate court becomes a district court judge.

(2) The offices of county court at law judge, county civil court at law judge, county criminal court judge, county criminal court at law judge, county criminal court of appeals judge, and judge of any other county court created by statute are continued until the legislature implements Section 5 of the 1976 revision of Article V; upon implementation, judges holding those offices in a county that is to be served by a circuit court become judges of the circuit court.

(d) **CRIMINAL DISTRICT ATTORNEYS.** Each criminal district attorney becomes a district attorney. Until otherwise provided by law, a criminal district attorney who becomes a district attorney under this section continues to perform the duties and functions prescribed by law applicable to the office of that criminal district attorney in effect on August 31, 1975. Unless otherwise provided by law, Article 329 of the Revised Civil Statutes of Texas, 1925, does not apply to a county in which a criminal district attorney becomes a district attorney under this section.

(e) **TRANSFER OF PROCEEDINGS AND RECORDS.** All courts, except those authorized by the 1976 revision of Article V, are abolished, and all matters pending before them are transferred to the appropriate successor courts authorized by the 1976 revision of Article V. The courts into which the matters are transferred assume full jurisdiction of them and full authority to dispose of them and to execute or otherwise give effect to all orders, judgments, and decrees issued by their predecessor courts.

Courts authorized by the 1976 revision of Article V succeed to all records and property of courts abolished by this subsection.

(f) TRANSFERS FROM COURT OF CRIMINAL APPEALS. All matters filed in or docketed by the court of criminal appeals but not heard by the court are transferred to the court of appeals in which the matters would have been docketed were they civil in nature and the court of appeals still a court of civil appeals.

Section 17. STABILIZATION OF SUPREME COURT SIZE. Unless otherwise provided by law, the offices of the first five justices, except the chief justice, who cease to be members of the supreme court by reason of death, removal, resignation, or retirement after September 1, 1976, cease to exist. The death, removal, resignation, or retirement of an incumbent justice after having been defeated at a primary or general election does not terminate the office. The position of commissioner of the supreme court exists only as long as it is held by the individual in the office on September 1, 1976.

Section 18. COUNTY COURT; COUNTY JUDGE. Unless otherwise provided by general or local law, county courts created in Article V, Section 15, of the Constitution of 1876, as amended and as it existed on November 4, 1975, continue in effect as the courts authorized in Section 6(a) of the 1976 revision of Article V, and the judges of those courts remain as county court judges and as presiding officers of the county commissioners courts. However, a judge of the county court who is licensed to practice law, by written notice to the governor filed with the secretary of state within 30 days after September 1, 1976, may elect instead to become a judge of the circuit court established pursuant to Section 5 of the 1976 revision of Article V if there is no circuit court judge provided for that district under the provisions of this transition schedule. If a judge of the county court becomes a circuit judge, the office of county judge becomes vacant and is filled by the county commissioners court until the next statewide general election. Should more than one judge of a county court within the same circuit court district file such written notice, the governor shall select one to become judge of the circuit court. Section 6(a) of the 1976 revision of Article V does not mandate or require a change in the jurisdiction or judicial functions of a county judge.

Section 19. MUNICIPAL COURT JUDGES AND JUSTICES OF THE PEACE. Unless otherwise provided by law, order, charter, or ordinance, municipal court judges and justices of the

peace remain as they exist on August 31, 1976.

Section 20. CLERKS. All laws pertaining to the office of district clerk or county clerk which are in effect on August 31, 1976, and which are consistent with the provisions of the 1976 revision of Article V, remain in effect until changed by law.

Section 21. PROSECUTORS. All laws pertaining to the office of district attorney or county attorney which are in effect on August 31, 1976, remain in effect until changed by law. Section 11 of the 1976 revision of Article V does not mandate or require a redistricting of existing district attorney districts.

Section 22. QUALIFICATIONS COMMISSION. Members of the judicial qualifications commission continue in office and perform the duties of the commission established by Article V, Sections 1(a) (2-13) of the 1876 Constitution, as amended and as it existed on November 4, 1975, until a commission is established pursuant to Section 10(b) of the 1976 revision of Article V.

Section 23. JUDICIAL DISTRICTS. Until otherwise provided by law, the judicial districts in existence on August 31, 1976, remain in effect, including any judicial districts then authorized by law but which take effect after August 31, 1976. Section 4 of the 1976 revision of Article V does not mandate or require judicial redistricting.

Section 24. LAWS AND RULES CONTINUED. Except to the extent inconsistent with the provisions of the 1976 revision of Article V, all laws and rules of court in force on August 31, 1976, continue in effect until superseded as authorized by law.

Section 25. MANNER OF APPEAL IN CRIMINAL CASES. Until the legislature or supreme court makes provisions for the appeal of criminal cases from the courts of appeals, the rules and laws presently in force for appeals from courts of civil appeals also apply to the appeal of criminal cases.

Section 26. JUDICIAL OFFICE TRANSITION. No judicial office is abolished until the expiration of the term of the person who holds the office on August 31, 1976, or until that person ceases to hold the office, whichever occurs first.

Section 27. INITIAL JUDICIAL TERMS. The initial justices, judges, and justices of the peace in the judicial branch established by the 1976 revision of Article V serve for the remainder of the

terms for which elected and thereafter terms of office are as provided in the 1976 revision of Article V.

Section 28. INITIAL TERMS FOR CERTAIN PROSECUTORS. Individuals who become district attorneys pursuant to Section 16 of this transition schedule hold that office two years beyond the terms for which they were elected. Successor office holders are elected for the same terms and in the same manner as are other district attorneys.

Section 29. MEMBER OF BOARD OF PARDONS AND PAROLES. The member of the Board of Pardons and Paroles who was appointed by the Presiding Judge of the Court of Criminal Appeals serves the full term to which appointed. A vacancy in that position is filled by the Attorney General of Texas with the advice and consent of two-thirds of the senate present.

Section 30. OTHER JUDICIARY TRANSITION. In the event a transfer or transition required by the revision of Article V has not been provided for by this transition schedule or by law, the supreme court shall provide by rule for the orderly transfer or transition.

Section 31. DISQUALIFICATION FROM VOTING. Unless provided otherwise by a law enacted after July 31, 1975, no person may be disqualified from voting because of conviction for a felony unless for the felony the person is incarcerated, on parole, or on probation.

Section 32. STATE AD VALOREM TAX. (a) Until December 31, 1978, Article VII, Section 17 (except for the first paragraph) of the Constitution of 1876, as amended and as it existed on November 4, 1975, continues in effect as if part of the constitution.

(b) The state ad valorem tax on property of two cents on the $100 assessed valuation levied by the first paragraph of Article VII, Section 17 of the Constitution of 1876, as amended and as it existed on November 4, 1975, is hereby levied until December 31, 1978, unless an amendment revising the finance provisions of the constitution is adopted and a state ad valorem tax of two cents is levied in the constitution.

Section 33. CONTINUATION OF BOND AUTHORITY. (a) Bonds or other evidences of indebtedness specifically authorized to be issued or executed by or on behalf of the state or an agency

thereof under the following designated sections of the Constitution of 1876, as amended and as it existed on November 4, 1975, may be validly issued or executed subject to all applicable terms and conditions:

(1) Article III, Section 49-b, Veterans' Land Program;

(2) Article III, Section 49-c, Texas Water Development Board; Bond Issue; Texas Water Development Fund;

(3) Article III, Section 49-d, Acquisition and Development of Water Storage Facilities; Filtration, Treatment and Transportation of Water; Enlargement of Reservoirs;

(4) Article III, Section 49-d-1, Additional Texas Water Development Bonds;

(5) Article III, Section 49-e, Texas Park Development Fund;

(6) Article III, Section 50b, Student Loans; and

(7) Article III, Section 50b-1, Additional Student Loans.

(b) The bonds or other evidences of indebtedness may be issued or executed bearing any rate of interest within the limits permitted by the Constitution of 1876, as amended and as it existed on November 4, 1975. However, the legislature by law may authorize new limits if approved by a record affirmative two-thirds vote of the membership of each house of the legislature and submitted to and approved by a majority of the qualified voters voting on the question.

(c) Until January 1, 1981, or an earlier date provided by law, bonds or other evidences of indebtedness payable solely from the general building use fees of senior colleges or universities and issued under the authority of Chapter 55 of the Education Code as it existed on July 31, 1974, are not included within the definition of "state debt" contained in Section 8(b) of Article VIII.

Section 34. CONSTITUTIONAL POWERS OMITTED FROM IMPLEMENTING STATUTES. (a) Any power directly granted to any of the following state agencies by the applicable designated section of the Constitution of 1876, as amended and as it existed on November 4, 1975, not also granted by statute continues in effect until the effective date of a statute either granting that

power or otherwise expressly superseding the power hereby continued:

(1) Veterans' Land Board--Section 49-b of Article III;

(2) Texas Water Development Board--Sections 49-c, 49-d, and 49-d-1 of Article III;

(3) Texas Water Quality Board or any successor agency--Section 49-d-1 of Article III;

(4) The Parks and Wildlife Department or its successor--Section 49-e of Article III; and

(5) Coordinating Board, Texas College and University System, or its successor or successors--Sections 50b and 50b-1 of Article III.

(b) No statute may supersede a power the continuation of which is made necessary by Section 2 of this schedule.

Section 35. COUNTY AND ROAD DISTRICT HIGHWAY FUND. Notwithstanding Section 7(d) of the 1976 revision of Article VIII, payments may be made to the County and Road District Highway Fund for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, as provided under Section 7-a of Article VIII of the Constitution of 1876, as amended and as it existed on November 4, 1975.

Section 36. AD VALOREM TAX EXEMPTIONS. (a) Ad valorem tax exemptions granted by the 1976 revision of Article VIII, apply for the 1977 tax year. Ad valorem tax exemptions granted by the Constitution of 1876, as amended and as it existed on November 4, 1975, apply for the 1976 tax year.

(b) If an exemption in excess of $3,000 of the assessed value of the residential homestead of persons 65 years of age or older has been granted by a political subdivision under Article VIII, Section 1-b, Subsection (b) of the Constitution of 1876, as amended and as it existed on November 4, 1975, the amount of the exemption in excess of $3,000 continues in effect for persons eligible under Section 4, Subsection (c) of the 1976 revision of Article VIII unless lowered in the manner permitted by the Constitution of 1876, as amended and as it existed on November 4, 1975.

Section 37. CONFEDERATE AND TEXAS RANGER PENSIONS. Revenue from the two-cent tax levied by Section 1(b)(2) of the 1976 revision of Article VIII may be used for the additional purposes of paying Confederate and Texas Ranger pensions to those persons entitled to benefits under Article III, Section 51 and Article XVI, Section 66 of the Constitution of 1876, as amended and as it existed on November 4, 1975, until no persons are entitled to benefits under those provisions or until a trust fund is established by law to provide benefits for those persons.

Section 38. SHERIFF, ASSESSOR-COLLECTOR OF TAXES. In those counties in which the offices of sheriff and assessor-collector of taxes are combined on August 31, 1976, the offices remain combined as if they had been combined in conformity with Article IX, Section 3(e), of the 1976 revision of Article IX.

Section 39. COUNTY ATTORNEYS. Those counties in which the office of county attorney exists, under Section 21 of Article V of the Constitution of 1876, as amended and as it existed on November 4, 1975, retain those offices under Subsection (b) of Section 3 of Article IX until otherwise provided by general or local law. The county attorneys have those duties as provided in Section 21 of Article V of the Constitution of 1876, as amended and as it existed on November 4, 1975, unless otherwise provided by general law.

Section 40. LOCAL GOVERNMENT DEBT LIMITS. Until the legislature by general law establishes a maximum amount of interest-bearing obligations payable from ad valorem taxes that may be issued by a class of political subdivisions under Section 10, Subsection (d) of the 1976 revision of Article IX, a political subdivision of that class may issue interest-bearing obligations payable from ad valorem taxes only to the extent that the total amount of outstanding interest-bearing obligations payable from ad valorem taxes does not exceed the following applicable percentage of the then current assessed valuation of taxable property within the political subdivision:

(1) a city or town--12 percent;

(2) a county--8 percent for purposes other than those described in Article III, Section 52, Subsection (c) of the Constitution of 1876, as amended and as it existed on November 4, 1975, for which the limit is 25 percent of the assessed value of

real property for obligations approved by a majority of the qualified electors voting on the issue;

(3) a school district–10 percent; or

(4) a community junior college district--10 percent.

III.

ARTICLE-BY-ARTICLE REVIEW

OF THE PROPOSED

1976 REVISION OF

THE TEXAS CONSTITUTION

ARTICLE I, BILL OF RIGHTS

The guarantees provided under the present Bill of Rights are retained in full. These important provisions include freedom of speech, assembly, and religion; separation of church and state; the right of trial by jury; the right to keep and bear arms; and the equal legal rights amendment adopted in 1972.

ARTICLE II, SEPARATION OF POWERS

Retained provisions:

Continues the division of powers among the three branches of government: legislative, executive, and judicial. Section 1.

New provisions:

None.

ARTICLE III, THE LEGISLATURE

Retained provisions:

Continues the present structure of the legislature consisting of a senate with 31 members and a house of representatives with 150 members. Section 2.

Continues provisions concerning the organization and procedure of the legislature except that the provision allowing closed executive sessions of the senate is omitted. Section 8.

Continues provisions on conflict of interest of members of the legislature. Section 10.

Continues the governor's power to veto bills or line items in appropriation bills. Section 12.

New provisions:

Requires single-member senatorial, representative, and congressional districts. Section 5.

Provides a compensation commission which would recommend the compensation and allowances received by members of the legislature. The legislative compensation, set by law, may not exceed this recommendation and does not take effect until after an intervening general election. Section 6.

Provides for annual sessions of 140 days in odd-numbered years and 90 days in even-numbered years, and a veto session of 15 days upon request of three-fifths of the membership of each house. Section 7.

Allows the legislature to meet in organizational sessions prior to the convening of the legislature in regular sessions. Section 8.

ARTICLE IV, THE EXECUTIVE

Retained provisions:

Continues the status of the governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of the genera. land office, and secretary of state as executive department officers. Section 1.

Provides four-year terms for elected executive department officers. Section 2.

Provides for a Board of Pardons and Paroles. Section 17.

Specifies terms and number of members of the Railroad Commission. Section 22.

New provisions:

Includes the commissioner of agriculture as an executive department officer. Section 1.

Authorizes the governor to designate chairmen of state boards and to remove those gubernatorial appointments to state agencies for cause unless the removal is vetoed by the senate. Section 2.

Mandates the legislature to provide a new governor-elect an appropriation in order to allow the governor to organize an office prior to inauguration. Section 4.

Permits the legislature to grant powers of fiscal control to the governor. Section 15.

Mandates a periodic review of state agencies by the governor and provides that all governmental agencies, with several exceptions, have a life of not more than 10 years unless extended by the legislature. Sections 16 and 24.

Limits the governor to two consecutive terms. Section 4.

ARTICLE V, THE JUDICIARY

Retained provisions:

Continues the present system of county courts and county judges until otherwise provided by law. Section 6.

Continues the system of choosing judges by election of the people. Section 9.

Provides for district attorneys and district clerks to be elected by the people. Sections 11 and 12.

Continues individual rights for a trial by jury and appeal by the accused. Sections 13 and 15.

New provisions:

Establishes a unified judicial system consisting of the supreme court, courts of appeals, district courts, and circuit courts. Section 1.

Merges the court of criminal appeals and the supreme court into a single court of last resort. Section 1.

Authorizes the supreme court to provide for efficient administration of the judicial system and to balance case loads. Section 7.

Allows the state to appeal in criminal cases in limited circumstances. Section 14.

Allows the legislature to establish methods of appeal to the courts from decisions of state agencies. Section 16.

ARTICLE VI, VOTER QUALIFICATIONS AND ELECTIONS

Retained provisions:

Provides for registration and qualifications for voting. Section 1.

Provides for voter residency requirements to be established by the legislature. Section 2.

New provisions:

Allows a person to vote unless that person has been convicted of a felony and for that felony is incarcerated, on parole, or on probation, subject to further legislative restrictions. Section 1.

Allows the legislature to make property ownership an additional qualification for voting in property tax or tax bond elections. Section 1.

Provides 18-year-olds the right to vote conforming the article to the 26th Amendment to the U.S. Constitution. Section 1.

ARTICLE VII, EDUCATION

Retained provisions:

Continues the Permanent and Available School Funds for the support of the free public schools. Section 2.

Continues the County Public School Funds for the support of the free public schools. Section 3.

Retains the State Board of Education. Section 4.

Continues the Permanent and Available University Funds for the benefit of The University of Texas and Texas A&M Systems. Sections 7 and 8.

Continues the state ad valorem tax of 10 cents on the $100 valuation for the benefit of colleges and universities outside The University of Texas and Texas A&M Systems and allocates the receipts to a new Higher Education Fund. Section 9.

New provisions:

Provides that the public education system must furnish each

individual an equal educational opportunity, but a school district may provide local enrichment of educational programs exceeding the level provided by the state consistent with general law. Section 1.

Permits the legislature to change the 10 cent higher education tax by law within the 10 cent maximum, and permits the legislature to allocate by law a portion of the Higher Education Fund to certain state vocational and technical institutes. Section 9.

Increases the amount of Permanent University Bonds which may be issued from 20% of the Fund to 30% of the Fund. Section 8.

Enlarges what the money from the bonds can be used for to include capital improvements and library materials. Sections 8 and 9.

ARTICLE VIII, FINANCE

Retained provisions:

Requires that state taxes be levied and collected by general law. Section 1.

Prohibits state ad valorem taxes except for (1) the continuation of the two cent tax for State Building Fund and (2) the 10 cent tax provided for in Article VII (both taxes may be reduced by law). Section 1.

Requires ad valorem taxes on real and tangible personal property to be equal and uniform. Section 2.

Continues existing exemptions from ad valorem taxation. Section 4.

Retains the dedication of motor fuel taxes for highway purposes and the Available School Fund. Section 7.

Retains the "pay-as-you-go" principle for the operation of state government. Section 9.

New provisions:

Continues the two cent tax for the State Building Fund

Under present Article VIII, tax is phased out in 1976. Section 1.

Requires uniform standards and procedures for appraisal of property for ad valorem tax purposes. Section 2.

Requires each county to provide for a single appraisal of all property within its boundaries as provided by law. Section 2.

Requires the legislature to establish separate formulas for appraisal of farm and ranch land and authorizes separate formulas for land devoted to timber production. Section 3.

Mandates a $3,000 exemption from ad valorem taxation by political subdivisions for persons 65 years of age or older. A political subdivision may increase the amount of the exemption. Section 4.

Authorizes legislature to exempt from ad valorem tax certain property owned by veterans' organizations, non-profit water corporations, and persons in need because of age, disability and economic circumstance. The legislature also may exempt property to preserve historical, cultural or natural history resources. Sections 4 and 5.

Provides taxpayers a new method to correct inequitable tax assessments through court action. Section 6.

Exempts petroleum products manufacturing tax from constitutional dedication to highway fund and available school fund. Section 7.

Requires state debt to be approved by two-thirds of the legislature and a majority vote of the voters. Section 8.

Requires that public funds be used only for public purposes. Amounts of public expenditures may be established by law. Section 10.

Prohibits a retail sales tax on (1) agricultural machinery or parts, fertilizer, feeds or seeds, (2) prescription drugs or medicine, or (3) food, except food sold by restaurants. Section 12.

Provides that refundable assessments voted by marine food or agricultural producers are not taxes. Section 13.

ARTICLE IX, LOCAL GOVERNMENT

Retained provisions:

Defines the counties of the state as those that exist on the date of adoption of the local government article. Section 1.

Retains the elected constitutional county offices and provides for four-year terms of office. Sections 3 and 8.

Retains home-rule provisions for cities. Section 6.

Continues the policy of intergovernmental cooperation. Section 11.

Continues provisions allowing the consolidation of offices and the transfer of governmental functions. Section 12.

New provisions:

Allows county voters to create additional offices, combine the duties and functions of offices, or eliminate offices. Section 3.

Enables county voters to grant ordinance-making power to the governing body of the county. Section 4.

Lowers the required population for home-rule cities from 5,000 to 1,500. Section 6.

Establishes tax limitations for operating purposes for cities and counties and requires the legislature to fix debt limits for cities, towns, counties, and school and community junior college districts. Section 10.

ARTICLE X, GENERAL PROVISIONS

Retained provisions:

Continues basic provisions relating to public officeholders such as the official oath of office and residency requirements. Sections 1 through 6.

Retains the provision defining the separate and community property of spouses. Section 11.

Continues the protection of the homestead from forced sale. Section 12.

Requires the legislature to protect certain personal property from forced sale. Section 13.

Prohibits garnishment of wages. Section 14.

Prohibits branch banking and foreign banking corporations. Section 16.

Continues the present system of local-option elections for the prohibition or sale of alcoholic beverages. Section 17.

Requires the legislature to prohibit lotteries and gift enterprises. Section 19.

Continues provisions for retirement benefits of teachers and other public employees. Section 21.

New provisions:

Requires the quality of the environment to be protected. Section 7.

Retains prohibition against use of state money for removing surface water from basin of origin if water is necessary to supply needs of the basin for ensuing 50 years. A new exception to this prohibition is made for the removal of water which is replaced from outside the state. Section 8.

Establishes the seaward beaches of the Gulf of Mexico and coastal submerged lands as a perpetual trust for the benefit of the people. Section 9.

Distinguishes between branch banks and bank holding companies. Mandates regulation of bank holding companies. Section 16.

Prohibits discrimination against handicapped persons. Section 23.

Establishes a goal of access to comprehensive health care for every resident as state policy. Section 24.

ARTICLE XI, MODE OF AMENDING THE CONSTITUTION OF THE STATE

Retained provisions:

Establishes a procedure for constitutional amendments requiring a two-thirds vote of each house of the legisiature and majority approval by the voters. Section 1.

New provisions:

Provides for the calling of a limited or unlimited constitutional convention with voter approval. Section 2.

Requires that the question of whether to call a constitutional convention is to be submitted to the people every 30 years. Section 2.

IV.

A SUMMARY COMPARISON OF THE PROPOSED 1976 REVISION OF THE TEXAS CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE CONSTITUTION AS IT PRESENTLY EXISTS

This summary comparison sets forth some of the more significant provisions of the proposed 1976 revision of the Texas Constitution and provides a brief summary of the changes that are made from the constitution as it presently exists. Emphasis is placed on the explanation of the new provisions and only the major changes are noted. Two of the significant changes are the length and the form of the documents; other changes are highlighted below. Some changes of substance have been made by deletion of material that is either no longer necessary or provided by statutes.

If all eight amendments are adopted on November 4, 1975, the revised constitution will consist of 11 articles with approximately 18,000 words, or about one-third the length of the present version, which contains approximately 63,000 words and is composed of 17 articles.

ARTICLE I
COMPARISON OF BILL OF RIGHTS

Proposed 1976 Revision	Present Constitution
The guarantees provided under the Bill of Rights contained in the 1876 Constitution are retained in full. These important provisions include freedom of speech, assembly, and religion; separation of church and state; the right of trial by jury; the right to keep and bear arms; and the equal legal rights amendment adopted in 1972. The only changes from the present constitution are minor technical ones to conform certain provisions to the new court system provided in the revised Judiciary Article (Article V).	*Same as 1976 revision.*

ARTICLE II
COMPARISON OF PROVISIONS ON SEPARATION OF POWERS

Proposed 1976 Revision	Present Constitution
Provides for three branches of state government–legislative, executive, and judicial. This section preserves the separation of powers principle by prohibiting one branch from exercising powers properly attached to the others except as authorized by the constitution.	*Similar provision.*

ARTICLE III
COMPARISON OF PROVISIONS ON THE LEGISLATURE

Proposed 1976 Revision	Present Constitution
1. Continues the present structure of the legislature composed of a senate and a house of representatives. The senate consists of 31 members and the house of representatives 150 members.	*Same as 1976 revision.*
2. Requires single-member senatorial, representative, and congressional districts.	*Representative districts may contain more than one representative in those counties entitled by sufficient population.*
3. Requires the legislature to redistrict the state after each federal decennial census. If a redistricting plan is found invalid by a court, the legislature is directed to enact a redistricting plan within a designated time. If the legislature then fails to enact a	*Requires the legislature to divide the state into senatorial and representative districts after each census. A redistricting board performs this duty if the legislature fails to do so.*

	redistricting plan, a redistricting board performs this duty.	
4.	**Provides for regular annual sessions of the legislature not to exceed 140 days in odd-numbered years and 90 days in even-numbered years. Provides for veto session of not more than 15 days upon petition of three-fifths of the membership of each house.**	*Regular sessions are limited to 140 days duration every two years.*
5.	Contains provisions concerning organization and procedure of the legislature. Organizational sessions would be permitted prior to the convening of the legislature in regular sessions.	*Similar provisions except preliminary organizational sessions are not allowed.*
6.	Contains specific prohibitions against legislative dual-office holding and provisions on conflict of interest of members of the legislature.	*Similar provisions.*
7.	Prohibits the legislature from enacting local or special laws except when a general law cannot be made applicable and provides that the question of whether a general law can be made applicable is reviewable by courts.	*Similar provisions except the subjects on which local and special laws may not be enacted are specifically listed.*

8.	Includes a method for impeachment and removal from office of executive department officers and justices of the supreme court.	*Similar provision is contained in a separate article on impeachment.*
9.	Includes a veto provision by which the governor may disapprove bills or line items of appropriation bills.	*Similar provisions contained in the executive article.*
10.	Provides for a salary commission to recommend maximum compensation and allowance for members of the legislature.	*Salary is fixed at $7,200 per year. Members of the legislature are also entitled to $30 per diem and travel expenses.*

ARTICLE IV
COMPARISON OF PROVISIONS ON THE EXECUTIVE

	Proposed 1976 Revision	Present Constitution
1.	Provides for an executive department consisting of the governor, lieutenant governor, attorney general, secretary of state, comptroller of public accounts, treasurer, commissioner of the general land office, commissioner of agriculture, and others as provided by law. All of these officers are to be elected except the secretary of state.	*Same as 1976 revision, except does not name commissioner of agriculture and also does not allow additional members to be included by law.*
2.	Provides for four-year terms for executive department officers and limits the governor to two consecutive four-year terms.	*Similar provisions, except there is no limit on the number of terms a governor may serve.*

3.	Provides that the terms of officers appointed by the governor to state governmental agencies will expire between February 1 and May 1 of odd-numbered years.	*No similar provision.*
4.	Allows the governor to designate the chairmen of state governmental agencies.	*No similar provision.*
5.	Authorizes the governor to remove appointed officers of state governmental agencies for stated reasons but the senate can refuse a removal by a majority vote.	*No similar provision.*
6.	Mandates the legislature to appropriate funds to be used by a governor-elect prior to inauguration.	*No similar provision.*
7.	Authorizes the governor to call a special 30-day session of the legislature.	*Same as 1976 revision.*
8.	Designates the governor as chief planning officer of the state.	*No similar provision.*
9.	Requires that the governor prepare and submit a budget to the legislature at the beginning of each session of the legislature at which a general appropriation bill is to be passed.	*Similar provision.*

10. Allow[illegible] legislature to grant powers of fiscal control to the governor.	*No similar provision.*
11. Requires the governor to report to the legislature every two years on the organization and efficiency of the executive branch. The governor may submit reorganization plans to the legislature. The plans, as they may be amended, must be brought to a vote of each house.	*No similar provision.*
12. Provides for a Board of Pardons and Paroles and authorizes the governor, on the written recommendation and advice of the board, to grant various types of clemency.	*Similar provision, except number and terms of Board are fixed in present constitution.*
13. Provides that state agencies with statewide jurisdiction having appointed members, except institutions related to higher education, have a life of not more than 10 years unless renewed by the legislature.	*No similar provision.*
14. Provides for the membership and terms of office for a railroad commission.	*Similar provision.*

ARTICLE V
COMPARISON OF PROVISIONS ON THE JUDICIARY

Proposed 1976 Revision	Present Constitution
1. Provides for a unified judicial system consisting of a supreme court, courts of appeals, district courts, and circuit courts, each with jurisdiction as provided by law. Prohibits statutory courts.	*Provides for a supreme court, courts of civil appeals, a court of criminal appeals, district courts, county courts, and justice courts. Provides specific jurisdictional assignments for all courts. Permits statutory courts.*
2. Provides for the merger of the supreme court and court of criminal appeals. Provides that intermediate courts of appeal have criminal, as well as civil, jurisdiction.	*Provides for separate civil and criminal courts of appeal.*
3. Continues the present system of constitutional county courts unless changed by law. At least one justice court per county is required. Municipal courts are as authorized by law or city charter.	*Provides for a constitutional county court. Requires at least four justice courts per county.*
4. Requires justices, judges, and justices of the peace to be U. S. citizens and residents of this state. Additional qualifications may be prescribed by the legislature. Justices and judges in the unified judicial system, including circuit courts on the county level, must be licensed to practice law in this state.	*Similar provisions for district and appellate judges.*

5.	**Justices of the supreme court and judges of the courts of appeals are elected for six-year terms. Judges of district and circuit courts and justices of the peace are elected for four-year terms. District attorneys and district clerks are elected for four-year terms.**	***Similar provisions.***
6.	Allows the legislature to determine the number of judges for each trial court, except the county court.	*Number of judges per court fixed by constitution.*
7.	Provides for a judicial qualifications commission with authority and functions as provided by law.	*Similar provision with most authority and functions stated in the constitution.*
8.	Authorizes the legislature to provide by law for methods of removal for all justices, judges, and justices of the peace. Justices of the supreme court may also be removed by impeachment or address.	*Contains several procedures for removal of justices and judges of the various courts.*
9.	Permits the legislature to grant the supreme court the authority to receive and answer questions of state law certified from federal courts.	*No similar provision.*
10.	Grants a limited right of appeal by the state in criminal cases.	*Prohibits appeal by the state in criminal cases.*

11. **Assigns administrative responsibility for the judicial branch to the supreme court.**	***No similar provision.***
12. Grants individuals the right to trial by jury and appeal by the accused, but appeal to the highest court is at the discretion of that court.	*Similar provisions, except that an express right of appeal is granted to the Court of Criminal Appeals.*
13. Permits legislature to establish methods of appeals to the courts from decisions of state agencies.	*No similar provision.*
14. Requires that the state pay the basic expenses of the unified judicial system.	*No similar provision. Counties pay the expense of county courts and many statutory courts.*

ARTICLE VI
COMPARISON OF PROVISIONS ON VOTER QUALIFICATIONS AND ELECTIONS

Proposed 1976 Revision	Present Constitution
1. Defines a qualified voter as any citizen 18 years of age or older who meets the residence and registration requirements provided by law. A person may vote unless that person has been convicted of a felony and for that felony is incarcerated, on parole, or on probation, subject to further legislative restrictions. Also, persons found mentally incompetent by a court	*Persons under 21 years old, idiots and lunatics, paupers, and felons are disqualified. Specific residence requirements are fixed in the constitution for state and local elections. (The present age requirement is 18 years of age or older due to the 26th Amendment to the U. S. Constitution.)*

would not be able to vote.	
2. Authorizes the legislature to make property ownership an additional qualification for voting in property tax or bond elections. A similar authorization is stated for elections by special districts and authorities whose activities have a disproportionate effect on property owners.	*Only property owners may vote in elections held by political subdivisions for the purpose of issuing bonds or spending money.*
3. Provides for elections by secret ballot and directs the legislature to ensure the integrity of the election process.	*Similar provisions.*
4. Defines general elections as those held every two years for election of state and county officials.	*No similar provision.*

ARTICLE VII
COMPARISON OF PROVISIONS ON EDUCATION

Proposed 1976 Revision	Present Constitution
1. Provides that the legislature has the duty to establish and provide by law for the equitable support and maintenance of an efficient system of free public schools below the college level. The system must furnish each individual an equal educational opportunity, but a school district may provide local enrichment of educational programs	*Similar provision except no stated guarantee of equal educational opportunity or of the right of local enrichment.*

	exceeding the level provided by the state consistent with general law.	
2.	Establishes two trust funds, the permanent and county public school funds, for the support of the free public schools.	*Similar provisions.*
	Requires that the permanent funds may not be spent, but must be invested in the manner provided by law. The Available School Fund (income from the investments of the Permanent School Fund and state taxes dedicated to the Available School Fund) is spent to provide free text books and other instructional materials. The provision to provide free instructional materials is new. The remainder of the fund is distributed to each county according to its scholastic population. The income from the County Public School Fund is spent for the support of public schools in the manner provided by law.	*Similar provisions except for differences in details concerning the expenditure of available and county funds.*
3.	Directs legislature to provide for a State Board of Education composed of elected members.	*Similar provisions, except the board may be appointed or elected as provided by law.*
4.	Establishes the Permanent University	*Similar provision.*

	Fund for the benefit of The University of Texas System and The Texas A&M University System.	***Similar provision, except the distribution of the remainder of the Available University Fund is provided by statute.***
	Requires that the Permanent University Fund may not be spent but must be invested in the manner described in the constitution. The Available University Fund (net income from the investments of the Permanent University Fund) is spent first to pay the principal and interest due on Permanent University Fund bonds and notes. The remainder is allocated, one-third to Texas A&M University in Brazos county and two-thirds to The University of Texas at Austin.	
5.	Allows Permanent University Fund bonds and notes to be issued to a value of 30% of the Permanent University Fund.	*Similar provision except limited to 20% of Permanent University Fund.*
6.	Permits the use of proceeds from Permanent University Fund bonds for rehabilitation of permanent improvements, purchase of capital equipment, and acquisition of library books and materials.	*Bond proceeds may be used only for construction of permanent improvements.*

7.	**Establishes the Higher Education Fund to finance permanent improvements for public senior colleges and universities that are not included in The University of Texas System or The Texas A&M University System. The source of revenue for the fund is the 10 cents on the $100 valuation state ad valorem tax continued from the present constitution, but provision is made for reducing the tax by law. The legislature is authorized to allocate a portion of the fund to certain state vocational and technical institutes. Fund is allocated among participating institutions on the basis of statewide higher education needs, which must be assessed annually.**	***Levies state ad valorem tax of 10 cents on the $100 valuation which is dedicated to 17 specified colleges and universities for the purpose of financing the construction of permanent improvements. Fund is allocated among participating institutions according to a fixed formula. No provision for distribution of a portion of fund to state vocational and technical institutes.***
8.	Permits the use of proceeds from Higher Education Fund bonds for rehabilitation of permanent improvements, purchase of capital equipment, and acquisition of library books and materials.	*Bond proceeds may be used only for construction of permanent improvements.*

ARTICLE VIII
COMPARISON OF PROVISIONS ON FINANCE

Proposed 1976 Revision	Present Constitution
1. Taxation	
(a) Requires that all real and tangible personal property be taxed on the basis of market value.	*Requires that all property (real and tangible and intangible personal property) be taxed on the basis of value.*
(b) Prohibits state ad valorem taxes except for (1) a tax of 2 cents on the $100 valuation (reducible by law) for the State Building Fund and (2) a tax of 10 cents on the $100 valuation (can be changed by law within the 10 cent maximum) for higher education purposes.	*Beginning in 1978, would prohibit state ad valorem taxes for state purposes except for the tax of 10 cents on the $100 valuation levied for institutions of higher education.*
(c) Requires uniform standards and procedures for appraisal of property for ad valorem tax purposes. Appraisals are to be provided for by the county in the manner and according to standards and procedures established by the legislature.	*No similar provision.*
(d) Requires the legislature to provide separate formulas for the appraisal of farm and ranch land and allows the legislature to provide for similar formulas for timberland.	*Provides directly for a right of appraisal on the basis of productivity for land owned by natural persons and designated for agricultural use but only if agriculture is the "primary occupation and source of income of the owner."*

(e) Provides for residential homestead exemptions and other exemptions from the ad valorem tax.	*Similar provisions.*
(f) Mandates a $3,000 residential homestead exemption from taxation by political subdivisions for persons 65 years or older. A political subdivision may increase this amount.	*Allows political subdivision to grant residential homestead exemption of not less than $3,000 for persons 65 years or older.*
(g) Authorizes the legislature to exempt from ad valorem taxation certain property owned by veterans' organizations, non-profit water corporations, and persons in need because of age, disability and economic circumstances. The legislature may exempt property to preserve historical, cultural, or natural history resources.	*No similar provisions.*
(h) Allows a taxpayer to pay ad valorem taxes under protest and sue for a refund in a district court. Courts have the duty of equalizing property appraisal and assessment.	*No similar provisi n.*
(i) Dedicates three-fourths of the net revenue from motor fuel taxes for highway construction and maintenance and related	*Similar provision.*

purposes. One-fourth of the revenue from the motor fuel tax and state occupation taxes is dedicated to the Available School Fund.	
(j) Exempts petroleum products manufacturing tax from constitutional dedication to highway fund and available school fund.	*No similar provision.*
2. State Debt	
(a) Requires that before state debt may be incurred it must be approved by a two-thirds vote of the membership of each house of the legislature and approved by the voters at a statewide election.	*Prohibits state debt, but various bond issues have been authorized by amendment to the constitution, which is basically the same approval process as the one in the 1976 revision.*
(b) Defines state debt to include bonds that obligate the general credit of the state or which are payable from tax revenue, tuition, fees, or other charges of state colleges and universities, or certain state agencies. Bonds that are payable solely from the revenues of the project to be financed are not included in this definition.	*Does not specifically define state debt, but the courts have limited the term to bonds that obligate the general credit of the state.*
3. Appropriations	
(a) Requires that appropriations remain within the revenue	*Similar provision.*

	estimated to be available for the fiscal year.	
	(b) Permits appropriations in excess of estimated revenue only in response to imperative public necessity and a four-fifths vote of the membership of each house of the legislature.	*Similar provision.*
4.	Requires that public money and public credit be used only for public purposes. The legislature may impose limitations on the amount of public money or credit that may be used for various purposes (e.g., ceiling on assistance grants to needy individuals) by statute.	*Prohibits grants or loans to individuals, associations, or corporations except for purposes stated in several provisions. Among specific purposes mentioned in the present constitution are: workmen's compensation coverage, assistance grants to needy individuals (state funds for direct assistance grants are limited to $80 million), aid to persons improperly imprisoned, assistance for survivors of law enforcement officers, and funds for the conservation and development of natural resources.*
5.	Prohibits a retail sales tax on (1) agricultural machinery or parts, fertilizer, feed or seeds, (2) prescription drugs or medicine, or (3) food, except food sold in restaurants.	*No similar provision.*
6.	Provides that refundable assessments voted by marine food or agricultural producers are not taxes.	*No similar provision.*

ARTICLE IX
COMPARISON OF PROVISIONS ON LOCAL GOVERNMENT

Proposed 1976 Revision	Present Constitution
1. Allows changes in county boundaries by a majority vote of the voters in each county affected. Mergers of two or more counties and the relocation of county seats would require a two-thirds vote for approval.	*Similar provisions for changes in county boundaries and the relocation of county seats.*
2. Defines the powers of counties as those granted by the constitution and general law.	*No similar provision.*
3. Retains county officers as elected officers and provides four-year terms of office.	*Similar provisions.*
4. Allows county voters by a majority vote to create additional offices, eliminate offices, or combine the duties and functions of offices.	*No similar provision, except that the offices of district and county clerks may be combined in counties with a population under 8,000 and the sheriff also may be the tax collector in certain counties.*
5. Ordinance-making powers may be granted to or taken from the county governing body by county voters.	*No similar provision.*
6. Cities under 1,500 population may be chartered only by general law and cities over 1,500 population may adopt home-rule charters.	*Similar provisions, except the minimum population for home rule is 5,000.*

7.	Contains a general statement of authority for the legislature to provide for special districts and authorities by general or local law. Cities and counties may also establish special districts within their boundaries if authorized by general law.	*There are several sections authorizing different types of special districts and authorities.*
8.	Establishes maximum ad valorem tax rates for operation of cities and counties. Political subdivisions with taxing power are authorized to levy an additional tax in an amount necessary to service debt payable from ad valorem taxes.	*Maximum tax rates for cities and counties apply to taxes levied for all purposes including debt services.*
9.	Directs the legislature to establish debt ceilings for cities, counties, school districts, and community college districts. Voter approval would be required before a special district or authority could levy taxes for operating expenses or issue interest-bearing obligations.	*Provides that voter approval is required for taxes and bonds of certain special districts and authorities. Debt ceilings are provided only for certain special districts.*
10.	Allows political subdivisions to enter into contracts and agreements with other units of government for the performance of various services and functions.	*Similar provision.*

11. Allows the legislature to provide by general law for the consolidation of one or more governmental offices or transfer of functions of any one or more political subdivisions located within a county. Voter approval of a consolidation of offices or transfer of functions is required, except for the function of collecting taxes within a county, which may be provided for by general law.	***Similar provisions, except there is no specific reference to tax collection.***

ARTICLE X
COMPARISON OF PROVISIONS ON GENERAL PROVISIONS

Proposed 1976 Revision	Present Constitution
1. Contains basic provisions relating to public officeholders such as the official oath of office and residency requirements.	*Similar provisions.*
2. Assures that elected and appointed officers of the state or political subdivisions will not lose the right to vote or to hold office because of absence from the state on public business.	*Similar provisions.*
3. Allows an officer to continue serving beyond the end of a term until a successor has qualified, but a limitation is placed on the period of time that an appointed officer	*Similar provision, but there is no limitation on the holdover period.*

	may stay in office after the expiration of the term.	
4.	Requires that persons elected to fill vacancies in office serve only for the unexpired term.	*Similar provision.*
5.	Permits the legislature to provide grounds and procedures for suspension, disqualification, and removal from office for constitutional officers if the method of removal is not provided in the constitution.	*Similar provision in a different article plus several provisions relating to exclusion from office or forfeiture of office for bribery, withholding of salary, or suspension from office for failure to perform duties.*
6.	Establishes the protection of the environment as a state policy and mandates the legislature to implement and enforce the policy.	*No similar provision.*
7.	Requires the legislature to implement a policy of conservation and development of the state's natural resources.	*Similar provision except current restrictions on removal of water have been changed to allow removal if replaced by out-of-state water.*
8.	Requires that the beaches on the seaward shore of the Gulf of Mexico and the coastal submerged lands be held in perpetual trust. Guarantees the use and benefit of the beaches to the public and requires that reasonable access be provided.	*No similar provision.*
9.	Maintains community property system but	*Separate and community property is defined solely in*

	defines separate and community property in terms of both spouses. Permits the spouses by written agreement to change community property into separate property and to create a right of survivorship in community property.	*terms of the wife. No provision for creation of right of survivorship.*
10.	Protects the homestead from forced sale. Defines rural and urban homesteads and residential and nonresidential homesteads. Permits the legislature to increase the value of the urban homestead. Permits liens on nonresidential homestead.	*Similiar provisions providing protection from forced sale with the same exceptions. Does not permit liens on homestead nor authorize legislature to increase value of urban homestead.*
11.	Requires the legislature to exempt certain items of personal property from forced sale by creditors.	*Similar provision.*
12.	Prohibits the garnishment of current wages.	*Same as 1976 revision.*
13.	Requires that private corporations be created under general laws.	*Same as 1976 revision.*
14.	Prohibits foreign banks and branch banking by banks in Texas. Requires the legislature to regulate bank holding companies.	*Similar provisions concerning foreign banks and branch banking. No provision on bank holding companies.*
15.	Preserves the system of local option elections for the prohibition or sale of	*Similar provision.*

alcoholic beverages in a county, justice precinct, or municipality.	
16. Requires the legislature to set qualifications for the practice of medicine, but stipulates that no preferential treatment may be given to any school of medicine.	*Similar provision.*
17. Requires the legislature to prohibit lotteries but permits bingo and raffles conducted by nonprofit charitable organizations if the proceeds are used in this state solely for charitable purposes.	*Similar provision requiring the legislature to prohibit lotteries, but does not permit bingo and raffles.*
18. Grants lien to mechanics, artisans, and materialmen for materials and labor.	*Similar provision.*
19. Provides retirement, disability, and death benefit programs for teachers and other public employees and officers.	*Similar provision.*
20. Prohibits discrimination against handicapped persons.	*No similar provision.*
21. Establishes a goal of adequate health care for every resident as state policy.	*No similar provision.*

ARTICLE XI
COMPARISON OF PROVISIONS ON MODE OF AMENDING THE CONSTITUTION

Proposed 1976 Revision ION	Present Constitution TUTION
1. Establishes a procedure for constitutional amendments requiring a two-thirds vote of each house of the legislature and majority approval by the voters. Amendments limited to an article or less Proposed amendments to be publicized as provided by law.	*Similar provision, except th is no limitation to an article o less. Manner of publicizing proposed amendments specified.*
2. Allows the legislature to submit to the people the question of whether to call a limited or unlimited constitutional convention upon a two-thirds vote of the membership of each house. Proposals submitted by the convention must be approved by a two-thirds vote of its membership.	*No similar provision.*
3. Requires that the question of whether to call a constitutional convention be submitted to the voters at least once every 30 years.	*No similar provision.*

V.

SAMPLE BALLOT FOR THE NOVEMBER 4, 1975 ELECTION ON THE PROPOSED REVISION OF THE TEXAS CONSTITUTION

ELECTION ON PROPOSED
REVISION OF THE CONSTITUTION OF TEXAS

_____ County, Texas

November 4, 1975

WD 0000

_____ County, Texas

November 4, 1975

OFFICIAL BALLOT

INSTRUCTION NOTE: Place in "X" in the square beside the statement indicating the way you wish to vote.

PROPOSITION NO. 1

☐ FOR
☐ AGAINST

The constitutional amendment revising the SEPARATION OF POWERS, LEGISLATIVE, AND EXECUTIVE PROVISIONS of the Texas Constitution.

PROPOSITION NO. 2

☐ FOR
☐ AGAINST

The constitutional amendment revising the JUDICIARY PROVISIONS of the Texas Constitution.

PROPOSITION NO. 3

☐ FOR
☐ AGAINST

The constitutional amendment revising the VOTING AND ELECTION PROVISIONS of the Texas Constitution.

PROPOSITION NO. 4

☐ FOR
☐ AGAINST

The constitutional amendment revising the EDUCATION PROVISIONS of the Texas Constitution.

PROPOSITION NO. 5

☐ FOR
☐ AGAINST

The constitutional amendment revising the FINANCE PROVISIONS of the Texas Constitution.

PROPOSITION NO. 6

☐ FOR
☐ AGAINST

The constitutional amendment revising the LOCAL GOVERNMENT PROVISIONS of the Texas Constitution.

PROPOSITION NO. 7

☐ FOR
☐ AGAINST

The constitutional amendment revising the GENERAL PROVISIONS of the Texas Constitution.

PROPOSITION NO. 8

☐ FOR
☐ AGAINST

The constitutional amendment revising the MODE OF AMENDING PROVISIONS of the Texas Constitution.

IMPLEMENTATION SCHEDULE FOR AMENDMENTS ADOPTED BY THE VOTERS ON NOVEMBER 4, 1975

The articles of the proposed revision of the constitution become effective on the following dates:

Article II, Separation of Powers – January 1, 1976

Article III, Legislative – January 1, 1976

Article IV, Executive – January 1, 1976

Article V, Judiciary – September 1, 1976

Article VI, Voter Qualifications and Elections – September 1, 1976

Article VII, Education – September 1, 1976

Article VIII, Finance – September 1, 1976

Article IX, Local Government – September 1, 1976

Article X, General Provisions – September 1, 1976

Article XI [XVII] Mode of Amending – September 1, 1976

If Proposition No. 1, revising the Separation of Powers, Legislative, and Executive provisions of the constitution is adopted alone or with other propositions, the legislature will convene in a regular 90 day session on the first Monday in January, 1976, for the limited purpose of implementing the adopted amendments and items submitted by the governor.

If Proposition No. 1 is not adopted but any of the following propositions is adopted, the governor is mandated to call the legislature into special session prior to July 1, 1976 for implementing (as determined by the governor) the revised articles:

Proposition No. 2 – Article V, Judiciary

Proposition No. 4 – Article VII, Education

Proposition No. 5 – Article VIII, Finance

Proposition No. 6 – Article IX, Local Government

Proposition No. 7 – Article X, General Provisions

Several provisions of the proposed revision of the constitution take effect at specified dates after September 1, 1976. These are:

Article III, Section 5. Legislative Redistricting – January 1, 1981 (after the next federal decennial census)

Article VII, Section 9. Higher Education Fund for Texas and Bonds and Notes – January 1, 1979 (at the conclusion of the current 10 year phase of constitutional funding for colleges and universities covered by the new fund)

Article VIII, Section 2(b) & (c). Uniform Standardization of Ad Valorem Appraisal – January 1, 1978 (to allow time for the passage of implementing legislation and adjustment to the new single appraisal concept)

Article VIII, Section 6(c). Authority and Duties of District Court in Tax Cases – January 1, 1979 (to allow time for the passage of appropriate legislation)

Office of Constitutional Research
Texas Legislative Council

FEB 14 1972



AMENDING THE Texas CONSTITUTION

by Janice C. May

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TEXAS ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

The Texas Advisory Commission on Intergovernmental Relations was created by the Texas Legislature to improve coordination and cooperation between the state and its local governments and between the state and the federal government by providing continuing research, information, and advisory services to public officials and citizens of the state. The Commission's membership, which includes private citizens, is broadly representative of every level of government in Texas -- state, local, and federal.

AMENDING THE TEXAS CONSTITUTION: 1951-1972

Janice C. May

TEXAS ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Austin: 1972

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The preparation of this report was financially aided through a grant from the Department of Housing and Urban Development authorized by Section 701 of the Housing Act of 1954, as amended.

FOREWORD

Adopted almost a century ago, the Texas Constitution has had to change over time to meet the needs of a growing state. The manner of its development has influenced profoundly the shape of the present document. Whereas the United States Constitution has developed through judicial interpretation, the Texas Constitution has developed through amendment. Thus, the Texas Constitution is extraordinarily long, for it has been amended many times.

What are the causes and consequences of the need for frequent amendment? The question has been asked many times. In an attempt to find answers, the Texas Advisory Commission on Intergovernmental Relations requested this study as a part of its continuing constitutional studies program. The Commission always has recognized the significance of the Constitution for efficient and effective government. Prepared by Dr. Janice C. May, Assistant Professor of Government, The University of Texas at Austin, the study examines the amending process from 1951 to 1972. These years provide the best basis for assessing the impact of the amending process on modern Texas.

While the Commission is pleased to make the study available, the conclusions and opinions expressed therein do not represent any official position of the Commission or its members. They are the author's responsibility.

Austin, Texas
December, 1972

Tom J. Vandergriff
Chairman

PREFACE

It has been my privilege to write this technical report on amending the Texas Constitution at the request of the Texas Advisory Commission on Intergovernmental Relations.

I am particularly indebted to Professor John E. Bebout for his wise counsel and warm encouragement in the preparation of the manuscript and on so many other occasions. My appreciation goes to James F. Ray, Executive Director, and all the members of the staff of the Texas Advisory Commission on Intergovernmental Relations who facilitated the completion of the report and especially to Philip W. Barnes, Research Director, for his valuable suggestions and other assistance.

A special note of thanks is due my husband, Francis B. May, who helped with matters statistical. Any errors are mine.

Janice C. May

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SUMMARY

The Texas Constitution, the sixth longest in the United States, has been amended 212 times since it was adopted in 1876, almost one hundred years ago. From 1951 to 1972 it was amended 105 times; and if the trend continues, 345 amendments will have been added to the Constitution by the year 2001.

Why are there so many amendments? What are the consequences, including the costs, of the amendments and their frequency for Texas state and local governments -- their relations with one another and with the national government, and their capacity to serve the people of Texas? How do voters react to the constant trips to the polls and the long ballot? Were all the 212 amendments really necessary? Must we go on like this, amendment by amendment by amendment?

This research was undertaken to answer these and related questions about the Texas amendment process. Special emphasis has been given to the causes and consequences of amendments as they concern intergovernmental relations in Texas because the Texas Constitution is essentially an intergovernmental document. It provides the basic framework for the state government and its relations with all political subdivisions -- municipalities, counties, school districts and other special districts. It is also the state's basic law governing the relations among the state, local and national governments in the pursuit of common goals.

The research on which this report is based consisted of an analysis of the 131 amendments proposed and the 94 amendments adopted at 19 elections from 1951 to 1971 inclusive. The 14 amendments submitted to the voters at the November 1972 election, of which 11 were approved, are included also in selected portions of the report.

The 1951 to 1971-72 time period selected for the research proved to be a felicitous choice. As the most recent period in Texas history it is no doubt the best indicator of future trends. Moreover, the amendments proposed and ratified represented close to half of all such amendments since 1876. The 131 amendments proposed accounted for 40 percent of all those proposed; the 94 amendments approved, 47 percent of all ratified; and the 37 amendments defeated, 32 percent of all amendments rejected by the voters over the years.

The report was designed to be the beginning of a more systematic approach to the study of Texas amendments. Various statistical techniques, including correlation analysis and extrapolation, were applied to this end. The report was inspired by the thought that a careful, systematic study of the amendments might be the key to an understanding of the real nature of the Texas Constitution and its impact upon Texas.

The research project was divided into three parts, each intended to reveal certain basic dimensions about constitutional amendments, and their causes and consequences.

Classification of Amendments

The first section of the report is devoted to a classification of all amendments proposed during the 21-year period, including the 14 submitted to the voters in 1972. The initial classification consisted of the number of times each of the 17 articles of the Texas Constitution had been the target of proposed amendments. The purpose was to determine the articles generating the most amendments. The principal finding was that three articles were most subject to amendment, to wit: the legislative article (III) with 67 proposed amendments; the general provisions article (XVI) with 27 proposed amendments; and the article on taxation and revenue (VIII) with 15 proposed amendments.

The amendments were then classified by the causes or reasons for their submission, certain suggestive patterns having emerged from the initial classification. In order of relative importance as determined by the number of times amendments were proposed in a given category, 95 amendments were submitted in order to evade the Constitution's restrictions on state and local finance; 85 were proposed to amend earlier amendments; 46 were designed to overcome limitations on local governments; 28 were proposed in an effort to override an electoral defeat by the voters; 21 were responses to the national government; and 12 were proposed to accommodate decisions of Texas courts and the opinions of Texas Attorneys General.

An analysis of the more fundamental reasons underlying the submission of the numerous amendments concludes the first section. The analysis emphasizes the impact on intergovernmental relations of changes to an urban, industrialized society and the need for constant amendment of a rural-oriented Constitution to keep abreast of these developments.

Costs of Amendments

The second section of the research report consists of a largely original study of the costs incurred in holding elections on amendments. Costs are obvious consequences of the amendment process as it is practiced in Texas. It is important for the people of Texas to know how much in dollars and cents they pay as taxpayers for frequent amendment of the Constitution.

Two kinds of costs were analyzed. The first were expenditures of the state government for the purpose of publicizing amendments. The Constitution directs that the text of proposed amendments be published

in newspapers prior to each election.* The second were the expenditures of county governments for holding elections on amendments.

Adding together the two items of expenditures yielded an estimate of the total costs of amendments to state and local governments over the 21-year period of approximately $9 million. This amounts to about $68,700 for each of the 131 proposed amendments and $95,700 for each of the 94 ratified amendments.

Voters and Elections

Under the Texas system of self-government, the people must ultimately resolve basic constitutional questions at the ballot box. The Texas Constitution cannot be formally amended without the consent of the voters. The third part of the research project sought to answer questions about the fundamental relationship between the voters and the Constitution. In terms of causes and consequences of the amendment process, the relationship is very important. Support for the Texas constitutional system can be gauged to some extent by the degree of voter participation. The costs to the voters of time, energy, and thought resulting from a long ballot and many elections are important.

The results were based on election data never before collected. The most important discovery was that a minority, often a very small minority, of the Texas electorate votes on constitutional amendments. Amendments trail the presidential vote in presidential elections and the gubernatorial vote in the off-year by hundreds of thousands, sometimes almost a million votes. Moreover, the percentage of the electorate voting on constitutional amendments at special elections is even lower. As might be expected, the lowest voter participation in an election occurs when an amendment affects only one local area, such as an amendment creating or abolishing a hospital district for a single county.

Another very important finding was that 72 percent of all amendments submitted were approved by the voters over the 21-year period but that the approval rate at general elections was 30 percent higher than at special elections. Patterns of defeat and victory among the amendments were investigated as were many other questions of voter participation, including the effect of the number of amendments or the long ballot on voter participation.

Conclusions and Recommendations

In the fourth and closing section of the report, conclusions are drawn and recommendations made based on the research findings. The need

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*Amendment Number 10 approved by the voters at the November 1972 election changes the procedure for publicizing amendments.

for and the timeliness of a new approach to constitutional change are emphasized. Strongly recommended is comprehensive revision of the entire Texas Constitution or at a minimum, selective revision in an orderly fashion of key articles concerned with intergovernmental relations, primarily those affecting state and local governmental fiscal capacity and the powers of the Texas Legislature. These were the provisions causing the most amendments.

CLASSIFICATION OF AMENDMENTS

Amendments were classified in a great variety of ways. The classifications were used to answer several questions. The two most important were first, what provisions of the Texas Constitution accounted for the most amendments? Second, what were the reasons for the amendments?

Classification by Constitutional Article

The target of most of the amendments by far was the Legislative Article (III). Of the 145 amendments submitted, 67 concerned Article III in whole or in part. Of the 105 amendments passed, 47 also concerned this provision of the Constitution. One reason for the popularity of the Legislative Article as a subject of amendment is that it contains much more than one would expect from its title. In addition to legislative structure, procedures and basic powers and limitations, there are numerous substantive sections on subjects such as education, local government, rural fire prevention districts, welfare and the like. The dubious honor of breeding the most amendments from 1951-1972 goes to Section 51 of Article III. Some 20 amendments were proposed to this section and 16 passed.

The constitutional article attracting the next most attention is General Provisions (Article XVI). Many unrelated topics are included therein, such as liquor by the drink, county retirement plans, pensions for Texas Rangers, jury service for women, oaths of office, and loan shark regulation, among others. This article attracted 27 of the 145 amendments submitted; 19 of them were ratified.

As the table on the following page indicates, the remaining articles have not attracted as many amendments. Article VIII on Taxation and Revenue has been the subject of 15 proposed amendments, while Article IX on Counties has been the subject of 13. Others include: Article VII, Education, with ten proposed amendments; Article VI, Suffrage, and Article V, Judiciary, each with five; Article IV, Executive, with four; Article I, Bill of Rights, and Article XVII, the amending article, each with three. All other articles have each been the subject of one proposed amendment, except Article XV, Impeachment. The Impeachment article was untouched over the 21-year period. Article XIII, Spanish and Mexican Land Titles, was eliminated by its only amendment.

Classification by Reasons for Amendment

The classification by number of times each article has been amended shows clearly that the legislative article and the articles on counties and general provisions have prompted the largest number of amendments

TABLE I

PROPOSED AMENDMENTS TO THE TEXAS CONSTITUTION, 1951-1972: BY ARTICLE

Article		Number of Proposed Amendments	Number Approved
I.	Bill of Rights	3	3
II.	The Powers of Government	1	0
III.	Legislative Department	67	47
IV.	Executive Department	4	2
V.	Judicial Department	5	5
VI.	Suffrage	5	4
VII.	Education	10	9
VIII.	Taxation and Revenue	15	9
IX.	Counties	13	12
X.	Railroads	1	1
XI.	Municipal Corporation	1	1
XII.	Private Corporations	1	1
XIII.	Spanish and Mexican Land Titles	1	1
XIV.	Public Lands and Land Office	1	1
XV.	Impeachment	0	0
XVI.	General Provisions	27	19
XVII.	Mode of Amending the Constitution of this State	3	3
	TOTALS	158*	118*

*The actual numbers of amendments submitted and approved are 145 and 105, respectively. The totals here are larger because individual amendments occasionally affected more than one article.

submitted over the 21-year period. Certain subject areas of these articles obviously have required more attention than others. By identifying these subject areas we are on the road toward discovering reasons for the amendments.

(1) To Evade Financial Restrictions

A special tally was taken of amendments concerned with government finance with dramatic results, among the most significant in the entire research project. Considering provisions dealing with spending, taxing, borrowing and debt, and fiscal administration, including constitutional funds, we find that 98, or about two-thirds, of the 145 amendments submitted concerned finance; 72 percent were passed.

Of the finance amendments, 68 concerned state and 30 local finance. The largest state category consisted of the constitutional funds, which were categorized separately even though they could well be included with the spending, taxing and borrowing provisions as well as fiscal administration. There were 13 funds either established or amended during the 20-year period of the study. They are as follows:

Permanent University Fund
State Medical Education Fund
Teachers Retirement System
State Retirement, Disability and Death Compensation Fund
College Building Fund
Veterans Land Fund
Texas Water Development Fund
Permanent School Fund
Available School Fund
State Park Development Fund
Texas Opportunity Plan for Students
Confederate Pension Fund
State Building Fund

The importance of these funds is well illustrated by the fact that 29 amendments were proposed in relation to them. All have been subject to amendment during the past 21 years, and five were created during this period, some requiring hundreds of words. In addition, there were other earmarked funds for purposes such as payments to survivors of state officers killed in the line of duty and medical assistance to certain law enforcement personnel.

Of local finance amendments, 12 involved taxation; 9 were approved.

The large number of finance-related amendments stems from the restrictiveness of the Texas Constitution. For one thing, the 1876 Constitution flatly prohibited debt except for defense and related matters and casual deficiencies up to $200,000. This unrealistic approach to government finance has been evaded by consitutional amendments authorizing

debt for specific purposes. In addition, the section prohibiting the lending of credit to individuals, associations or corporations has been the subject of even more amendments.

Inextricably joined with debt are provisions on spending, and they have been the biggest problem of all. In addition to the normal safeguards against unauthorized spending, the Texas Constitution prohibits grants of public money. Section 51 of Article III, the section breeding the most amendments, prohibits the state from grants of public moneys "to any individual, association of individuals, municipal or other corporation whatsoever." Section 52 extends the prohibition to all local governments. The section has been amended often because such prohibitions are unworkable. Grants of public money are essential to the business of modern state government.

Welfare spending has been a consistent begetter of amendments; some 13 have been proposed and 10 ratified from 1951-1972. In addition to dollar limits on the welfare programs, the Texas Constitution at great length also delineates the kinds of programs authorized, eligibility for assistance, division of the available funds, and many other details that demand constant attention, often by federal mandate or in order to take advantage of federal programs.

The constitutional cross borne by local governments in fiscaldom has involved primarily taxation, although spending and borrowing are also affected; in fact, all are related. Constitutional restrictions on the authority of local governments to incur bonded indebtedness for water and road programs have created through amendments some of the most confusing sections of the Constitution. Similarly, local government financial limitations encourage the creation of hospital and other special districts. The number of hospital district amendments alone attests to the importance of finance as a breeder of amendments.

(2) To Amend Amendments

In terms of sheer numbers, the second most important reason for amendments has been amendments to amendments. This is a question of mode or method of constitutional change as well as substance; but method is important in understanding why the Texas Constitution is so long. Quite obviously, the tradition has been to patch, rather than to revise in a comprehensive and orderly fashion.

Eighty-five of the 145 amendments were changes in amendments already passed, many of them originally passed during the 1951-1972 period. This means that not only is the 1876 Constitution requiring amendment, but the amendments themselves must be changed. Of the 85 proposed amendments, 63 or 74 percent passed.

What requires so much tinkering? Once again, finances dominate the picture. Of the 85 amendments in question, 64 concerned finance.

Of these, 17 dealt with constitutional funds, 13 with welfare expenditures, 11 retirement programs, 7 education funds, 8 legislative salaries, and 6 veterans' land programs. (There is deliberate overlapping in some of these categories.)

The numerous amendments are understandable. If specific interest rates are to be set in the Constitution, specific investment portfolios, the specific apportionment of funds among programs, the specific amount of borrowing authority, and so on, obviously changes will have to continually be made to keep abreast of changing market and general economic conditions.

But another reason for continual amending of amendments is that many amendments simply are poorly drafted and have to be changed. It is not uncommon for the Legislature to fail to foresee the consequences of a given amendment on other related provisions of the Constitution, necessitating housekeeping amendments.

Among the amendments to amendments proposed for those purposes are the following, each described briefly below: (1) rural fire prevention amendment of 1951; (2) oaths of office of 1956, (3) terms of county officers, 1954 and 1958.

In 1949 the Legislature proposed and the electorate approved an amendment authorizing rural fire prevention districts, but the tax rate provided for was only three cents for each $100 valuation and was inadequate even to purchase fire fighting equipment. In 1951 the Legislature proposed a change from three to fifty cents in the tax rate. The news commentators dubbed it the "one word amendment" for obvious reasons. Unfortunately for rural fire fighters, the amendment failed.

In 1938 an amendment was passed omitting dueling from the oath required of officials (and making other changes), but it failed to include language appropriate for appointive officials. In 1956 an amendment was proposed which amounted to a seven word change, deleting these words: "the electi at which I was elected."

In 1954 an amendment changing the terms of county and district officers from two to four years was adopted by the voters. Unforeseen consequences soon dictated amendments to the amendment. At the 1958 election two amendments were submitted. One dealt with vacancies in the offices of county judge and justices of the peace; it simply deleted three words, namely, "for such office," so that the County Commissioners Court would not be able to fill vacancies for more than a relatively short period of time rather than for almost an entire four year period. Also, county officials running for another elective office were required to resign when more than one year of their term remained unserved.

Finally, many of the amendments are designed to expand a good thing. That is, an amendment limited to one county or group of counties or to any limited area, office or subject, is amended in order to expand

coverage. Possibly as many as 70 amendments could qualify in some manner under this rubric. Among many examples, the hospital district story is a good place to begin. Eight amendments have concerned these districts. After the voters turned down an amendment authorizing the Legislature to create hospital districts on a general basis, specific amendments were proposed authorizing districts in given areas until a comprehensive amendment was passed. Another example of extending a good thing is the 1970 amendment to the judicial article. A 1965 amendment established the Judicial Qualifications Commission and adopted new provisions on judicial removal, resignation, discipline, and retirement. Applicable originally only to district and appellate courts, it was extended to all courts by an amendment passed in 1970.

Workmen's compensation for government employees was first provided for state employees by a 1936 amendment; in 1948 it was extended to county employees; in 1952 to employees of municipalities; and finally in 1962 to all political subdivisions.

Provisions for retirement systems for government employees began in 1936 with the Teacher Retirement System. This was followed in 1946 by a system for appointive state employees and county employees. In 1948 a judicial retirement system was begun; in 1954 an exchange of credits from the teachers' to the State Employees' System was authorized; further changes in teachers' retirement occurred in 1957. In 1957 a retirement system for elected state officers and employees was instituted. Then the system was extended to employees of all political subdivisions. Had the original amendment authorized the Legislature to create retirement systems with or without a referendum, the remaining amendments would all have been avoided.

Finally, we might mention the three amendments pertaining to the consolidation of county offices and functions and authority to make intergovernmental contracts. The first amendment applied in effect only to Harris County by population bracket; the second specifically applied only to El Paso and Tarrant Counties; and the third amendment finally got around to all counties although it was originally introduced in the Legislature for Bexar County only.

What we have seen in this last series of amendments is piecemeal or incremental change. This method of constitutional revision is characteristic of the Texas constitutional amendment process, perhaps its most important feature.

(3) To Overcome Limitations on Local Government

A special tally was also taken of local government amendments in the hope that this would shed some light on the impact of the amendment process on intergovernmental relations in Texas. It is significant that over 30 percent of the amendments submitted to the electorate (46 of the 145) directly concerned local government: counties, municipalities,

special districts, school districts, or simply all political subdivisions. The approval rate was 78 percent.

The distribution of the amendments by the unit of government concerned is revealing:

counties (23)
municipalities (5)
special districts (14)
school districts (3)
"all political subdivisions" (5)

The fact that counties led in number of amendments can be explained by the numerous restrictions imposed by the Constitution upon this unit of government. These restrictions require relatively frequent constitutional change. This is in sharp contrast to the few amendments dealing solely or mainly with municipalities. The widely heralded Home Rule amendment for municipalities undoubtedly is an important explanation for the difference. The large number of special district amendments is primarily due to the so-called explosion of hospital districts during the period under review, which accounted for eight of the 14. Regionalism is at work here also, not only insofar as hospital districts are concerned, but also in such matters as regional airports.

Many of the local government amendments also concerned finance. The hospital districts, for example, were not loved for their sake alone but also for their value as a means of evading rigid constitutional restrictions on taxation. Medical services could be provided by the district without increasing tax rates.

The state of Texas is responsible for its political subdivisions which are its legal creatures, but the Texas Constitution has failed to treat this important subject in a consistent manner, observing no systematic theory. Most of the local government amendments have dealt with counties and more will be necessary until the state allows the counties more freedom and flexibility in handling their affairs.

(4) To Reverse an Electoral Decision

Another significant cause of amendments has been the desire to reverse a decision by the electorate on given amendments which have been defeated at the polls. Apparently the need for these amendments is so great that the Legislature feels compelled to resubmit them, sometimes time and time again. The Legislature resubmitted, in some form or another, at least 28 amendments and probably more from periods not covered in this research project. Proposals for legislative pay led the pack, accounting for nine or one-third. Fixing the legislative salary in the Constitution causes considerable constitutional business. When the voters prefer to reject the amendments increasing compensation, the amendment business booms. Among other repeaters are the following:

county retirement (3)
welfare (3)
veterans' land program (2)
poll tax (2)
maximum interest rate on state bonds (1)
four year terms for Governor and other state executives (1)
annual legislative sessions (1)
Permanent University Fund (1)
hospital districts for any area (1)
dual office holding (3)
proposing amendments at special sessions (1)

(5) To Respond to the National Government

Twenty-one amendments can be traced directly to the influence of the national government. No doubt many others were indirectly influenced. In addition to passing amendments in order to meet federal requirements for particular programs, others were passed as a result of federal court decisions or other federal mandates. The most important single group of amendments in this regard has been the 13 welfare proposals. Four of the five suffrage amendments are also the product of federal action, in some instances in anticipation of a new federal law or an amendment to the United States Constitution. Other examples are the amendments authorizing regional airport authorities and water development programs.

(6) To Accommodate Decisions of Texas Courts and the Opinions of Texas Attorneys General

Decisions of the Texas courts and Texas Attorney General Opinions have accounted for twelve amendments, one having been the result of both a judicial decision and an Attorney General opinion. Court decisions leading to amendments have included decisions on city workmen's compensation programs, commitment of the mentally ill without a trial by jury, terms for directors of Conservation and Reclamation Districts, dual office holding, the effect of changes of boundaries of school districts on taxes and bonds, and exchange of credits between the Teacher Retirement System and the State Employee Retirement System. Attorney General Opinions have concerned such problems as eligibility of employees of political subdivisions for social security coverage, terms of directors of Conservation and Reclamation Districts, dissolution of hospital districts, mental health expenditures by political subdivisions within a hospital district, and persons entitled to state assistance when officers are killed in the line of duty. As was true of the national government, no doubt the influence of the Texas courts and the Attorney General extends way beyond the few amendments listed here. In fact, the entire amendment process is significantly affected by the traditionally cautious view taken by the judiciary and the Attorney General on the meaning of constitutional provisions, which has the effect of increasing the burden on the amendment process. That is, instead of constitutional

change proceeding by interpretation it proceeds by numerous amendments. This cautious approach is no doubt facilitated by constitutional detail and it in turn prompts more detail. The only possible result of failure to change the pattern is a longer and more complicated constitution. Georgia and Louisiana have carried this to an extreme.

An Analysis of Reasons for Amendment

Underlying the reasons given above for the amendments submitted over the past 21 years are more basic forces or conditions, including societal and political changes. These have consequences for the Texas constitutional system and explain why many of the amendments were proposed.

As Texas has become an industrialized and urban state, having the fourth largest population of any state in the Union and the largest number of metropolitan areas, demands for more governmental services and other kinds of public activity have proved overwhelming. The amendments proposed during the past 21 years provide, in fact, a panoramic view of the problems facing Texas in the 20th Century -- water development, parks and recreation, welfare, education, law enforcement, medical care, and many others.

One constitutional response has been to permit intergovernmental cooperation as a means of handling areawide problems in an urban society. The amendments authorizing counties to consolidate offices and functions and to make intergovernmental contracts, the hospital districts, the regional airport authorities, and the water development programs are all good examples of this approach. In addition, there are amendments of limited application also reflecting regionalism, such as the ill-fated attempt to allow Texarkana, Texas, to get a refund on cigarette taxes in order to compete with its neighbor Texarkana, Arkansas.

Another constitutional response has been to authorize borrowing, spending and, in a few instances, tax exemptions or tax increases.

Changes in the political system are evidenced by suffrage amendments which have expanded the base of participation in Texas politics. In addition, fundamental social changes are reflected in the amendments traceable to the civil rights revolution, such as the amendment deleting the section requiring segregation by race in the public schools, the proposed Equal Rights Amendment on the 197 ballot, and perhaps the amendment allowing women to serve on juries in 1954.

As the national government has assumed more responsibilities for domestic concerns, it has made an imprint on the Texas Constitution, as already indicated above. Furthermore, a desire to modernize Texas state and local governments so that they can cope more effectively with modern problems has resulted in several amendments, including the five on the judicial branch; the various amendments to raise the salaries of legislators and the two proposing annual sessions; the county and special

district amendments already mentioned; and the four-year terms for state executive officials.

Finally, a word about the original Texas Constitution of 1876. The nature of this Constitution with its myriad restrictions and detail, mainly statutory, and its general tone has been the root cause of numerous amendments from 1951-1972. Despite the 212 amendments, the Constitution still maintains its original shape, creating formidable barriers to efforts to respond effectively to the pressures of modern society. The basic structure of government remains pretty much intact; the basic prohibitions on debt, spending, and taxation are all there although the amendments provide numerous exceptions; and so on. The amendments continue in the same manner as the original Constitution. So we get more of the same compounded. Finally, contributing to the need for amendments has been the generally strict construction given the Constitution by the Texas courts and Attorney General.

COSTS: THE NITTY GRITTY

One would assume that holding 19 elections in 21 years on 131 amendments would cost plenty. And it does, insofar as we can determine.

Publication Costs

The amending article of the Texas Constitution, Article XVII, requires that proposed amendments be published once a week for four weeks beginning at least three months before an election in one weekly newspaper of each county in which there is a newspaper. An amendment adopted in 1972 has changed these requirements, but whether the net cost will be less is not known. The new amendment states that amendments only have to be published twice and not in full; and all newspapers in the state qualifying for publication of legal notices would be required to publish a synopsis of the amendment. Also, the Legislature would be authorized to set the rate which the newspaper could charge, which could not be more than the newspaper's national published advertising rate per column inch. In addition, the entire text of each amendment would have to be posted at the courthouse of each county.

The cost of publishing amendments from 1951 to 1971, as required by the Constitution and statutes, amounted to $2,491,467, or about $19,000 an amendment. The range per amendment was from $6,818 to $39,500 fluctuating greatly from election to election. The costs have been rising in recent years, measured by either the cost per work or the average cost per amendment. An extrapolation to the year 2001 suggests that if nothing else changes, we can expect a publication cost per amendment of $50,000. Multiplying this figure by 36, the number of amendments we can expect to be proposed in 2001, the total publication cost for that biennium, 2001-02, will be an awe-inspiring $1.8 million.

Costs of Holding Elections

To the best of our knowledge, no one has attempted to find out how much it costs to hold elections for amendments in all Texas counties. In an attempt to provide reliable data on this subject, questionnaires were mailed to all counties; information was requested about the costs of the 1971 and 1969 special elections held on amendments and the 1970 general election at which amendments were submitted. Of the 254 counties, replies were returned from 145, including the big four -- Bexar, Dallas, Harris and Tarrant. The votes cast on amendments in the 145 counties represented 83 percent of all the votes in 1971; 77 percent of the votes in 1969; and 77 percent in 1970.

For the 1971 election, the cost per vote for the counties responding to the questionnaire was as follows:

Counties casting 0 - 999 votes	$1.61
Counties casting 1,000 - 4,999 votes	1.08
Counties casting 5,000 - 14,999 votes	.99
Counties casting 15,000 - 29,999 votes	.66
Counties casting 30,000 and above votes	.55

The estimated cost for all 254 counties was $622,228.98.*

For the 1969 election, the cost per vote for the counties responding was as follows:

Counties casting 0 - 999 votes	$1.12
Counties casting 1,000 - 4,999 votes	.80
Counties casting 5,000 - 14,999 votes	.60
Counties casting 15,000 - 29,999 votes	.52
Counties casting 30,000 and above votes	.73

The estimated cost for all counties was $498,052.46.**

The sharp differences in costs among the counties suggests something about the efficiency of devolving election administration upon 254 separate administrative units, some of which are extremely small.

Most constitutional amendments are submitted at general elections. It is virtually impossible to determine what percentage of the total cost can be attributed to the amendments on the ballot, but one would assume that the cost would be considerably less since it would not be necessary to crank up the entire election machinery for the amendments. The county officials receiving the questionnaire were asked to report the total cost of the 1970 General Eelction and then to make an estimate of the cost attributable to the amendments either by a percentage figure or in absolute dollars. The average estimate given by county officials was 18 percent of the total cost. Basing calculations

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*The costs varied widely from county to county and between groups of counties. In order to make a more reliable estimate of the election costs for all counties, the 145 counties were broken down into five groups on the basis of the number of votes cast for amendments. The cost per vote for each group of counties was calculated and then multiplied by the total cote cast by all counties within each group. The product of each group of counties was then summed to get the total cost for all 254 counties.

**It should be noted that the ballots in some counties included more than constitutional amendments. Hence, the estimated cost for the special elections is not wholly accounted for by the amendments.

upon this figure, the cost of amendments in the 1970 general elections was estimated to be $217,816.51 for all 254 counties.* The total, as anticipated, was less than that for special elections.

Combined Costs

From these figures, we can estimate that the total cost of holding the 19 elections on amendments from 1951 - 1971 was probably in the neighborhood of $6,500,000.** This figure includes the estimates of the costs at general elections and must be accepted with caution. If this figure is coupled with the publication costs of $2.5 million over the same period, the total direct cost to the taxpayers for holding constitutional amendment elections was $9.0 million or $95,744 for every amendment approved and $68,702 for every amendment submitted at elections from 1951 - 1971.

No public expenditures in these amounts should be dismissed lightly. One must always ask the question, whatever the expenditure: Are there better ways to spend the taxpayer's dollar?

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*The total cost reported by the counties replying to the questionnaire was $936,837.05. This figure was multiplied by 18 percent, the estimate of the amount traceable to amendments. Then, the product, $168,630.67 was divided by the total number of votes cast by the 145 counties reporting. The dividend, $.11 was then multiplied by the total vote cast on amendments in all the counties in 1970 for the estimate of the cost of having amendments on the 1970 general election ballot.

**This assumes that the cost of a special election is about $500,000., which is the midpoint between the 1971 and the 1969 costs, and a general election cost of $200,000. There were nine special elections for a total of $4,500,000 and 10 general elections for a total of $2,000,000 giving us a grand total of $6,500,000.

VOTERS AND ELECTIONS

Number of Amendments and Elections

Between 1951 and 1972, the Legislature submitted and the people voted in 20 elections on 145 amendments to the Texas Constitution. The voters approved 105 for an approval rate of 72 percent. The highest number of amendments confronting the voter at any one time was 16 in the 1966 general election, and the largest number approved at a single election was 15, also in 1966. Table II on page 21 lists the date of the election, the number of amendments submitted, and the number approved. Table III on page 22 lists the number of amendments submitted and approved in rank order.

Texas has the sixth longest constitution in the United States, and it will continue to get longer if past trends persist. An extrapolation based on the 1951-71 base period indicates that by the year 2001 Texas will see a constitution with 345 amendments! We can also expect about 36 amendments to be proposed by the Legislature to the voters in 2001, of which 26 are likely to be approved.

Kinds of Elections: It Makes a Difference (1951 - 1971)

One of the most significant findings of the study was that there is a decided difference between special and general elections and even between presidential and off-year general elections insofar as the fate of amendments and other amendment questions are concerned.

A total of 43 amendments was voted on at 9 special elections for an average of 4.8 amendments per elections; and 22 of these were approved for an approval rate of only 51 percent. On the other hand, a total of 88 amendments were submitted at the 10 general elections, for an average of 8.8; of these, 72 were approved for a success rate of 82 percent. In other words, there was a differential of 30 percentage points in the number of amendments approved at special and general elections.

There were also significant differences between presidential and off-year elections within the general election category. In all but one of the five presidential elections, the voters approved every single one of the amendments offered; however, the overall approval rate was 77.4 percent because in one election only 7 of 14 amendments were approved. The totals in the presidential elections were 24 approved of 31 submitted. In the five off-year elections, the success rate was higher, 84.2 percent, 48 of 57 amendments being approved; but there was only one election in which the voters approved all the amendments.

Participation of Voters

What do the voters think about voting often on numerous amendments? Although we cannot probe further without interviews and precinct and county data, aggregate election data indicate that the voters do not particularly care about amendments. At least they keep away in droves from the ballot booth.

Only about one-third of the registered voters vote on amendments. Taking all 19 elections and averaging the number of registered voters participating, only 32 percent of those registered voted on amendments. In contrast, the participation rate for voting for President or for Governor in general elections is about two-thirds (67 percent) of the registered voters.

When we distinguish between general and special elections, the turnout becomes even more startling. In special elections without the pulling power of a race for President or for Governor, the percentage of registered voters participating drops precipitously to only 16 percent. The percentage of registered voters voting for amendments at general elections is about three times as great -- 45 percent -- although this is low also. A turnout of 6.7 percent occurred in one special election.

There is also a significant difference in turnout between presidential and off-year general elections. The percentage of registered voters casting ballots for amendments in Presidential elections is 51 percent in contrast to 39 percent in the off-year general elections.

Participation rates drop virtually to the vanishing point when resident voting age population is considered; this is the usual indicator of the potential electorate. Taking the number of voters as a percentage of the voting age population yields an average participation rate of only 17 percent. In the elections studied, the participation of the voting age population ranged from 3.7 percent to 28.9 percent. It is clear that a small minority of the people of Texas vote on amendments.

With these figures in hand, one would be hard put to argue that the voters are enthusiastic about amendments or that amendments draw voters to the polls. It is much closer to the truth to say that a candidate's race pulls the voter into the ballot booth; while there he may or may not vote on the amendments. When there are no races involving candidates, then the voting for amendments is not very popular, and one can assume from the data collected that the voters who do turn out are much more suspicious of the amendments offered and are more likely to defeat them than the voters in the general election.

Popular and Unpopular Amendments

What kinds of amendments attract the most votes and the least? The voters understandably pay the most attention to controversial and more

TABLE II

THE NUMBER OF PROPOSED AND ADOPTED AMENDMENTS TO THE TEXAS CONSTITUTION FROM 1951 TO 1972: BY YEAR

Year	Proposed	Adopted
1951	5	1
1952	2	2
1954	11	11
1956	8	8
1956	1	1
1957	3	3
1958	9	7
1960	4	4
1962	14	10
1963	4	1
1964	3	3
1965	1	0
1965	10	5
1966	16	15
1967	6	6
1968	14	7
1969	9	4
1970	7	5
1971	4	1
1972	14	11
Totals	145	105

TABLE III

RANK ORDER OF THE NUMBER OF PROPOSED AND ADOPTED AMENDMENTS TO THE TEXAS CONSTITUTION: 1951-1972

Proposed		Adopted
16		15
14		11
14		11
14		10
11		8
10		7
9		7
9		6
8		5
7		5
6	Median	4
5		4
4		3
4		3
4		2
3		1
3		1
2		1
1		1
1		0

basic amendments than to those having application to only a small area; or, are of concern to only a limited number of people; or, are of a highly technical nature. An examination of the 17 amendments drawing the most votes bears out this hypothesis.* Six or about one-third of the amendments dealt with welfare issues, a controversial matter in Texas. The other popular amendments involved the following issues: women on juries; interest rates, four-year terms for Governor and other high state executive officials; liquor by the drink; the veterans' land program; and retirement. Only one concerned a local government issue, and this was on the ballot with only one other competitor. It had to do with city employee's workmen's compensation. The approval rate for these popular amendments was about 71 percent.

The least popular amendments concerned local government issues, particularly those having limited application. Why should the people of San Antonio or Muleshoe be concerned about whether the Jefferson County Drainage District Number 7 and the Port Arthur Independent School District should combine for purposes of a hospital district? In total, over two-thirds of the amendments receiving the least votes in 17 elections concerned local government; and one-third or six concerned only one or a handful of local areas. Three of the other least popular amendments involved constitutional funds; one, maximum interest rates on state bonds; one, dual office holding; one, the state building commission; and one, proposing amendments at special elections. Of these seventeen amendments, five dealt with state finance.

The unpopularity of local government amendments was investigated further. Thirteen proposed amendments could be classified as local government amendments with limited application, meaning that they applied to only one or a handful of local government units. Six of these, almost half, received the least votes in the elections at which they were submitted; two others were next to the bottom of the list in order of votes received in the election; two were third from the bottom and two more, fourth. Only one of the 13 was anywhere near to the top in terms of voter drawing power; this was the amendment authorizing regional airport authorities, which at the time of adoption applied to only two areas.

It has often been remarked in Texas that unpopular amendments bring down other amendments in the same election. There might be some truth to this, but not too much. In each of the seven elections in which the rejection rate was 50 percent or higher, there was at least one unpopular amendment on the ballot. On the other hand, unpopular amendments were defeated at other elections in which the approval rate was much higher; and an amendment unpopular at one election has been approved at others even when the rejection rate is high. Welfare is a good example One is forced to conclude that the voter uses a "search and destroy"

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*Data were collected for the amendment at each election receiving the highest vote except for two elections where there was only one amendment.

tactic. Some amendments, such as increasing legislative pay, are going to have a sticky time of it, regardless of the popularity of the other amendments on the ballot. As earlier indicated, what is more important is whether the amendment is voted on at a special or general election.

The Rational Voter

Another item of interest was whether an amendment's position on the ballot affected its chance of passage. The present statute governing the place on the ballot of each proposed amendment assumes that it does; drawing by lot serves to give each amendment an equal chance of having first or any other place.

There is no evidence that ballot position makes much difference in the fate of an amendment. If a first place position is an advantage, one would expect amendments appearing first on the ballot to be adopted more frequently. Of the 17 amendments first on the ballot during the 21 year period covered by this study (excluding the two in elections in which there was only one amendment), 13 passed and 4 failed for an approval rate of 76 percent, several percentage points higher than the overall approval rate (72 percent) but not dramatically so. As for last place amendments, 12 of the 17 passed for an approval rate of 71 percent, virtually identical to the overall approval rate. Furthermore, the distribution of defeated and approved amendments showed no particular pattern by ballot position. For example, about the same number of approved amendments were in second and third place as in first.

The investigation also helps dispel the notion that the voter votes blindly. On the basis of fifty percent (there being two choices, yes or no) on 17 amendments in first place or last place, in no case was the success rate only 50 percent by ballot position. Apparently, the voter discriminates among the amendments offered to him.

Patterns of Defeat and of Victory

Can any pattern be detected in the amendments defeated and those approved by the voters? Although a wide variety of subjects was covered by both the defeated and the successful amendments, a few patterns were evident. About 70 percent of the rejected amendments concerned government financing. Within this group it is significant that five dealt with salaries of legislators, including in some cases the Lieutenant Governor. It was also significant that many proposed changes in the basic organization of government were rejected, suggesting a reluctance on the part of the voter to make fundamental changes incrementally. Examples of the defeated amendments of that character were those providing four-year terms for Governor and other high executive officials, although the voters finally approved these in 1972; four-year terms for Representatives; an enlarged Senate; and an Ethics Commission to get salary schedules subject to legislative approval. Tax exemptions were also relatively unpopular.

The 94 ratified amendments covered the constitutional rainbow. Nevertheless, it is significant that all amendments to the judicial article passed, including what might be classified as basic changes. Virtually all education proposals passed. Almost all hospital district amendments passed, as did all but three of the welfare proposals.

Other Patterns of Participation

In an effort to find out more about patterns of participation, an investigation utilizing correlation analysis was made of three important questions frequently asked about voter participation in the amendment process.

The first question was whether the number of amendments on the ballot makes a difference in the voter approval rate. For example, if the number of amendments gets very large, will the voters cry "Halt!" and reject them all? This happened in Louisiana recently. After years of approving large batches of amendments, the voters defeated all 53 proposed in 1970.

The experience during the past 21 years in Texas has been that the voters generally approve the amendments, regardless of the number on the ballot. For example, in the election in which the most amendments were proposed, 16, 15 were approved. Also, there have been eight elections in which all the amendments, ranging in number from 2 to 11, were approved. In fact, the correlation between the number of amendments proposed and ratified is a high .89. So the Louisiana syndrome has not yet been experienced in Texas.

On the other hand, there is a tendency in general elections for the voters to approve a smaller percentage of amendments as the number proposed gets larger. For example, in the only presidential election from 1951 to 1971 in which the approval rate was not 100 percent, the number of amendments submitted was 14, the largest number submitted at these elections.

A second question was whether the voters would be more likely to vote on the amendments if the number of amendments was large. In other words, are voters attracted to the polls when there are more choices, so to speak? There was some indication that this was true in special elections. The percentage of registered voters participating in these elections was greater when the number of amendments was greater. But this was not always true in general elections. The reason for this was probably the drawing power of the presidential race in which the number of amendments voted on tended to be smaller than in the off-year general elections.

A third question was whether a large turnout was a factor contributing to the victory or defeat of amendments. There was some evidence that insofar as special elections were concerned, the percentage of amendments approved tended to decline as the turnout increased. That is, a larger turnout has been associated to a limited extent with a higher

rejection rate. Perhaps a campaign to get voters to the polls in special elections would help to defeat amendments. As for general elections, the correlations analysis revealed no association between participation rates and the percentage of amendments approved or rejected. Turnout, then, was not important for victory or defeat in those elections as measured by that statistic.

CONCLUSIONS AND RECOMMENDATIONS

The findings reported in the three sections of the research project analyzing amendments to the Texas Constitution from 1951 to 1972 lead to the following general conclusions:

- Most of the amendments -- particularly fiscal and local in nature have been caused by the need to evade or otherwise to overcome the deficiencies of the Constitution of 1876 and to keep abreast of the rapid changes of an urban state.

- Amendments have in turn resulted in other amendments, contributing to the extreme length and detail of the Constitution and its statutory character, a document now containing over 50,000 words and 212 amendments.

- High costs of publishing amendments and holding elections have been an important consequence of the frequency of amendments.

- Only a small minority of the voters -- in fact a tiny minority in special elections -- vote on amendments, thereby making decisions affecting the future of Texas.

The analysis has highlighted the importance of the amendments for intergovernmental relations in Texas. As noted in the Summary, the Texas Constitution provides the basic framework for these relations; numerous amendments have had an impact upon that framework. In particular, the findings reveal that most of the amendments have concerned the fiscal capacity of state and local government, the structure and powers of local governments, and the powers and responsibilities of the Texas Legislature, generally. Hence, the story of constitutional amendments from 1951 to 1972 has been largely a story of the capacity of state and local governments to serve the people of Texas.

Shall we go on as we have in the past, amendment after amendment after amendment? Recommendations for a different course of action conclude this report.

Finance

Every state constitution should contain safeguards against raids on the public purse; and it should contain assurances of honest and orderly procedures in the handling of state money. The Texas Constitution provides these by requiring that public moneys be spent only in pursuance of an appropriation and only for a public purpose. The pay-as-you-go amendment of 1942 is an additional safeguard. But beyond this, the

Texas Constitution imposes restrictions and detail that have been evaded or changed by numerous amendments. The amendments themselves are proof that the restrictions do not work.

The prohibitions against grants to individuals, associations, and corporations should be deleted, relying instead as most state constitutions do on the injunction that public moneys should be spent only for public purposes. Even if Texans desire to retain restrictions on welfare spending, it is not necessary to have the lengthy provisions now incorporated in the Constitution for this purpose. The Legislature could be authorized expressly to provide for public welfare expenditures. If a dollar limit must be imposed, and Texas is the only state left that does so, then at least the Constitution should provide for a referendum on the raising of the ceilings rather than requiring a constitutional amendment each time the dollar limits are changed. Other restrictions, such as those on eligibility which are often contrary to federal regulations in any event, programs which are spelled out in detail, and similar provisions could have been deleted.

Then there are the constitutional funds. Is all this statutory detail necessary? Does anyone seriously think that the voters will or should inform themselves about the myriad details of the water development fund, the veterans land fund, the college building fund, the Permanent University Fund and the others? Funds, which in the public interest ought to have constitutional status, could be referred to in the Constitution without the statutory material; and safeguards stated in general terms requiring audit or review could have saved hundreds of words and more than 20 amendments, over the past 20 years.

The prohibition of public debt is unrealistic. Texas has a public debt: constitutional amendments authorize it. If a debt limit is politically necessary, it could be stated as a relationship to a general indicator such as a percentage of the Gross National Product. Thus, the debt ceiling would expand and contract with the economic trends. If the voters insist on a dollar limit, provision for a referendum for raising the ceiling would save countless amendments over the years.

In sum, the vast majority of the 98 amendments dealing with finance could have been avoided entirely if the Constitution had contained provisions for a realistic fiscal policy with adequate safeguards for the public interest.

Local Government

About one-third of all the amendments proposed from 1951 - 1972 have concerned local government, many of them involving fiscal matters. Most could have been avoided.

It is ironic that at least one constitutional restriction on taxation has actually increased the taxpayer's burden. The Constitution sets

the maximum tax for bonded indebtedness of home rule cities. Because of this limitation, many cities have had to pay a higher interest rate in order to borrow money. Apparently, bonding authorities are fearful that defaults could occur if local governments are forced to a tax effort near the constitutional maximum.

Similar tax limits, moreover, have made it difficult for Texas counties to take on urban-type functions and assume their rightful place in metropolitan areas. The numerous amendments concerning hospital districts might have been eliminated had cities and counties not needed to evade restrictions on taxing and borrowing power.

Finally, many amendments to county government provisions could have been eliminated had the organization of county government not been frozen in the Constitution. Although counties serve as administrative arms of the state, they are also local governments. More options to the voters and local officials would have reduced the number of amendments and permitted more effective county government tailored to the people's needs in each local area.

Legislature

All roads to constitutional revision lead eventually to the Texas Legislature. As observed earlier, the most amendments by far have concerned the legislative article. This article includes many of the financial restrictions, some of the local government sections, some of the constitutional funds, and other topics considered above. Many of these relate to the power and responsibilities of the Legislature. Others pertain to the structure and operation of the Legislature.

The Legislature needs to be strengthened if it is to play its proper role in a democratic society. Certain constitutional changes, often proposed but resisted by the voters, are needed. These include provisions for annual sessions, preferably of undetermined length, and for legislative compensation set by law, perhaps on recommendation of an independent commission.

As the Legislature is given the resources with which to govern more capably, the voters' confidence in their legislators should increase correspondingly. This in turn will contribute to the deletion of constitutional provisions based on mistrust, including many of the fiscal restrictions. Replacing them should be the normal political processes of elections, community action, petition, and lobbying whereby the citizens hold their legislators accountable.

Comprehensive and Piecemeal Revision

Texas has had almost a century of experience with piecemeal revision, amendment by amendment. Many of the consequences of this process have

been apparent from this study of amendments. It would appear virtually impossible to make any basic change in the Texas constitutional system by continuing on as we have in the past. For one thing, the Legislature cannot give proper attention to all the constitutional amendments required during the Regular Session and certainly not within a framework conducive to letting the constitutional right hand know what the constitutional left hand is doing. Indeed, mistakes are common, some necessitating amendments to amendments. One mistake proved particularly costly in 1956. An amendment intended to be voted upon at the general election in November of that year carried the wrong Tuesday in the wording, and a special election just for one amendment had to be held a week after the general election! The voters registered their dismay by staying home. Only about six percent of the voters actually came to the polls on that second round.

If the pitfalls of the past are to be avoided, it is essential that there be a new kind of revision, either a comprehensive overhaul of the entire document or orderly selective revision of important articles. At the minimum, those provisions concerned with state and local finance and legislative powers must be changed. We must have a constitutional framework that allows the state to serve the people in a responsive and efficient manner and to work in partnership with the national government toward common goals.

The voters voiced their firm support for a new approach to constitutional revision by adopting Amendment Number Four at the general election on November 7, 1972. Amendment Number Four provides for a constitutional revision commission to be established in January 1973 and for the members of the Legislature to serve as a constitutional convention during a special session in January 1974.

A comprehensive revision of the Texas Constitution has long been needed. The time for revision has clearly arrived. No longer should the people of Texas tolerate a mass of amendments with their attendant consequences resulting from deficiencies in the original document. With proper revision years ago, perhaps 90 percent of the amendments which have required the attention of the Legislature, the courts, state and local officials, and, most important, the citizens of Texas, could have been avoided. And this could have been accomplished without reducing the constitutional safeguards necessary to protect the public interest.

APPENDICES

APPENDIX A

RESEARCH METHODS, SCOPE, AND SOURCES

The texts of all the 145 amendments proposed during the period under review and analyses of each prepared by the Texas Legislative Council, the Texas Legislative Reference Library, the Institute of Public Affairs at the University of Texas at Austin, and news commentaries were collected and examined. In addition, the *Citizens' Guide to the Texas Constitution* by George Braden (published by the Texas Advisory Commission on Intergovernmental Relations), the 1968 Report of the Texas Constitutional Revision Commission, and the 1961 Report of the Texas Legislative Council on the Texas Constitution were frequently consulted.

On the basis of the texts and analyses of the amendments, all the amendments were classified in numerous ways including by subject matter; by constitutional provision affected; by passage or defeat; by position on the ballot; by order of vote received in the election; and by cause or reason for the amendment. The tallies yielded invaluable information.

The votes on the 131 amendments at the 19 elections from 1951 to 1971 were checked with the Index of Official Reports in the Secretary of State's Office after being collected initially from the *General and Special Laws of the State of Texas*. (The votes on the 14 amendments submitted at the 1972 election were not available at the time of the project.) A number of discrepancies and omissions were uncovered; these were corrected for the tabulation in the research on election studies.

The number of registered voters in Texas was secured from the reports of the Secretary of State's Office; the *Texas Almanac* (Dallas: A.H. Belo Corporation) was also relied upon, particularly for estimates of the total number of eligible voters during the poll tax period when some voters were not required to register in order to vote. The votes cast for President and for Governor were obtained from the *Texas Almanac*, the Secretary of State's Office, and *America Votes 4* (Pittsburgh: University of Pittsburgh Press) by Richard Scammon.

The election data were arranged in tabular form in order to give the number and percentage of registered voters voting on the amendment receiving the most votes at each election, the number of amendments submitted and approved at each election, and the number and percentage of registered voters voting for President in presidential years and for Governor in the off-years. The data were also arranged to distinguish between special and general elections and also between presidential and off-year elections. Totals and averages were calculated to give aggregate data as needed.

Extrapolations, using the base period 1951-71 in most cases, were calculated by least squares trend lines to indicate the number of amendments that will have been added to the Texas Constitution by the year 2001, the number of amendments to be submitted by the Legislature to the voters that year, and the number to be approved by the voters during the 2001-2002 biennium. The extrapolations assume no changes in constitutional amendment procedures or in constitutional revision.

Many costs are incurred in amending the Texas Constitution. Two kinds were investigated for this study. First, the publication costs incurred by the state were secured from the Secretary of State's Office for the years 1956 to 1971 and from the appropriations statutes for the years 1951-1954. (There were no elections in 1953 and 1955.) These costs were arrayed in tabular form by year, totaled, and averages taken to get the average publication cost for each amendment. Then, the costs were extrapolated to the year 2001 to give both totals and average costs. Again, the extrapolation assumes no changes in the constitutional requirements and procedures for publishing amendments and do not take into account changing price levels. However, changes in price levels during the base period are reflected in the extrapolation.

Second, the costs shouldered by counties in holding elections at which amendments are voted on were investigated. A questionnaire requesting data from county auditors and, in counties without auditors, county judges was mailed to each county. The officers were asked to report the cost of holding the August, 1969, and the May, 1971, special elections, in which a number of amendments were on the ballot. Also, the officers were asked to give the total cost of the 1970 general election and to make an estimate of the percentage of the total that could be attributed to the amendments on the ballot.

One hundred and forty-five counties replied to the questionnaire. As the reports came in, the election costs were tabulated by county and date of election; the votes cast in each county for the amendment receiving the most votes at the elections in review were tabulated to give the cost per vote at amendment elections. In addition to the sums and averages calculated from the data available, the counties were divided into five groups on the basis of the number of votes for amendments cast. The first group consisted of counties in which 0 - 999 votes had been cast; the second, 1000 - 4,999; the third, 5,000 - 14,999; the fourth, 15,000 - 29,999; and the fifth, 30,000 and above. The cost per vote cast was then calculated for each group of counties. As anticipated, the larger counties show smaller costs per vote cast than the smaller counties.

Pearson product moment correlation analysis was used to help answer three questions often asked about voting on amendments: (1) Does the number of amendments make a difference in voter approval or rejection? (2) Are voters attracted to or repelled from the polls by the number of amendments on the ballot, that is, a short or a long ballot? (3) Does the size of the voter turnout help to defeat or approve amendments?

Correlations do not tell us whether variable A causes variable B. They can tell us whether there is an association between variables and its magnitude. If there is no association, it can be assumed that neither variable causes the other. For example, if the size of the voter turnout is not associated with either defeat or victory of amendments, then it may be assumed that defeat or victory is not caused by the number of voters participating.

Correlation coefficients may take on a value from -1 to +1, indicating a perfect negative correlation and a perfect positive correlation, respectively. The value 0 means there is no association between the variables. Correlation coefficients are designated by the letter "r".

The correlation coefficients calculated to answer the three questions referred to above were large with respect to the first question concerned with the number of amendments and voter approval or rejection. The "r" was .89 in all elections, .75 in special elections, and .89 in general elections. However, this calculation was based on absolute numbers. When the percentage of amendments approved or rejected was correlated with the number of amendments submitted, the correlation was negligible except for a negative correlation of -.52 in general elections.

Other correlations of some magnitude were as follows: (1) the number of amendments and the percentage of registered voters at special elections, .56; (2) the percentage of voters registered and the number of amendments approved at general elections, -.42; (3) the percentage of voters registered and the percentage of amendments approved at special elections, -.49.

Since the data constituted a universe and not a sample and in any event were not randomly selected, tests of significance were not appropriate and were not calculated.

APPENDIX B

SUBJECTS OF PROPOSED AMENDMENTS TO THE TEXAS CONSTITUTION: 1951-1972

Election Year	Article and Section	Subject
1951	III:48-d	*Permitting an increase in ad valorem tax for the creation of rural fire prevention districts.
	III:49-b	Enlarging amount of Veterans' Land Fund.
	III:51a	*Increasing the maximum amount spent for state welfare pensions.
	VII:11a	*Enabling UT Board of Regents to invest university fund in additional securities.
	XVI:63	*Authorizing a statewide retirement system for county employees.
1952	III:50a	Establishing a State Medical Education Fund to encourage rural medical practice.
	III:61	Providing for workmen's compensation insurance for city employees.
1954	III:51a	Increasing amount of old age assistance, aid to the blind and to dependent children.
	III:51b	Authorizing transfer of Confederate Pension Fund to the State Building Fund.
	III:51g	Providing social security coverage for proprietary employees.
	III:52b	Prohibiting lending of state credit or use of state funds for toll roads.
	IV:5, 21 22, 23 III:24, 61	Allowing Legislature to set salaries of certain state officers; per diem.
	V:9, 15, 18, 20, 21, 23, 30 VIII:14, 16 XVI:41, 64, 65	Providing four year terms for elective district, county and precinct offices.
	VI:1, 2, 2a	Conferring voting privileges to members of the Armed Forces who were already Texas residents.
	VIII:16a	Allowing creation of tax assessor-collector in counties with less than ten thousand population.

*defeated

Election Year	Article and Section	Subject
1954 (cont.)	IX:4	Authorizing Legislature to create hospital districts in counties over 190,000 in population.
	XVI:19	Requiring women to serve on juries.
	XVI:63	Allowing exchange of retirement benefits for Teacher Retirement System and Employees Retirement System members.
1956	I:11a	Allowing denial of bail to habitual offender, except in capital cases.
	I:15a	Requiring medical testimony for commitment of persons of unsound mind.
	III:48a	Increasing benefits and coverage and revises investments of Teacher Retirement System.
	III:49-b	Increasing Veterans' Land Fund; altering membership of Veterans' Land Board.
	III:51b	Authorizing Legislature to provide for assistance to needy disabled persons.
	III:51-c	Permitting Legislature to grant aid and compensation to persons improperly fined or imprisoned.
	VII:11-a, 17, 18	Providing for improvements at state institutions of higher learning; investment of Permanent University Fund.
	VIII:9	Authorizing Commissioners Court to levy sums necessary for various fund purposes.
	XVI:1	Altering form of Oath of Office to include appointive officers of the state.
1957	III:49c	Providing for creation of the Texas Water Development Board and issuance of bonds for local water conservation and development projects.
	III:51-a	Increasing amount of old age assistance.
	XVI:62-a	Increasing retirement allowances and disability in State Employees Retirement System.
1958	III:5, 24, 24a	*Providing for annual Legislative session and salary increase.
	III:51-a	Authorizing the Legislature to provide funds for direct or vendor medical care for welfare recipients.
	V:28	Authorizing County Commissioners' Court to temporarily fill vacancies of county judge and justice of the peace.

*defeated.

Election Year	Article and Section	Subject
1958 (cont.)	IX:5	Authorizing the creation of four hospital districts: Amarillo, Wichita County, and Jefferson County.
	XI:11	Authorizing home rule and general law cities to provide term of office for officials.
	XVI:56	Authorizing the dissemination of information about Texas resources.
	XVI:62-b	*Providing retirement benefits for county officials and employees.
	XVI:65	Requiring resignation of county official if running for another office during four year term.
	XVI:66	Authorizing the Legislature to provide pensions for Texas Rangers.
1960	III:24	Increasing annual salaries for Legislators.
	III:49b	Increasing interest rate on Veterans' Land Bonds.
	IX:6, 7, 8	Authorizing the creation of special hospital districts in Lamar, Hidalgo, and Comanche Counties.
	XVI:11	Providing regulation of interest rates and classification of loans and lenders.
1962	II:2	*Authorizing Legislature to provide for trials de novo on all appeals from rulings of state administrative or executive agencies.
	III:49-b	Allowing resale of certain unsold lands by Veterans' Land Fund to non-veterans.
	III:49-d	Allowing development of water storage in reservoirs by Water Development Board.
	III:51a	Providing increase in old age assistance, aid to the blind, and aid to dependent children.
	III:51b	Providing for increase in assistance for the totally disabled.
	III:60	Providing workmen's compensation for employees of political subdivisions.
	III:62	Providing for Legislative System of emergency succession to public offices.
	VII:3-b	Validating all taxes and bonds voted by independent school districts in Dallas County.
	IX:1-A	Allowing counties to regulate use of their beach by the public.

*defeated

Election Year	Article and Section	Subject
1962 (cont.)	IX:9	Authorizing Legislature to create hospital districts statewide.
	IX:10	*Providing for creation of hospital district in Brazoria County and a home for the aged in Titus County.
	IX:11	Authorizing creation of hospital districts in Ochiltree, Castro, Hansford and Hopkins Counties.
	XVI:33	*Permitting dual office holding and compensation for state employees.
	XVI:62(b)	*Providing state retirement benefits for elected and appointed officers and employees of counties and other political subdivisions.
1963	III:49-b	*Permitting sale of additional bonds by Veteran's Land Board to finance the Veterans' Land Fund.
	III:51-a, 51-b-1	Removing of residence requirements for welfare; increase in assistance.
	VI:2, 4	*Providing for repeal of the poll tax and for voter registration.
	XVI:62	*Authorizing Jefferson County to provide their appointive officers and employees retirement benefits.
1964	III:51a-2	Providing medical care for needy 65 and over who are not recipients of old age assistance.
	VII:5	Removing authorization to transfer money from permanent school fund to available school fund.
	XVI:59(d)	Requiring notice of intention to create a conservation or reclamation district.
1965	III:2, 25	*Requiring apportionment of Senate according to population and increase of size of Senate.
	III:4	*Providing four year, staggered terms for State Representatives.
	III:24; IV:17	*Authorizing Legislature to set salaries of Lieutenant Governor and Speaker; increases per diem of Legislators.
	III:48b	Providing that assets of Teacher Retirement System be administered by Board of Trustees of the Teacher Retirement System.

*defeated

Election Year	Article and Section	Subject
1965 (cont.)	III:49-b	*Increasing amount of bonds issued by Veterans' Land Board.
	III:50b	Authorizing sale of bonds for Texas Opportunity Plan Fund loans to college students.
	III:51-a, 51a-1, 51-a-2	Expanding age limits and residency requirements for medical care for the aged and needy.
	IV:4, 22, 23	*Providing four year terms for state officials.
	V:1-a	Creating State Judicial Qualifications Commission for removal of district and appellate judges for misconduct and retirement for age or disability.
	VII:17	Increasing ad valorem tax for building construction by state institutions of higher learning.
	VIII:2-A	*Providing tax exemptions to charitable hospitals.
1966	III:3, 4	Establishing date newly-elected members of Legislature qualify and take office.
	III:49-d	Increasing amount of bonds issued by Texas Water Development Board and expansion of uses for fund.
	III:51-d	Providing assistance to survivors of certain officials suffering violent death in performance of duty.
	III:63	Authorizing consolidation of governmental functions within a county and intergovernmental contracts.
	V:4 & 5	Increasing number of judges on Texas Court of Criminal Appeals.
	VI:2	Allowing members of the armed forces to vote in Texas.
	VI:2 & 4	Repealing poll tax and requiring annual voter registration.
	VI:2a	Liberalizing residence requirements for voting for certain persons.
	VII:3-b	Authorizing that boundary changes will not nullify taxes or bonds previously approved by independent school district.
	VII:18	Withdrawing Arlington State College from participation in Permanent University fund.
	VIII:1-d	Assessing tax on agricultural lands based on land's value for agricultural purposes.

*defeated

Election Year	Article and Section	Subject
1966 (cont.)	IX:9	Providing method for dissolution of hospital districts.
	IX:12	Authorizing Legislature to provide for creation of airport authorities.
	XVI:6	Authorizing funds to assist the handicapped in becoming gainfully employed.
	XVI:30c	*Authorizing six year term for Directors of Conservation and Reclamation Districts.
	XVI:62-c	Authorizes Legislature to provide retirement benefits for officers and employees of a county or political subdivision.
1967	III:49-b	Authorizing sale of additional bonds and expands Veterans' Land Program to veterans of Viet Nam conflict.
	III:49-e	Authorizing Parks and Wildlife Department to sell bonds for Texas Park Development Fund.
	III:52-e	Authorizing counties to pay medical expenses of law enforcement officials injured in line of duty.
	VIII:9	Authorizing counties to combine all tax money into a single county tax fund.
	IX:13	Providing for the establishment of mental health or public health services within a hospital district.
	XVI:33	Permitting dual office holding and compensation for non-elective state officers and employees.
1968	III:18	Fixing time of ineligibility of Legislators for other offices.
	III:24	*Providing for Legislative salary increase and extension of per diem.
	III:48a	Removing ceiling on teacher contributions to Teacher Retirement System.
	III:51-a	Increasing financial assistance to the public welfare programs.
	III:52a	*Authorizing cities and counties to issue revenue bonds for industrial development.
	III:52e	Authorizing Dallas County to issue bonds for road construction and maintenance.
	III:64	Authorizing consolidation of governmental functions and intergovernmental contracts.
	VII:11a	Permitting UT Board of Regents more authority in investment of Permanent University Fund.

*defeated

Election Year	Article and Section	Subject
1968 (cont.)	VIII:1-e	Abolishing state ad valorem property tax except for amount for college building fund.
	VIII:1-f	*Authorizing ad valorem tax exemption for property stored in public warehouses.
	VIII:1-j	*Permitting tax refund on tobacco products for Texarkana.
	VIII:2-a	*Permitting property tax exemption for pollution abatement devices.
	XVI:21	*Removing some restrictions from state contract purchasing requirements.
	XVI:62a	Establishing the Employees Retirement System of Texas as a constitutional agency.
1969	III:5	*Providing for annual Legislative sessions.
	III:24	*Providing for Legislative salary increase; Legislature set its own salary and salary of Lieutenant Governor and Speaker.
	III:42, 46, 48 VII:3a, 7 VIII:12 IX:3 X:1, 3, 4, 5, 6, 7, 8, 9 XI:10 XII:3, 4, 5, 7 XIII:1, 2, 3, 4, 5, 6, 7 XIV:2, 3, 4, 5, 6, 7, 8 XVI:3, 4, 7, 13, 29, 32, 34, 35, 36, 38, 42, 45, 46, 54, 55, 57, 58, 60	Repealing of obsolete and unnecessary sections of the Texas Constitution.
	III:49-d-1	*Broadening the powers of the Texas Water Development Board.
	III:50b-1	Authorizing student loans under Texas Opportunity Plan.
	III:51-a	Increasing welfare assistance payments.
	III:51-d	Authorizing payment of benefits to survivors of certain governmental officers and employees.
	III:64	*Authorizing removal of constitutional interest rate limitations on certain bonds.

*defeated

Election Year	Article and Section	Subject
1969 (cont.)	VIII:2	*Exempting nonprofit water supply corporations from ad valorem taxation.
1970	III:51-b(a)	*Establishing State Building Commission as Governor-appointed commission.
	III:52	Authorizing counties to issue road bonds.
	III:64(a)	Authorizing counties to consolidate governmental functions and for intergovernmental contracts.
	V:1-a	Providing for the removal, retirement and censure of judges and justices.
	VIII:1-d	*Authorizing Legislature to provide uniform method of tax assessment of agricultural lands.
	XVI:20(a)	Regulating sale of mixed alcoholic beverages on a local option basis.
	XVI:51	Increasing amount of homestead exemption.
1971	III:24	*Providing for a State Ethics Commission to recommend Legislative salaries and govern Legislative conduct.
	III:49-d-1	Authorizing issuance of Water Development Bonds for water quality control.
	III:51-a	*Removing limitation on appropriations for assistance grants, except for aid to dependent children.
	XVII:1	*Permitting Legislature to propose constitutional amendments at special or called sessions.
1972	I:3a	Providing equal rights for women.
	III:24	*Providing for Legislative salary increase.
	III:65	Increasing maximum interest rate on certain bonds issued under constitutional authority.
	IV:4, 22, 23	Providing four year terms for constitutional and statutory executive officers.
	IV:17	*Providing for salary increase for Speaker
	III:24	and Lieutenant Governor.
	VII:66	Permitting county to distribute portion of County Permanent School Fund to school districts.
	VIII:1-b	Permitting homestead tax exemptions from property tax for those 65 or older.
	VIII:2	Permitting property tax exemptions to disabled veterans and their survivors.
	IX:6	Abolishing the Lamar County Hospital District.

*defeated

Election Year	Article and Section	Subject
1972 (cont.)	XVI:33, 40	*Permitting dual office holding of Directors of Soil and Conservation Districts.
	XVI:33, 40	Permitting dual office holding for state employees providing no compensation is received.
	XVI:61	Providing compensation for justices of the peace on a salary basis.
	XVII:1	Permitting proposal of constitutional amendments at special sessions and changes in publication notice.
	XVII:2	Authorizing the Legislature to establish a constitutional revision commission and to convene as a constitutional convention.

*defeated

APPENDIX C

VOTER PARTICIPATION IN ELECTIONS ON AMENDMENTS TO THE TEXAS CONSTITUTION: 1951-1971

Year	Special/General Election Amendment Receiving the Most Votes	Number of Votes Received	Registered Voters	Percent of Registered Voters Voting on Most Votes Amendment	Votes Cast for President or Governor	Percentage of Registered Voters Voting for President or Governor	Number of Amendments Submitted and Approved	Percentage of Amendments Approved
1951	Special Election - Welfare	237,464	1,832,475	12.958	---	---	5 - 1	20.000
1952	General Election - City Employees Workmen's Compensation	1,088,578	2,456,169	44.320	2,075,946	84.519	2 - 2	100.000
1954	General Election - Women on Juries	527,580	1,935,319	27.260	636,892	32.900	11 - 11	100.000
1956	General Election - Teachers Retirement System	1,517,160	2,640,221	57.463	1,955,168	74.053	8 - 8	100.000
1956	Special Election - Welfare	177,448	2,640,221	6.720	---	---	1 - 1	100.000
1957	Special Election - Welfare	225,123	2,084,453	10.800	---	---	3 - 3	100.000
1958	General Election - Legislative-Annual Session Salaries	637,796	2,213,514	28.813	1,317,492	59.520	9 - 7	77.777
1960	General Election - Loan Shark	1,458,125	2,798,986	52.094	2,311,845	82.595	4 - 4	100.000
1962	General Election - Welfare	1,108,264	2,467,106	44.921	1,569,198	63.604	14 - 10	71.428
1963	Special Election - Poll Tax Repeal	559,895	2,068,506	27.067	---	---	4 - 1	25.000
1964	General Election - Welfare	1,476,861	3,014,597	48.990	2,626,811	87.136	3 - 3	100.000
1965	Special Election - Increase Senate Size	222,412	1,971,965	11.278	---	---	1 - 0	0.000
1965	Special Election - Four Year Terms Executive (State)	503,879	1,971,965	25.552	---	---	10 - 5	50.000
1966	General Election - Repeal Poll Tax, Annual Registration	1,125,723	2,968,483	37.922	1,425,861	48.033	16 - 15	93.750
1967	Special Election - Veterans Land Program	274,249	2,982,862	9.194	---	---	6 - 6	100.000
1968	General Election - Teachers Retirement System	2,108,768	4,073,576	51.176	3,079,406	75.594	14 - 7	50.000
1969	Special Election - Welfare	661,778	3,500,649	18.904	---	---	9 - 4	44.444
1970	General Election - Liquor by the Drink	1,894,349	4,149,261	45.655	2,306,765	55.594	7 - 5	71.428
1971	Special Election - Welfare	792,100	3,986,690	19.868	---	---	4 - 1	25.000
	19 Elections (10 General and 9 Special)	16,597,552	51,757,018	32.068	19,305,384	67.225	131 - 94	71.755

SOURCES:

Registered Voters: Official Reports from the Secretary of State's Office; *Texas Almanac* (Dallas: A. H. Belo Corporation, selected years). The number of poll tax receipts and exemption certificates are supplemented by an estimate of the number of persons in towns under 10,000 who might be eligible voters (1951-1965).

Votes on Amendment: Official Index from the Secretary of State's Office. These figures differ in a few instances from those in other sources such as the *General and Special Laws of the State of Texas* and the *Texas Almanac*.

Votes for President and Governor: *Texas Almanac*; Richard Scammon, *America Votes 4* (Pittsburg: University of Pittsburg, 1962).

APPENDIX D

STATE COSTS OF PUBLISHING AMENDMENTS: 1951-1971

Year of Election	Number of Amendments	Total Cost	Cost Per Amendment
1951	5	$ 54,571.45*	$10,714.28
1952	2	21,428.55*	10,714.28
1953	---	---	---
1954	11	75,000.00**	6,818.18
1955	---	---	---
1956	8,1***	103,511.95	11,501.33
1957	3	47,884.55	15,948.18
1958	9	94,515.40	10,501.71
1959	---	---	---
1960	4	39,265.30	9,816.45
1961	---	---	---
1962	14	254,192.10	18,156.58
1963	4	140,229.53	35,057.38
1964	3	52,257.84	17,419.28
1965	1	11,971.71	11,971.71
1966	10	394,189.53	39,418.95
1967	16	428,839.59	26,802.47
1968	6	187,677.06	31,279.51
1969	14	247,346.19	17,667.58
1970	9	121,120.09	13,457.77
1971	7	110,742.67	15,820.38
	4	107,723.49	26,930.86
Total	131	Total $2,491,467.06	Avg. $19,018.83

* The appropriation for publication of amendments for the 1951-52 biennium was $75,000. The average cost for each amendment for 1951 and 1952 was calculated by dividing $75,000 by seven. The total cost for each election was calculated by multiplying the cost for each amendment by five and two respectively.

**The appropriation for 1953-54 biennium was $75,000. The cost per amendment was calculated by dividing $75,000 by 11.

*** Two elections were held in 1956, eight amendments being on the ballot at the general election in November and one amendment on the ballot at a special election held one week later. The Secretary of State's data do not separate the costs of the two elections.

SOURCES: Office of the Secretary of State
General and Special Laws of the State of Texas, (1951 and 1953).


TEXAS ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS

A New Constitution for Texas



Texas
Constitutional
Revision
Commission

A NEW CONSTITUTION FOR TEXAS

Prepared by

TEXAS CONSTITUTIONAL REVISION COMMISSION

SECOND PRINTING
November, 1973
Austin, Texas

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November 1, 1973

To the Honorable William P. Hobby
Lieutenant Governor

To the Honorable Price Daniel, Jr.
Speaker of the House of Representatives

To the Members of the 63rd Legislature

In accordance with Article XVII, Section 2(b) of the Constitution of 1876, transmitted herewith are the recommendations of the Texas Constitutional Revision Commission. The recommendations consist of proposed constitutional language which the Commission was directed to prepare by Senate Concurrent Resolution Number 1, enacted by the 63rd Texas Legislature.

The proposed new constitution for Texas contained in this document is the first thorough revision of the State's basic law since it was adopted in 1876. The document is the result of months of intensive work by the Constitutional Revision Commission which was appointed in February, 1973 in accordance with a constitutional amendment approved by the voters of Texas in November, 1972. As you know, the constitutional revision process envisioned by that amendment includes a preparatory study and submission of recommendations by the Revision Commission, and then the convening of the Legislature as a Constitutional Convention in 1974 to recommend changes in the basic law of the State to the people.

After months of study and debate, the Commission has prepared a new constitution based on the general framework of the 1876 Constitution, but substantially shortened, simplified, and revised to reflect the needs of modern Texas. The new constitution contains eleven articles as opposed to seventeen in the 1876 Constitution. Much statutory detail has been eliminated from the new document and, where appropriate, will be retained in statutory form.

Although this publication fulfills the requirements set forth in Article XVII, copies of a more comprehensive report are being

presented today to the Lieutenant Governor and Speaker of the House. The full report will be distributed to members of the Legislature as soon as printed copies are available. That report contains a text of the new constitution, a description of the process by which the Revision Commission reached its conclusions, and a complete discussion of each recommended article and section of the new constitution.

In order to provide for an orderly transition of governmental operations upon the adoption of a new constitution, a transition schedule has been prepared and is included in this document.

Respectfully yours,

Beryl Bradley Milburn

Mrs. Malcolm Milburn
Vice Chairman

Robert W. Calvert

Robert W. Calvert
Chairman

RWC/BBM:cwj

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Preamble

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

Article I
Bill of Rights

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 1. Freedom and Sovereignty of State

Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Section 2. Inherent Political Power; Republican Form of Government

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Section 3. Equal Rights

All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Section 3a. Equality under the Law

Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative. (Added Nov. 7, 1972.)

Section 4. Religious Tests

No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Section 5. Witnesses Not Disqualified by Religious Beliefs; Oaths and Affirmations

No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Section 6. Freedom of Worship

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. Appropriations for Sectarian Purposes

No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Section 8. Freedom of Speech and Press; Libel

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 9. Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Section 10. Rights of Accused in Criminal Prosecutions

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Added Nov. 5, 1918.)

Section 11. Bail

All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Section 11a. Multiple Convictions; Denial of Bail

Any person accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor may, after a hearing, and upon evidence substantially showing the guilt of the accused, be denied bail pending trial, by any judge of a court of record or magistrate in this State; provided, however, that if the accused is not accorded a trial upon the accusation within sixty (60) days from the time of his incarceration upon such charge, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder. (Added Nov. 6, 1956.)

Section 12. Habeas Corpus

The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Section 13. Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 14. Double Jeopardy

No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Section 15. Right of Trial by Jury

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury. (As amended Aug. 24, 1935.)

Section 15-a. Commitment of Persons of Unsound Mind

No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury. (Added Nov. 6, 1956.)

Section 16. Bills of Attainder; Ex Post Facto or Retroactive Laws; Impairing Obligation of Contracts

No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Section 17. Taking, Damaging or Destroying Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises

No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Section 18. Imprisonment for Debt

No person shall ever be imprisoned for debt.

Section 19. Deprivation of Life, Liberty, Etc.; Due Course of Law

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Section 20. Outlawry or Transportation for Offense

No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Section 21. Corruption of Blood; Forfeiture; Suicides

No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Section 22. Treason

Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Section 23. Right to Keep and Bear Arms

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Section 24. Military Subordinate to Civil Authority

The military shall at all times be subordinate to the civil authority.

Section 25. Quartering Soldiers in Houses

No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Section 26. Perpetuities and Monopolies; Primogeniture or Entailments

Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Section 27. Right of Assembly; Petition for Redress of Grievances

The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Section 28. Suspension of Laws

No power of suspending laws in this State shall be exercised except by the Legislature.

Section 29. Provisions of Bill of Rights Excepted from Powers of Government; to Forever Remain Inviolate

To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Article II
Separation of Powers

Section 1. Separation of Powers

The government of the State of Texas shall be divided into three branches: legislative, executive, and judicial. Except as otherwise authorized by this Constitution, each branch shall exercise the powers appropriate thereto.

Article III
The Legislature

Section 1. Legislative Power

The legislative power of the State of Texas shall be vested in two houses, a Senate and a House of Representatives, which together shall be styled "The Legislature of the State of Texas."

Section 2. Composition

As shall be provided by law, the Senate shall consist of not fewer than thirty-one nor more than fifty members, and the House of Representatives shall consist of not fewer than ninety-three nor more than one hundred fifty-five members. The number of members of the House of Representatives shall be a whole multiple of the number of members of the Senate.

Section 3. Qualification of Members

(a) A person shall be eligible for election to the Senate if a citizen of the United States, a qualified voter, twenty-five years of age or older, and a resident of this State for five years and of the senatorial district for one year immediately preceding the election.

(b) A person shall be eligible for election to the House of Representatives if a citizen of the United States, a qualified voter, twenty-one years of age or older, and a resident of this State for two years and of the representative district for one year immediately preceding the election.

(c) In the general election following a redistricting, a person shall be eligible to be elected to the Legislature from any new district that contains a part of the district in which that person was eligible for election on the effective date of the redistricting, but only if within thirty days after the date of filing as a candidate in the primary election that person becomes a resident of the new district.

(d) A member of the Legislature may not hold any other office or position of profit or trust under this State, the United States, or any foreign government, except as a member of the National Guard, National Guard Reserve, or any of the armed forces reserves of the United States, as a retired member of the armed forces of the United States, or as a notary public.

Section 4. Election and Terms of Members

(a) Senators and Representatives shall be elected at a general election.

(b) Each Senator shall serve a term of four years beginning on the date provided in this Constitution or by law for convening the Legislature in regular session. The qualified voters shall elect a new Senate after each statewide senatorial redistricting, and the Senators shall decide by lot which shall serve four-year terms and which shall serve two-year terms, so that one-half shall be chosen every two years thereafter.

(c) Each Representative shall serve a term of two years beginning on the date provided in this Constitution or by law for convening the Legislature in regular session.

(d) Vacancies in the Senate and House of Representatives shall be filled by special election as provided by law.

Article III

Section 5. Redistricting

(a) Before August 15 following publication of each federal decennial census, the Legislature shall by law divide the State into single-member senatorial districts and each senatorial district into single-member representative districts.

(b) All senatorial districts shall contain as nearly as practicable an equal number of inhabitants. All representative districts within a senatorial district shall contain as nearly as practicable an equal number of inhabitants. All districts shall be composed of compact and contiguous territory.

(c) A county entitled to more than one Senator or Representative shall be divided into the required number of districts. Population in excess of that required for complete districts within the county, or the population of a county insufficient to comprise a district, shall be joined with population of another county or counties to form one district.

(d) Senatorial and representative districts shall not divide counties unless necessary to prevent a significant population variance between districts.

(e) A Legislative Redistricting Board shall be constituted within twenty days after August 15. The board shall consist of the Governor, Lieutenant Governor, Speaker of the House of Representatives, Attorney General, and five members appointed by the Governor. The appointed members shall be from different geographical regions of the State, and due regard shall be given to the division between urban and rural areas. No appointed member shall be a public officeholder, and not more than three shall be from the same political party. The Legislature shall provide funds for the board's clerical, technical, and other expenses.

(f) If the Legislature fails to redistrict by August 15 or if its redistricting plan is declared invalid, the State shall be redistricted by the board. In the event of failure to redistrict, the board shall convene as soon as practicable after it is constituted. In the event the legislative redistricting plan is declared invalid, the board shall convene as soon thereafter as is practicable. The board shall make and file its redistricting plan with the Secretary of State within twenty-five days after its first meeting.

(g) If the board fails to complete its redistricting in accordance with the requirements of this Section, the Supreme Court of Texas shall have original jurisdiction to compel the board to perform its duties and may provide such remedies and penalties as may be appropriate.

(h) The board shall be dissolved immediately following the first general election held in accordance with a valid redistricting plan.

Section 6. Compensation

Each member of the Legislature shall receive compensation and allowances as provided by law, not to exceed the amount recommended by the salary commission. Any increase in compensation shall become effective only at the first regular session following the next general election.

Section 7. Sessions

(a) The Legislature shall meet at least once every two years and at such times and for such duration as provided by law.

(b) All legislative proceedings shall be open to the public.

(c) Neither house may adjourn or recess for more than three days without the consent of the other.

(d) The Legislature shall meet at the seat of government unless otherwise provided by law.

Section 8. Organization and Procedure

(a) Each house shall be the judge of the qualifications and election of its own members, but contested elections shall be determined as provided by law.

(b) Each house shall adopt its rules of procedure. The Legislature by majority vote of the membership of each house shall adopt joint rules. Rules, once adopted, shall remain in effect until amended, repealed, or otherwise changed by the same or succeeding Legislatures.

(c) At the beginning and end of each session the Senate shall elect from its members a president pro tempore who shall perform the duties of president when the Lieutenant Governor is absent or disabled, or when the office is vacant.

(d) When first assembled the House of Representatives shall organize and elect a speaker from its members.

(e) All elections held by either house of the Legislature shall be by individual voice votes to be recorded in the journal.

(f) Two-thirds of the membership of each house shall constitute a quorum for transacting business, but fewer members may recess or adjourn from day to day and compel the attendance of absent members.

(g) Each house shall prepare and publish a journal of its proceedings. At the request of any three members present, the votes on any question shall be recorded in the journal.

(h) Each house may punish a member for disorderly conduct or for cause deemed sufficient by that house and may expel a member by two-thirds vote of its membership, but not a second time for the same offense.

Section 9. Legislative Immunity

No member shall be questioned in any other place for speech or debate during a legislative proceeding.

Section 10. Conflict of Interest

(a) No member may vote for the appointment of another member to any office filled by the Legislature.

(b) During the term for which elected a member shall be ineligible for (1) any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased, during such term, or (2) any office or position the appointment to which may be made, in whole or in part, by either house of the Legislature. The ineligibility shall terminate on the last day in December of the last full calendar year of the term for which the member was elected.

(c) A member privately interested in a bill, resolution, or other matter before the Legislature shall disclose the interest and shall not vote on the bill, resolution, or other matter.

(d) No member may have a pecuniary interest in any contract with the State.

(e) No member shall for compensation other than the emoluments of office appear before or have dealings with an executive or administrative unit of State government; and no member shall directly or indirectly share in any fee paid to any other person for such appearance or dealings.

(f) A continuance shall not be granted in any judicial proceeding solely because a party or attorney is a member of the Legislature.

Section 11. Bills

(a) The Legislature shall enact no law except by bill.

(b) A bill may originate in either house. After a bill passes either house, the other may amend or reject it, but neither house may so amend a bill as to change its original purpose.

(c) Every bill shall be limited to a single subject, which shall be expressed in its title. A general appropriation bill shall be limited to the subject of appropriations. A statutory revision bill shall be limited to that subject.

(d) A bill, amendatory in form, shall set out the complete section, as amended, of the statute it amends.

(e) Before a house considers a bill it must have been referred to a committee of that house and report least five days before adjournment of the session.

(f) Before a bill becomes law it must be read on three separate days in each house. Either house by four-fifths record vote of the members present and voting may suspend this requirement.

(g) If a bill or resolution is defeated by a vote of either house, no bill or resolution containing the same substance shall be passed during the same session.

(h) The presiding officer of each house shall, in the presence of that house, certify the final passage of each bill or resolution requiring the concurrence of both houses. The fact of certification shall be recorded in the journal.

(i) No law except the general appropriation act and redistricting acts shall take effect until ninety days after it becomes a law or ninety days after adjournment of the session at which it was enacted, whichever is earlier. The Legislature, by three-fourths record vote of the membership of each house, may authorize an earlier effective date.

Section 12. Local or Special Legislation

The Legislature may not enact a local or special law if a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Section 13. Impeachment

(a) The House of Representatives shall have the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the record vote of two-thirds of its membership, to impeach executive officers and justices of the Supreme Court.

(b) Any officer against whom articles of impeachment have been preferred shall be suspended from the exercise of the duties of the office during the pendency of the impeachment. The Governor may make a temporary appointment to fill the vacancy occasioned by the suspension of the officer until the decision on the impeachment.

(c) Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall affirm or take an oath to try impartially the party impeached. If the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. A person may be convicted of impeachment charges only by record vote of two-thirds of the membership of the Senate.

(d) A judgment of conviction by the Senate shall not extend beyond removal from office and disqualification to hold any office of honor, trust, or profit of this State. An impeached person, whether convicted or acquitted, shall be amenable to prosecution, trial, judgment, and punishment according to law.

Section 14. Advice and Consent of the Senate

Two-thirds of the members present and voting shall constitute consent to any appointment which this Constitution requires to be with the advice and consent of the Senate. The Legislature may provide by law for interim appointments made when the Senate is not in session.

Article IV
The Executive

Section 1. Officers Constituting the Executive Department

The Governor shall be the Chief Executive Officer of the State. The Executive Department shall consist of a Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, Commissioner of the General Land Office, and such other officers as may be provided by law.

Section 2. Selection, Terms, and Residence of Officers of Executive Department

The Governor, Lieutenant Governor, Attorney General, and Comptroller of Public Accounts shall be elected by the qualified voters of the State at general elections beginning with 1978. The Secretary of State shall be appointed by the Governor. The Commissioner of the General Land Office shall be elected or appointed as provided by law. Appointive officers of the Executive Department shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor. Elective officers of the Executive Department shall serve four-year terms. All officers of the Executive Department shall reside at the seat of government.

Section 3. Returns of Election; Declaration of Election; Tie Votes; Contests

Election returns for executive officers shall, until otherwise provided by law, be sealed and transmitted to the Secretary of State, who shall open the returns and promptly certify the winner but shall do so no later than the first Monday in January. The person receiving the highest number of votes for an office shall be declared elected. If two or more persons shall have the highest and an equal number of votes for an office, one of them shall be chosen immediately by joint vote of both houses of the Legislature. Contested elections for executive offices specifically named in Section 1 of this Article shall be determined by both houses of the Legislature in joint session.

Section 4. Governor's Eligibility and Installation

(a) The Governor shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a resident of this State at least five years immediately preceding election.

(b) The Legislature shall provide appropriations for a staff and office space for a new Governor-elect prior to inauguration. A new Governor-elect shall be entitled to receive from governmental agencies those reports to which an incumbent Governor is entitled.

(c) The Governor shall be inaugurated on the second Tuesday in January or as soon thereafter as practicable. In those years when a new Governor is inaugurated, the Legislature shall convene in regular session one day prior to inauguration and shall organize but shall not act as a deliberative body for the consideration and passage of bills and resolutions until forty-five days thereafter, except on matters called for by the Governor.

Section 5. Gubernatorial Succession

(a) If before inauguration the person elected Governor fails to qualify, is disabled, or dies, the person elected Lieutenant Governor shall be inaugurated and shall serve as Governor

until the person elected Governor at the next general election assumes office for the remainder of the term.

(b) If after inauguration the Governor dies, resigns, becomes disabled, or is removed from office, the Lieutenant Governor shall become Governor and shall serve for the remainde of the term unless the vacancy occurs within sixteen months after inauguration in which event the Lieutenant Governor shall serve only until the person elected Governor at the next general election assumes office for the remainder of the term.

(c) If after a vacancy occurs in the office of Governor and the Lieutenant Governor becomes Governor and thereafter dies, resigns, becomes disabled, or is removed from office, the Speaker of the House of Representatives, if qualified, shall become Governor under the same conditions and for the same term as provided for the Lieutenant Governor.

(d) If the Governor is absent from the State, the Lieutenant Governor shall act as Governor until the Governor returns. If both the Governor and Lieutenant Governor are absent from the State, the Speaker of the House of Representatives shall act as Governor during such absences.

(e) While serving or acting as Governor, the Lieutenant Governor or Speaker of the House of Representatives shall receive only the compensation payable to a Governor.

(f) The Legislature may provide by law for further succession to the office of Governor. No person shall serve as Governor unless qualified for that office.

Section 6. Disability of Elective Officers of Executive Department

The disability of any elected officer of the Executive Department to perform the duties of the office during the term for which elected shall be determined in a proceeding in the Supreme Court of the State under such rules of procedure as may be prescribed by that court. A majority vote of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, Speaker of the House of Representatives, and President pro tempore of the Senate shall initiate such proceedings.

Section 7. Compensation of Officers of Executive Department

The compensation of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, and Commissioner of the General Land Office shall be as provided by law, not to exceed the amount recommended by the salary commission. The compensation of officers of the Executive Department shall not be diminished during their term of office. The Governor shall have the use of the Governor's Mansion.

Section 8. Dual Office Holding; Other Compensation

No officer of the Executive Department shall hold any other civil or corporate office or practice any profession; nor shall any such officer receive any salary, reward, or compensation from non-governmental sources.

Section 9. Commander-in-Chief; Calling Forth Militia

The Governor shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States, and shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

Section 10. Execution of Laws; Conduct of Business With Other States, The United States, and Foreign Nations

The Governor shall cause the laws to be faithfully executed and shall conduct, in person or in such manner as shall be provided by law, all intercourse and business of the State with other states, the United States, and foreign nations.

Section 11. Convening the Legislature in Special Session

The Governor may, on extraordinary occasions, convene the Legislature in special session, stating specifically the purpose and duration of the session.

Section 12. Governor's Message

At the beginning of each legislative session the Governor shall, and at other times may, give the Legislature information on the condition of the State, and may recommend legislative action.

Section 13. Action on Bills and Resolutions

(a) Every bill that passes both houses of the Legislature shall be presented to the Governor. The Governor may approve the bill by signing it in which event it shall become law and shall be filed with the Secretary of State. The Governor may veto the bill by returning it with objections to the house in which it originated. That house shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill passes that house by a two-thirds record vote of the membership, it shall be sent with the Governor's objections to the other house which shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill likewise passes that house by a two-thirds record vote of the membership, the bill shall become a law and shall be filed with the Secretary of State. If the Governor fails to veto a bill within ten days (Sundays excepted) after it is presented, the bill shall become a law and shall be filed with the Secretary of State. If the Legislature by its adjournment prevents a veto, the bill shall become a law and shall be filed with the Secretary of State unless within twenty days after adjournment the Governor files the bill and objections with the Secretary of State and gives public notice thereof by proclamation. If the same Legislature meets again, the Secretary of State shall return the bill with the Governor's objections to the house in which the bill originated for reconsideration in the manner provided above.

(b) The Governor may veto or reduce any item of appropriation in a bill, except that no item consisting of an appropriation for the salary for a single office or position may be reduced. Portions of a bill not vetoed and the reduced amount of items shall become law. Items vetoed and the amount by which items are reduced together with the Governor's objections shall be returned to the house in which the bill originated for reconsideration in the manner provided in Subsection (a).

(c) All orders and resolutions requiring the concurrence of both houses of the Legislature, except those concerning adjournment and legislative rules and those proposing amendments to the Constitution or a referendum on incurring State debt, shall be presented to the Governor. If the Governor disapproves an order or resolution, it shall not become effective unless repassed in the manner provided for in Subsection (a).

Section 14. Chief Planning Officer

The Governor shall be the chief planning officer of the State and may require information in writing and reports from all State agencies and officers upon any subject relating to their duties, conditions, management, and expenditures.

Section 15. Budget Preparation

At the beginning of each session at which appropriations are to be made for the general operation of the government the Governor shall submit to the Legislature a budget for all proposed State expenditures for the applicable fiscal period, accompanied by an appropriation bill covering the proposed expenditures. This bill, to be known as the Budget Bill, shall be introduced immediately in each house by the respective chairmen of the committees on appropriations for consideration and passage as in the case of any other bill. Until the Budget Bill has been enacted, neither house shall finally pass any other appropriation bill, except emergency bills recommended by the Governor and appropriations for the operation of the Legislature.

Section 16. Budget Execution

The Governor shall be responsible as provided by law for the proper execution and administration of the total State budget and shall require of all State governmental agencies such expenditure plans, fiscal reports, and accounts as deemed necessary to supervise the expenditure of previously appropriated funds.

Section 17. Administrative Reorganization

The Governor may from time to time submit to the Legislature written reorganization plans reassigning functions among or consolidating or abolishing any State governmental agencies. Within sixty days after submission or within sixty days after the Legislature can act as a deliberative body, whichever comes later, either house may reject a plan by resolution. Unless rejected the plan shall become effective by its terms.

Section 18. Reprieves, Commutations, and Pardons; Remission of Fines and Forfeitures

The Governor shall have power as provided by law to grant reprieves relating to the execution of death sentences, and to grant commutations, pardons, and the remission of fines and forfeitures.

Section 19. Lieutenant Governor

The Lieutenant Governor shall possess the same qualifications as provided for the Governor. The qualified voters shall cast separate votes for the candidates for Governor and Lieutenant Governor. The Lieutenant Governor shall, by virtue of the office, be President of the Senate and when the Senate is equally divided may cast a deciding vote.

Section 20. Secretary of State

The Secretary of State shall perform the duties required by this Constitution and such other duties as may be provided by law.

Section 21. Attorney General

The Attorney General, except as expressly provided by law to the contrary, shall represent the State in all suits in which the State may be a party in all the courts of the State and of the United States, shall have all the powers of the office as at common law, and shall have such other duties as may be provided by law. The Attorney General must be qualified to practice before the Supreme Court of this State.

Section 22. Comptroller of Public Accounts

The Comptroller of Public Accounts shall perform the duties required by this Constitution and such other duties as may be provided by law.

Section 23. General Land Office

There shall be one General Land Office in the State at the seat of government, where all land titles emanating from the State shall be registered. The Commissioner of the General Land Office shall perform the duties required by this Constitution and such other duties as may be provided by law.

Section 24. Vacancies in Statewide Offices

Unless otherwise provided by this Constitution, all vacancies in elective statewide offices shall be filled by appointment of the Governor with the advice and consent of the Senate. An appointee shall serve for the remainder of the term unless the vacancy occurs within sixteen months after the elected officer assumed office, in which event the appointee shall serve only until a successor elected at the next general election assumes office for the remainder of the unexpired term.

Section 25. State Agencies

(a) The length of the term of members appointed by the Governor to State governmental agencies created by statute and with a life of not less than six years shall be two years, unless the number of appointed members is three or a whole multiple thereof in which case the length of the term shall be six years. Two-year terms shall expire between February 1 and April 1 of odd-numbered years. In the case of agencies with members who serve six-year terms, the terms of the members appointed by the Governor shall be staggered. The terms of one-third of such members shall expire between February 1 and April 1 of odd-numbered years.

(b) At the time of appointing members of multi-member agencies with six-year terms, the Governor may designate the chairman. If the Governor fails to designate a chairman prior to April 1, the members of an agency shall choose the chairman from among its membership.

Section 26. Seal of State and Commissions

There shall be a Seal of the State which shall be kept by the Secretary of State and used by that officer officially under the direction of the Governor. The Seal of the State shall be a star of five points encircled by olive and live oak branches and the words "The State of Texas." All commissions shall be in the name and by the authority of the State of Texas, sealed with the Seal of the State, signed by the Governor, and attested by the Secretary of State.

Article V
The Judiciary

Section 1. Unified Judicial System

The judicial power of the State is vested in the Judicial Branch. The State unified judicial system shall be composed of a Supreme Court, courts of appeals, district courts, and county courts. No other courts shall be created except municipal courts, as provided by law or charter, and justice courts. All courts shall have jurisdiction as provided by law, but jurisdiction of courts of the same level shall be uniform throughout the State.

Section 2. Supreme Court

(a) The Supreme Court shall be the highest court of the State and shall consist of the Chief Justice of Texas and at least eight other justices. The court may sit in sections as designated by the court to hear argument of cases and to consider applications for writs of error or other preliminary matters, but a majority of the court shall be necessary to decide a case.

(b) The Supreme Court shall have the duty and authority to provide for the efficient and just operation of the judicial system. It may transfer cases from a trial court to a court of appeals or to the Supreme Court, and from one court of appeals to another or to the Supreme Court.

(c) The Supreme Court shall have authority to prescribe rules of civil and criminal procedure, but any rule of procedure expressly disapproved by the Legislature shall have no effect thereafter. The Supreme Court may prescribe other rules as provided by law.

Section 3. Courts of Appeals

The Legislature shall provide by law for one or more courts of appeals, each consisting of a chief judge and two other judges, and such additional judges as may be provided by law. Not fewer than three judges shall sit in any case.

Section 4. District Courts

The State shall be divided by law, or by an agency acting under authority of law, into geographical judicial districts. In each district there shall be one district court with one or more district judges and such other officials as provided in this Article or by law.

Section 5. County Courts

The Legislature shall provide by law for county courts. A county court may serve one or more counties, but no county shall have more than one county court. Each county court shall have one or more judges and such other officials as provided by law.

Section 6. Justice Courts

The governing body of each county shall establish and maintain one or more justice courts and, if more than one, shall divide the county into justice precincts and provide a justice court for each precinct.

Article V

Section 7. Qualifications of Judges

Each justice or judge shall be a citizen of this State and shall have such other qualifications as provided by law. Each justice and judge in the unified judicial system must be licensed to practice law in this State.

Section 8. Merit Selection and Nonpartisan Election*

(a) There is hereby created a Judicial Nominating Commission of eleven members, a majority of whom shall be non-lawyers. The Governor, Lieutenant Governor, and Speaker of the House of Representatives acting together shall select the members of the Judicial Nominating Commission and designate the chairman. The selection of the members shall be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the State.

(b) Members of the commission shall serve six-year terms, and no person shall serve more than one full term. Vacancies shall be filled by the selection committee for the remainder of the term.

(c) No member of the commission shall hold an elective or salaried public office or office in a political party, or shall be eligible for appointment to a State judicial office during the term for which appointed.

(d) When a vacancy occurs in the office of the Chief Justice of Texas, a supreme court justice, or a court of appeals judge, the vacancy shall be filled by the Governor from a list of three nominees submitted by the commission within forty-five days after the vacancy occurs. In selecting nominees, the commission shall consider only those who are well qualified from experience and knowledge of the law, but, among those so qualified, shall give fair consideration to the sexes, ethnic groups, and geographical regions of the State. If the Governor fails to make the appointment within sixty days after receiving the list of nominees, the Lieutenant Governor shall make the appointment from the list. A justice or judge appointed pursuant to this Subsection shall be subject, in the manner provided by law, to approval or rejection on a nonpartisan ballot at the first general election held more than ten months after the appointment is made, and every sixth year thereafter.

(e) If the Supreme Court determines that the Chief Justice is temporarily disabled, it shall designate another justice of the Supreme Court to serve temporarily as acting Chief Justice until the disability ends.

(f) District and county judges shall be elected on a nonpartisan ballot by the qualified voters as provided by law. Judges of the district courts shall serve six-year terms, and judges of the county courts shall serve four-year terms. Vacancies in the office of judge of the district and county courts shall be filled until the next succeeding general election by the Governor with the advice and consent of the Senate.

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* *The Commission voted its preference for merit selection of appellate judges but also recommends that the following proposal for nonpartisan election be submitted to the qualified voters as an alternative:*

ALTERNATIVE SUBMISSION

Section 8. Nonpartisan Election of Appellate Judges

(a) The Chief Justice and justices of the Supreme Court shall be elected by the qualified voters of this State every six years on a nonpartisan ballot in the manner provided by law. Judges of the courts of appeals shall be elected by the qualified voters of their respective districts every six years on a nonpartisan ballot in the manner provided by law.

(b) Vacancies in the offices of justices and judges of the Supreme Court and the courts of appeals shall be filled until the next succeeding nonpartisan election by the Governor with the advice and consent of the Senate.

(g) Justices of the peace shall be elected every four years by the qualified voters of the county or precinct. Vacancies in the office shall be filled by the County Commission for the remainder of the term.

(h) No active justice or judge in the unified judicial system may engage in the practice of law. If any justice or judge files as a candidate for any elective nonjudicial office, the judicial office shall immediately become vacant.

Section 9. Compensation

The State shall pay the basic salaries of all justices and judges of the unified judicial system, subject to any supplementation by counties, and shall pay such other expenses of the system as provided by law. The salaries of such justices and judges shall not exceed the amount recommended by the salary commission. Funds collected by the courts may not be used to support the unified judicial system except to the extent of reimbursement of salaries and other expenses.

Section 10. Mandatory Retirement of Judges

The office of each justice and judge in the unified judicial system shall become vacant on the first day of January of the year following the date on which the incumbent reaches the age of seventy-five years or an earlier age, not less than seventy years, as provided by law.

Section 11. Removal of Judges

(a) Any justice of the Supreme Court shall be removed by the Governor, after a hearing by the Legislature and a vote by two-thirds of the membership of each house, for willful neglect of duty, incompetency, oppression in office, or other reasonable cause not a sufficient ground for impeachment.

(b) Any justice, judge, or other judicial officer may be removed from office, suspended, or censured by the Supreme Court for willful or persistent conduct which is clearly inconsistent with the proper performance of duties of the office, or which casts public discredit upon the judiciary or the administration of justice, and may be involuntarily retired or removed by the Supreme Court for disability seriously interfering with the performance of duties of the office if the disability is, or is likely to become, permanent.

(c) The Legislature shall establish by law a Judicial Qualifications Commission which shall operate under rules promulgated by the Supreme Court. The commission shall have authority to issue an order of public censure and to recommend to the Supreme Court suspension, removal, or retirement of any justice, judge, or other judicial officer.

Section 12. Judicial Council

(a) There is hereby created a Judicial Council which shall consist of the Chief Justice of Texas as chairman and the following members, each of whom shall serve a two-year term: two judges of the courts of appeals, three trial judges, one district clerk, and one county clerk, each appointed by the Supreme Court of Texas; four members of the State Bar appointed by its board of directors; and two members of each house of the Legislature appointed by each house. Vacancies shall be filled by the appointing authority for the remainder of the term.

(b) The council shall prescribe rules of administration for the unified judicial system and shall perform other duties as provided by law. Rules of administration shall not become effective until approved by the Supreme Court.

(c) Pursuant to rules of administration prescribed by the council, the Chief Justice may delegate administrative powers to active or retired judges, and temporarily assign a judge to any court of the same level and from a court of appeals to the Supreme Court. By such assignments, the membership of any court may be temporarily increased. The council shall also prescribe rules for filling vacancies temporarily for the purposes of trying cases and hearing appeals. If for any reason a judge feels aggrieved by any administrative action of the Chief Justice, the judge may petition the Supreme Court for review of such action.

Section 13. Clerks

(a) The Supreme Court and each court of appeals shall appoint a clerk who shall serve for a term of four years unless sooner removed by the court for good cause entered on the minutes of the court. These clerks shall give bond as required by law.

(b) District courts may remove their district clerks from office upon a jury finding of incompetence, official misconduct, or other causes defined by law.

Section 14. Juries

(a) Grand juries in the district courts shall consist of twelve persons, nine of whom shall constitute a quorum.

(b) Trial juries in the district courts shall consist of twelve persons and verdicts shall be unanimous, except that the Legislature or the Supreme Court pursuant to its rule-making power may provide that a verdict may be rendered in civil and misdemeanor cases in the district courts by fewer than twelve but not fewer than nine who shall concur in and sign the verdict.

(c) Trial juries in county courts shall consist of six persons and verdicts shall be unanimous, except that the Legislature or the Supreme Court pursuant to its rule-making power may provide that in civil cases a verdict may be rendered by fewer than six jurors.

(d) The qualifications of grand jurors and trial jurors shall be as provided by law.

(e) Any party shall have a right of trial by jury in civil causes in the district and county courts upon demand as provided by law or rule of the Supreme Court. A jury shall not be empaneled in any cause until a jury fee is paid if required by law or by rule of the Supreme Court.

Section 15. Suspension of Sentence and Probation

Courts having original jurisdiction of criminal cases shall have power to suspend sentence, place a defendant on probation, and reimpose sentence, subject to regulation by law.

Section 16. Appeal by State

The State shall have no right of appeal in criminal cases.

Section 17. Appeal by Accused

The right of appeal granted to an accused by Article 1, Section 11a of this Constitution shall be direct to the Supreme Court of Texas.

Article VI
Suffrage

Section 1. Qualified Voter

Any citizen of the United States eighteen years of age or older who meets the registration and residence requirements provided by law, who is not serving a sentence for a felony, whether incarcerated, on parole, or on probation, and who is not of unsound mind as determined by a court, shall be a qualified voter.

Section 2. Elections

All elections by the qualified voters shall be by secret ballot. The Legislature by law shall provide the requirements for residence, registration, absentee voting, and administration of elections, and shall ensure the purity of elections and guard against abuses of the electoral process.

Section 3. General Elections

General elections shall be held in even-numbered years on a date provided by law.

Article VII
Education

Section 1. Equitable Support of Free Public Schools

(a) A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable provision for the equitable support and maintenance of an efficient system of free public schools and to provide equal educational opportunity for each person in this State.

(b) In distributing State resources in support of the free public schools, the Legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the State as a whole and that State supported educational programs shall recognize variations in the backgrounds, needs, and abilities of all students. In distributing State resources, the Legislature may take into account the variations in local tax burden to support other local government services.

Section 2. Permanent and Available School Fund

(a) The Permanent School Fund consists of all property set apart for support of the free public schools. The Permanent Fund shall not be expended but shall be preserved and invested at the direction of the State Board of Education in the manner prescribed by law.

(b) The Available School Fund consists of income from the Permanent Fund together with all State taxes dedicated to support the free public schools.

(c) The Available Fund shall be appropriated by the Legislature to support the free public schools, including the provision of free textbooks and such other instructional materials as may be required in academic programs.

Section 3. Prohibition of Aid to Non-Public Schools

Public funds shall not be used for support of religious, church-affiliated, or proprietary schools that provide education below the college level; nor shall public funds be provided to any students for payment of expenses incurred by attending such schools.

Section 4. Dedicated School Tax

One-fourth of the revenue from State occupation taxes and one-fourth of the net revenue from the State motor fuel tax are dedicated to the Available School Fund.

Section 5. State Board of Education

There shall be a State Board of Education which shall have the duties provided in this Article and by law. The Legislature may provide either for appointed or elected members whose terms shall not exceed six years. If the board is elective, the Governor shall appoint four additional members to the board. In making appointments the Governor shall give consideration to fair and equitable representation of the sexes, ethnic groups, social groups, and economic groups.

Section 6. School and Community College Districts

The Legislature shall define by general law the duties and functions of school and community college districts and shall provide for establishing, financing, altering, consolidating, and abolishing such districts.

Section 7. First Class Colleges and Universities

The Legislature shall provide for a system of higher education of the first class which shall include The University of Texas System, the Texas A&M University System, universities, colleges, community colleges, and other first class institutions or systems as may be provided by law.

Section 8. Permanent University Fund. Its Administration, Its Investments; Available University Fund and Its Expenditure

(a) The Permanent University Fund consists of the two million acres of land set apart and appropriated for the establishment and maintenance of The University of Texas by the Constitution of 1876 and the Legislative Act of April 10, 1883, together with the proceeds of the sale of such land, including the sale of oil, gas, and other minerals from such land, and the securities and other assets purchased with the proceeds. All proceeds shall be invested, and only the income from the Permanent University Fund may be appropriated and expended.

(b) The Permanent University Fund shall be held in trust for the people of Texas and for the use and benefit of the Texas A&M University System and The University of Texas System. The land set apart to the Permanent University Fund, if sold, shall be sold under such regulations, at such times, and on such terms as may be provided by law.

(c) The Board of Regents of The University of Texas System may invest the Permanent University Fund in securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government, or any of its agencies, in bonds issued by the State of Texas or any political subdivision thereof, and in such bonds, debentures, obligations, preferred stocks, or common stocks issued by corporations, associations, or other institutions as the Board of Regents of The University of Texas System may deem to be proper investments for the Permanent University Fund. However, not more than one percent of the Fund shall be invested in the securities of any one corporation nor shall more than five percent of the voting stock of any one corporation be owned by the Fund. In making each and all investments, the Board of Regents shall exercise the judgment and care under the circumstances then prevailing that men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The Board of Regents shall make full disclosure of all investments as provided by law.

(d) The net income (that is, dividends, interest, and other income less administrative expense) of the Permanent University Fund, exclusive of net income attributable to grazing leases of Permanent University Fund land, shall constitute the Available University Fund. Out of one-third of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Directors of the Texas A&M University System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such one-third of the Available University Fund shall be appropriated by the Legislature for the support and maintenance of Texas A&M University at College Station. Out of the other two-thirds of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund

bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the Legislature for the support and maintenance of The University of Texas at Austin.

Section 9. Texas A&M University System; The University of Texas System; Permanent University Fund Bonds or Notes

(a) The Board of Directors of the Texas A&M University System and the Board of Regents of The University of Texas System for the benefit of all the institutions now included in their respective systems are each hereby authorized to issue in amounts not to exceed for the Texas A&M System ten percent, and for The University of Texas System twenty percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance, negotiable bonds and notes for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) refunding any bonds heretofore or hereafter issued.

(b) Any bonds or notes issued pursuant to this Section shall be payable solely out of the Available University Fund. Bonds or notes so issued shall mature serially or otherwise not more than thirty years from their respective dates.

(c) Institutions now included in the Texas A&M University System and The University of Texas System, and entitled to participate in the Permanent University Fund, shall not receive any general revenue funds for acquiring land either with or without permanent improvements, or for constructing and equipping new buildings or other permanent improvements except in case of fire, flood, storm, or earthquake occurring at any such institution. In such an event an appropriation in an amount sufficient to replace the uninsured loss may be made by the Legislature from general revenue funds.

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the Boards are severally authorized to pledge the whole or any part of the respective interests of the Texas A&M University System and The University of Texas System in the Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this Section shall be approved by the Attorney General of Texas and when so approved shall be incontestable.

Section 10. State Higher Education Tax Fund for the Benefit of Certain Institutions of Higher Education

(a) The Legislature shall levy a State ad valorem tax on property at a rate not less than ten cents on the one hundred dollars valuation sufficient to provide a level of support necessary to promote the attainment of first class status for all State institutions of higher education except those institutions included in the Texas A&M University System and The University of Texas System, all public community colleges, and all State technical institutes.

(b) The proceeds of this tax shall comprise the Higher Education Tax Fund.

(c) The Higher Education Tax Fund may be pledged to secure or refund bonds issued heretofore or hereafter for acquiring land, either with or without permanent improvements thereon, constructing, equipping, repairing, rehabilitating buildings or other permanent improvements, and for acquiring capital equipment and library books and materials at the in-

stitutions for which the Fund is created. After appropriating an annual sun. sufficient to pay the principal and interest due on such bonds, the Legislature shall appropriate the remainder of the Fund for the support and maintenance of State institutions of higher education other than The University of Texas at Austin, Texas A&M University at College Station, the public community colleges, and the State technical institutes.

(d) The Legislature shall provide by law for each issue of bonds authorized by this Section and for equitable distribution of the proceeds on the basis of statewide needs. Responsibility for issuance of bonds and allocation of proceeds shall be vested as provided by law.

(e) From the date on which they became eligible to participate in the special tax fund established in this Section, the institutions participating in this fund shall not receive any general revenue funds for acquiring land or permanent improvements, or for constructing and equipping new buildings or other permanent improvements, except that in the case of fire or natural disaster the Legislature may appropriate from general revenue an amount sufficient to replace the uninsured loss.

(f) If for any reason the tax authorized by this Section is held invalid, the Legislature shall provide an equal amount of revenue from other sources.

Article VIII
Finance

Section 1. Taxation

Taxes shall be levied and collected by general law.

Section 2. Property Tax Exemptions

(a) There shall be exempt from all ad valorem taxation:

(1) The property of the State except as provided by law and all other public property used for public purposes;

(2) All household goods and personal effects not used for the production of income; and

(3) All farm products in the hands of the producer and family supplies for home and farm use.

(b) There shall be exempt from State ad valorem taxation:

(1) Three thousand dollars of the assessed value of all residence homesteads; and

(2) The property of political subdivisions of the State.

(c) The Legislature by general law may exempt from ad valorem taxation:

(1) Property used exclusively for educational or charitable purposes or places of burial not held for profit,

(2) Up to three thousand dollars of the assessed value of property owned by a disabled veteran of the armed services of the United States or by the surviving spouse and surviving minor children of a disabled veteran of the armed services of the United States;

(3) Up to three thousand dollars of the assessed value of property owned by the surviving spouse or surviving minor children of any member of the armed services of the United States whose life was lost while on active duty;

(4) Actual places of religious worship;

(5) Any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society if the property yields no revenue to the church or religious society, but such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; and

(6) Any other property validly exempt at the time of adoption of this Constitution.

(d) The governing body of any political subdivision may exempt from ad valorem taxes not less than three thousand dollars of the assessed value of a residence owned and occupied by persons sixty-five years of age or over. If no exemption has been granted, the governing body,

upon a petition signed by qualified voters equal in number to at least twenty percent of those voting in the last preceding election held by the political subdivision, shall call an election to determine by majority vote whether to grant such an exemption in the amount, not less than three thousand dollars, specified in the petition.

(e) The Legislature by general law may provide relief from residential ad valorem taxes for persons determined to be in need of such relief because of age, disability, or economic circumstances. Any such law shall provide for the reimbursement of political subdivisions for revenue losses caused by such relief.

(f) No exemptions from ad valorem taxation shall be granted except as authorized under this Section.

Section 3. Highway-User Revenues

Subject to legislative appropriation, allocation, and direction, all net revenues from motor vehicle registration fees and three-fourths of net revenues from all taxes on fuels and lubricants used to propel motor vehicles over public roadways, except gross production and ad valorem taxes, shall be deposited in the State Highway Fund. Such revenues shall be used solely for acquiring rights-of-way, constructing and maintaining a State highway system; for policing public roadways; and for administering laws pertaining to the supervision of traffic and safety on public roadways. One-fourth of net revenues from these taxes shall be allocated to the Available School Fund. The net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each county, or less than the percentage allowed to be retained, under the laws in effect at the time of adoption of this Constitution.

Section 4. State Taxes on Income

If a law is enacted levying an income tax, the tax may be on personal or corporate income, or both, and may be graduated or otherwise. The law may define income by reference to the laws of the United States as they then exist or may thereafter be changed.

Section 5. State Debt

(a) State debt shall mean bonds or other evidences of indebtedness which are secured by the general credit of the State or are to be repaid, directly or indirectly, from tax revenue and are incurred for the State or for an agency of the State.

(b) No State debt shall be authorized or incurred except as provided in this Constitution.

(c) State debt may be authorized by general law to refund outstanding State debt.

(d) State debt may be incurred if approved by two-thirds vote of the membership of each house of the Legislature and submitted to and approved by a majority of the qualified electors voting on the question.

Section 6. Appropriations

(a) Money may not be drawn from the State Treasury except in accordance with specific appropriations made by law.

(b) Any appropriation from the State Treasury expires two years after its effective date.

(c) No bill containing an appropriation may be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts certifies that the amount appropriated is within the estimated revenue for the applicable fiscal period.

(d) No appropriation in excess of the estimated revenue shall be valid unless it is made in response to imperative public necessity and approved by four-fifths vote of the membership of each house of the Legislature.

Section 7. Public Funds

Public money and public credit shall be used for public purposes only.

Section 8. Public Purposes

Public purposes, as that term is used in this Constitution, include, but are not limited to, purposes for which taxes could be levied or public money or public credit could be used before the adoption of this Constitution.

Article IX
Local Government

Section 1. Counties

The counties of the State are those that exist on the date of adoption of this Constitution. Changes in county boundaries, the merger and division of counties, and the removal of county seats shall be subject to the approval of a majority of the qualified voters voting on the question in each county affected.

Section 2. Powers of County Government

The powers of counties shall be those granted by this Constitution and by general law.

Section 3. County and District Officials

(a) The governing body of each county, to be known as the County Commission, shall consist of a County Judge elected by the qualified voters of the county and four County Commissioners, each elected by the qualified voters from separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The County Judge shall serve as presiding officer.

(b) A Sheriff, Treasurer, Tax Assessor-Collector, County Clerk, and District Clerk shall be elected for each county, except that a single County Clerk may be elected to perform the duties of county and district clerk as provided by law.

(c) County Attorneys, District Attorneys, and Criminal District Attorneys shall be elected in such numbers and for such counties as provided by law.

(d) The County Commission may provide for the election of one or more Constables.

(e) The qualifications, duties, and functions of county officials and the grounds and procedure for disqualification, suspension, and removal shall be as provided by law.

(f) Notwithstanding any of the foregoing provisions, the qualified electors of a county, as provided by general law, may by charter, or by a majority vote of those voting on the question, alter the governing body, create additional offices, eliminate offices, combine the duties and functions of offices, and change the method of selection of any one or more county officials. In such an event the county shall provide for the performance of all duties and functions required by State law.

(g) Vacancies in county offices shall be filled as provided by general law or charter. Vacancies in district offices shall be filled as provided by law.

Section 4. County Charters and Ordinances

(a) The Legislature shall by law provide procedures by which any county with a population of not less than twenty-five thousand may adopt, amend, or repeal a charter with the approval of a majority of qualified voters voting on the question. A charter election may be initiated by petition of the qualified voters of the county or by resolution of the governing body as provided by law. No charter or ordinance shall be inconsistent with the Constitution or laws of the State.

(b) The qualified voters of a county without a charter may by a majority of those voting on the question grant the county governing body the power to enact ordinances as authorized by law.

(c) If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance shall prevail within its jurisdiction as defined by law.

(d) Neither county charters nor ordinances shall affect jurisdiction or venue or the duties of personnel of courts which are part of the State unified judicial system.

Section 5. General Law Cities

Cities and towns having a population of one thousand five hundred or less may be chartered only by general law. They may levy, assess, and collect such taxes as may be authorized by law.

Section 6. City Charters

Cities and towns having more than one thousand five hundred inhabitants may, by a majority vote of the qualified voters voting on the question, adopt, amend, or repeal their charters as provided by law. No charter or ordinance shall be inconsistent with the Constitution or general laws of the State. Cities which adopt charters under this Section may levy, assess, and collect any taxes authorized by law or charter. No city shall lose the power to amend or repeal its charter because its population drops below one thousand five hundred.

Section 7. Special Districts and Authorities

The Legislature shall provide by general law for establishing, financing, consolidating, and abolishing special districts and authorities and shall define their powers by general law. No special district or authority shall be created if the service it is to provide can be provided by an existing political subdivision. The provisions of this Section shall not be applicable to school and community college districts.

Section 8. Terms of Office

The terms of office for all elected officials of political subdivisions shall be as provided by law or charter.

Section 9. Compensation of Officials

Elected officials of political subdivisions shall be compensated only on a salary or per diem basis.

Section 10. Local Redistricting

Within the calendar year following that in which each federal decennial census is published, and at such other times as the governing body of any political subdivision may deem necessary, each governing body not entirely elected at large shall divide its geographical area into districts for the election of those representatives to the governing body not elected at large. The districts shall be composed of contiguous territory and shall be as compact and as nearly equal in population as practicable.

Section 11. Local Debt

Political subdivisions shall not issue general obligation bonds, except refunding bonds, unless approved by a majority of qualified voters voting on the question. No debt shall be

created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.

Section 12. Intergovernmental Cooperation

A political subdivision may, by act of its governing body, cooperate or contract with one or more other political subdivisions, the State, or the United States with respect to the exercise of any function, power, or responsibility, or the use of public funds and credit in the public interest.

Article X
General Provisions

Section 1. Official Oath

All State and local officials shall take the following oath before they enter upon the duties of their office:

"I, , do solemnly swear that I will faithfully execute the duties of the office of and will to the best of my ability preserve, protect, and defend the Constitutions and laws of the United States and of the State of Texas, so help me God."

Section 2. Residence of Civil Officials

All elected and appointed officials shall reside within the State. All elected and appointed officials of a political subdivision shall reside within the political subdivision which they serve, and shall keep their offices at such places as required by law. Failure to comply with these conditions shall vacate the office.

Section 3. Officials to Serve Until Successor Qualified

All officials may continue to perform the duties of their offices until their successors shall be duly qualified.

Section 4. Forfeiture of Residence by Absence on Public Business

No person shall forfeit the right of suffrage, or of election or appointment to any office because of absence from the State or a political subdivision on business of the United States, this State, or a political subdivision.

Section 5. Vacancies Filled for Unexpired Term

Except as otherwise provided in this Constitution, elections to fill vacancies in office shall be for the remainder of the term only.

Section 6. Disqualification from Constitutional Office

In addition to the grounds and procedures provided in this Constitution, the disqualification, suspension and removal from any constitutional office, withholding of salary, and temporary filling of vacancies shall be as provided by law, but no statute enacted under the authority of this Section may be applicable to conduct committed before its enactment.

Section 7. Qualification for and Disqualification from Statutory Office

Unless otherwise provided in this Constitution, the qualifications, grounds for disqualification, suspension and removal from office, withholding of salary, and temporary filling of vacancies for statutory officials shall be as provided by law.

Section 8. Appointments to State Agencies

The authority responsible for appointing the members or filling vacancies for State gov-

ernmental agencies shall make appointments that fairly and equitably represent the sexes, ethnic groups, economic groups, and geographical regions of the State.

Section 9. Salary Commission

(a) A salary commission shall be established to recommend rates of compensation for members of the Legislature, judges in the State unified judicial system, and officials of the executive branch, and to perform such other duties pertaining to compensation as may be provided by law. Compensation paid by the State shall not exceed the rates recommended by the commission.

(b) The salary commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate. Members of the commission shall serve six-year terms. Vacancies shall be filled by the Governor for the remainder of the term with the advice and consent of the Senate. No member of the commission may hold another public office at the same time.

Section 10. Environment

The State and each person shall maintain and improve a clean and healthful environment in Texas for present and future generations. The Legislature shall provide for the administration and enforcement of this duty. The Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 11. Separate and Community Property of Husband and Wife

All property owned or claimed by each spouse before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of each spouse in relation to separate property as well as that held in common with one another. A husband and wife may from time to time and by written instrument partition between themselves in severalty or into equal undivided interests all or any part of their existing community property. In like manner, they may exchange between themselves the community interest of one in any property for the community interest of the other in other community property. The portion or interest set aside to each by partition or exchange shall be and constitute a part of the separate property of such spouse. A partition or exchange under this Section shall not prejudice the rights of preexisting creditors. This provision is self-operative, but laws may be passed prescribing reasonable requirements not inconsistent herewith.

Section 12. Homestead

(a) The homestead of a family and of such other persons as may be designated by law is protected from forced sale for the payment of all debts, except for purchase money therefor, taxes due thereon, and for work and material used in constructing improvements thereon when the work and material are contracted for in writing by the owner but, in the case of married persons, only if both spouses consent to the contract in the manner required when a homestead is sold. A homestead of married persons may be sold only with the consent of both spouses, except that when the homestead is the community property or the separate property of the spouse desiring to sell, it may be sold as provided by law without the consent of the other spouse if the latter is incompetent, has disappeared, or has abandoned the homestead, as provided by law. No mortgage, trust deed, or other lien on a residential homestead shall be valid except for the purchase money therefor or for improvements made thereon, as provided above. Liens may be created on non-residential homesteads but only in the manner required for a conveyance thereof. All pretended sales of the homestead involving any condition of defeasance shall be void.

(b) The homestead not in a city, town, or village shall consist of not more than two hundred acres of land, which may be in one or more parcels with the improvements thereon. Of the two hundred acres, only fifty acres on which the home is located shall be classified as residential and the remainder shall be classified as non-residential. The homestead in a city, town, or village shall consist of land valued at the time of establishment thereof, and without reference to the value of any improvements thereon, at no more than ten thousand dollars or any larger sum as may be provided by law. A homestead in a city, town, or village is a residential homestead if used as a home and is non-residential if used as a place for the exercise of the calling or business of the head of a family or such other person as may be designated by law. A home remains a homestead while temporarily rented only so long as no other homestead is acquired.

(c) The homestead of married persons shall descend and vest like any other real property, except that the homestead shall not be partitioned so long as it is used and occupied as a home either by the surviving spouse, or by minor children if the use and occupancy have been granted by the court.

Section 13. Protection of Personal Property from Forced Sale

The Legislature shall provide by law for the protection from forced sale of certain portions of the personal property of all adults and heads of families.

Section 14. Wages Not Subject to Garnishment

No current wages for personal service shall be subject to garnishment.

Section 15. Private Corporations

No private corporation shall be created except by general laws.

Section 16. Foreign Corporations with Banking and Discounting Privileges

No foreign corporation, other than national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

Section 17. Alcoholic Beverages

(a) The Legislature shall regulate the manufacture, sale, possession, and transportation of alcoholic beverages, and shall preserve the right of any county, justice precinct, or incorporated town or city to exercise local option by election to legalize or to prohibit the sale of alcoholic beverages of various types and various alcoholic content.

(b) In any county, justice precinct, or incorporated town or city in which the manufacture, sale, barter, or exchange of alcoholic beverages of any of various types and various alcoholic content was prohibited at the time of the adoption of this Constitution, the same shall continue to be unlawful unless and until a majority of the qualified voters in such political subdivision voting on the question in an election shall determine such to be lawful.

Section 18. Practitioners of Medicine

The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

Article X

Section 19. Gambling Enterprises

Neither the State nor any political subdivision thereof shall sponsor or operate lotteries or any other gambling enterprises.

Section 20. Liens of Mechanics, Artisans, and Materialmen

Mechanics, artisans, and materialmen of every class shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Section 21. Pension and Retirement Systems

Any pension or retirement system of this State, or of any political subdivision thereof, or of any governmental agency of either, now in effect shall be continued. No funds held pursuant to any such system shall be used for any purposes inconsistent therewith.

Article XI
Mode of Amending the Constitution of the State

Section 1. Amendments to the Constitution

(a) Amendments to this Constitution may be proposed to the qualified voters of the State by a record vote of two-thirds of the membership of each house. Before either house votes, a proposed amendment shall be submitted to the Attorney General who shall within twenty days of receipt of a request render an opinion on its effect on other provisions of this Constitution and on whether the proposal can be enacted without a constitutional amendment.

(b) A proposed amendment shall be submitted at the next general election following the expiration of ninety days after it is proposed by the Legislature. Procedures shall be provided by law for publicizing proposed amendments.

(c) A proposed amendment shall become a part of this Constitution on approval by a majority of the qualified voters voting on the question.

Section 2. Constitutional Convention

(a) The Legislature by a record vote of a majority of the membership of each house may submit to the qualified voters of the State the question of whether to call a constitutional convention. The question shall be submitted at the first general election occurring at least six months after the Legislature proposes the question. A constitutional convention shall be called if approved by a majority of the qualified voters voting on the question.

(b) The question of whether to call a constitutional convention shall be submitted to the qualified voters at least once every twenty years.

(c) The Legislature shall, at the next legislative session following approval of a constitutional convention by the qualified voters, provide by law for the time, place, and duration of the convention; fix and provide for the pay, allowances, and expenses of delegates and officers; and provide for the expenses of the convention. The first meeting of the convention shall be within three months after the election of delegates.

(d) One delegate shall be elected from each representative district and shall have the same qualifications for office as a member of the House of Representatives. Delegates shall be elected and vacancies filled as provided by law, except that no justice or judge, no member of the Legislature, and no elective official of the executive branch may serve as a delegate.

(e) The constitutional convention may, by a majority vote of its membership, propose any revision or amendments to the Constitution. The convention shall determine the manner of submission, the date of the election, which shall be not less than two nor more than six months after the convention adjourns, and the manner of publicizing the proposals to be voted on.

(f) Any proposed revision or amendments shall become effective, as the convention provides, if approved by a majority of qualified voters voting on the question.

Transition Schedule

The following schedule provisions shall remain part of this Constitution until they have been executed. Once each year the Attorney General shall review this Schedule and certify to the Secretary of State which remaining provisions have been executed. Any provisions so certified shall be removed and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

(a) Sections 14 and 15 of Article IV shall become effective on January 1, 1975.

(b) Section 10 of this Transition Schedule shall become effective on January 1, 1975.

Section 2. Existing Laws, Rights, and Proceedings

All laws not inconsistent with this Constitution shall continue in force until they expire by their own limitation or until amended or repealed, and all existing writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles, and rights shall continue unaffected except as modified in accordance with the provisions of this Constitution.

Section 3. Validity of Issued and Unissued Bonds

(a) All bonds or other evidences of indebtedness validly issued by or on behalf of the State or any agency or political subdivision thereof under authority previously granted by the Constitution of 1876, as amended, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions notwithstanding the repeal of such authority by virtue of the adoption of this Constitution. The State and any such agency or political subdivision, as the case may be, shall continue to provide for source or sources of payment in accordance with the terms of such bonds or other evidences of indebtedness, whether from taxes or otherwise, until such bonds or other evidences of indebtedness are paid in full.

(b) Any bonds or other evidences of indebtedness previously authorized to be issued by or on behalf of the State or any agency or political subdivision thereof but unissued on the effective date of this Constitution may be validly issued subject to all applicable terms and conditions under the authority previously granted by the Constitution of 1876, as amended, notwithstanding the repeal of such authority by virtue of the adoption of this Constitution. Any such unissued bonds or other evidences of indebtedness may be issued bearing any rate of interest within the limits permitted by the Constitution of 1876, as amended, until the Legislature, by law, hereafter removes such limits or authorizes new limits.

Section 4. Continuation of Grants of Power to Counties

The powers directly granted by the following designated provisions of the Constitution of 1876, as amended, are continued in force and effect until the effective date of a general law that continues the power or by its terms diminishes or discontinues the power.

(a) Subsection (c) of Section 52 of Article III;

(b) Section 52d of Article III;

(c) That Section 52e of Article III that was added in 1967;

(d) That Section 52e of Article III that was added in 1968; and

(e) Section 6b of Article VII.

Section 5. Ten Cent State Ad Valorem Tax

The State ad valorem tax of ten cents on the one hundred dollars valuation levied by Section 17 of Article VII of the Constitution of 1876, as amended, is hereby levied until the Legislature levies an ad valorem tax pursuant to Section 10 of Article VII. The proceeds of such levies shall be used for the purposes specified in that Section.

Section 6. County Ad Valorem Tax

Counties may continue to levy an ad valorem tax of not more than eighty cents on the one hundred dollars valuation as provided by Article VIII, Section 9 of the Constitution of 1876 until the Legislature by general law grants to counties power to levy an ad valorem tax of a different amount.

Section 7. Assessment of Agricultural Lands

Until otherwise provided by law, Section 1d of Article VIII of the Constitution of 1876, as amended, shall continue in force and effect.

Section 8. Continuation of Power Granted to Independent School Districts and Community College Districts

The powers directly granted to independent school districts and community college districts by Section 3b of Article VII of the Constitution of 1876, as amended, are continued in force and effect until the effective date of a general law that continues the powers or by its terms diminishes or discontinues the powers in whole or in part.

Section 9. Compensation of Legislature and Lieutenant Governor

Members of the Legislature and the Lieutenant Governor shall receive the compensation provided for in the Constitution of 1876, as amended, until otherwise provided by law.

Section 10. Anticipatory Legislation

Laws may be enacted in 1975 in anticipation of the effective date of this Constitution but such laws shall not become effective prior to September 1, 1975.

Section 11. Retirement Systems

The provisions of the following sections of the Constitution of 1876 pertaining to retirement systems shall continue in force and effect unless and until changed by law:

(a) Article III, Section 48a; Fund for Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities;

(b) Article III, Section 48b; Teacher Retirement System of Texas;

(c) Article III, Section 51-e; Municipal Retirement Systems and Disability Pensions;

(d) Article III, Section 51-f; State-wide Retirement and Disability System for Municipal Officers and Employees;

(e) Article V, Section 1-a; Retirement, Censure, and Removal of Justices and Judges; State Judicial Qualifications Commission;

(f) Article XVI, Section 62; State and County Retirement, Disability and Death Compensation Funds;

(g) Article XVI, Section 63; Teachers and Employees Retirement Systems, Service Credit; and

(h) Article XVI, Section 66; Texas Rangers; Retirement and Disability Pension System for Rangers Ineligible for Membership in Employees Retirement System.

Section 12. Special Elections for Members of the Legislature

Until otherwise provided by law, the Governor shall issue writs of election to fill vacancies in either house of the Legislature.

Section 13. Terms of Office

(a) The terms of all offices affected by Section 25 of Article IV are hereby extended to February 1, 1977, 1979 and 1981, if they expire prior to those dates but after January 31, 1976, 1978 and 1980, respectively, and are shortened to March 31, 1977, 1979 and 1981, if they expire subsequent to those dates but prior to February 1, 1978, 1980 and 1982, respectively. The foregoing adjustments are applicable only to offices that are not abolished.

(b) The Commissioner of the General Land Office and the Treasurer elected at the general election held in 1974 shall serve for the terms for which they are elected.

(c) Except as otherwise provided in this Transition Schedule, all elected officers in this State shall continue in office until the end of their terms unless their offices are sooner abolished in accordance with this Constitution or laws enacted pursuant thereto.

(d) Until otherwise provided by law, general law cities and towns, by majority vote of the qualified voters voting at an election called for the purpose, may provide for terms of office of its elected officers not exceeding four years.

(e) Until otherwise provided by law, the terms of office and system of staggered terms created by Sections 64 and 65 of Article XVI of the Constitution of 1876 shall remain in effect.

(f) Until otherwise provided by law, the requirement of Article XVI, Section 65 of the Constitution of 1876 that the candidacy of district, county, and precinct officers for any office other than the office held shall constitute an automatic resignation, if the unexpired term of the office then held shall exceed one year, shall remain in effect.

Section 14. Commissioner of the General Land Office and State Treasurer

The Commissioner of the General Land Office and the State Treasurer shall continue to be elected officials until the Legislature otherwise provides by law.

Section 15. Board of Pardons and Paroles

Until otherwise provided by law, the Board of Pardons and Paroles shall continue to be chosen and shall continue to operate as provided in Section 11 of Article IV of the Constitution of 1876, as amended.

Section 16. Constitutional Powers Omitted from Implementing Statutes

Any power directly granted to any of the following designated boards by the applicable designated section of the Constitution of 1876, as amended, not also granted by statute shall remain in force and effect until the effective date of a statute either granting such power or otherwise specifically superseding the power hereby continued. No statute may supersede any power the continuation of which is made necessary by the provisions of Section 3 of this Schedule.

(a) State Board of Trustees of the Teacher Retirement System of Texas—Section 48b of Article III.

(b) Veterans' Land Board—Section 49b of Article III.

(c) Texas Water Development Board—Sections 49c, 49d and 49d-1 of Article III.

(d) Texas Water Quality Board or any successor agency– Section 49d-1 of Article III.

(e) State Board of Trustees of the Employees Retirement System of Texas—Section 62 of Article XVI.

Section 17. Dual Officeholding

Until otherwise provided by law, the prohibitions and exceptions thereto contained in Sections 12, 33 and 40 of Article XVI of the Constitution of 1876, as amended, shall continue in force and effect as to all persons except members of the Legislature.

Section 18. Conflict of Interest

No member of the Legislature on the effective date of this Constitution shall be in violation of Section 10(d) of Article III if on that date the member has a pecuniary interest in a contract with the State and that interest would not have violated Section 18 of Article III of the Constitution of 1876, as amended. This preservation of a pecuniary interest shall not extend beyond the term for which the member was elected.

Section 19. The Judiciary

(a) All courts, except those authorized by Article V and the Court of Criminal Appeals, are hereby abolished and all matters pending therein transferred to the courts created by or pursuant to this Article. The Court of Criminal Appeals shall be merged with the Supreme Court as provided by Section 19(d) of this Transition Schedule. The courts into which the matters are transferred shall assume full jurisdiction of the matters and shall have full power and authority to dispose of them and to execute or otherwise give effect to all orders, judgments, and decrees issued by the predecessor courts. The courts created pursuant to Article V shall succeed to all records and property of the courts abolished hereby.

(b) Except to the extent inconsistent with the provisions of Article V, all laws and rules of court in force on the effective date of this Constitution shall continue in effect until superseded as authorized by law.

(c) All appeals docketed but not heard by the Court of Criminal Appeals on the effective date of this Constitution are hereby transferred to that Court of Appeals, formerly the Court of Civil Appeals, in which the appeal would have been docketed if it had been an appeal in a civil case. Until such time as the Supreme Court promulgates specific rules

for appeals of criminal cases from the courts of appeal, the rules presently in force for appeals from courts of civil appeals shall be used in criminal cases.

(d) Two alternative methods for selection of appellate judges are proposed in Article V, Section 8.

(1) If the merit plan for selection of appellate judges is adopted, the following provision will govern.

On the effective date of this Constitution, the Chief Justice of the Supreme Court shall become the Chief Justice of Texas. After the effective date of this Constitution, the offices of the first five justices of the Supreme Court and judges of the Court of Criminal Appeals, other than the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals, who cease to be members of the Supreme Court or Court of Criminal Appeals shall cease to exist. The Supreme Court and Court of Criminal Appeals, after the effective date of this Constitution, shall continue to function separately until a majority of each court determines that the number has been reduced sufficiently for the total membership of the two courts to function properly as one court, but no later than when the total membership has been reduced to nine. Thereupon, the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals shall immediately file with the Secretary of State a statement certifying that such determinations have been made and that the courts have been merged. Whereupon, the Presiding Judge and other judges of the Court of Criminal Appeals shall become justices of the Supreme Court of Texas. At the same time each commissioner of the Court of Criminal Appeals shall become a commissioner of the Supreme Court of Texas, but when he ceases to hold that position, the position shall cease to exist. Upon the filing with the Secretary of State of the statement certifying that the courts have been merged, the Supreme Court of Texas shall assume all authority and jurisdiction of the Court of Criminal Appeals.

(2) If the nonpartisan election method for selection of appellate judges is adopted, the following provision will govern.

On the effective date of this Constitution, the Chief Justice of the Supreme Court shall become the Chief Justice of Texas. After the effective date of this Constitution, the offices of the first five justices of the Supreme Court and judges of the Court of Criminal Appeals, other than the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals, who die, resign, retire, or who are removed or fail to file for reelection shall cease to exist. The Supreme Court and Court of Criminal Appeals, after the effective date of this Constitution, shall continue to function separately until a majority of each court determines that the number has been reduced sufficiently for the total membership of the two courts to function properly as one court, but no later than when the total membership has been reduced to nine. Thereupon, the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals shall immediately file with the Secretary of State a statement certifying that such determinations have been made and that the courts have been merged. Whereupon, the Presiding Judge and other judges of the Court of Criminal Appeals shall become justices of the Supreme Court of Texas. At the same time each commissioner of the Court of Criminal Appeals shall become a commissioner of the Supreme Court of Texas, but when he ceases to hold that position, the position shall cease to exist. Upon the filing with the Secretary of State of the statement certifying that the courts have been merged, the Supreme Court of Texas shall assume all authority and jurisdiction of the Court of Criminal Appeals.

(e) Chief Justices of the courts of civil appeals shall become chief judges of the courts of appeals; justices of the courts of civil appeals shall become judges of the courts of appeals.

Transition Schedule

(f) Each district judge or judge of a criminal district court, domestic relations court, special juvenile court, or special designated probate court shall become a judge of a district court.

(g) Each judge of a county court at law, county civil court at law, county court for criminal cases, county criminal court, or county court of criminal appeals shall become a judge of a county court.

(h) Judges of the county court elected pursuant to Article V, Section 15 of the Constitution of 1876 shall remain as presiding officers of the County Commission as provided by Article IX, Section 3(a) of this Constitution. Any judge of the county court who is licensed to practice law may elect to preside over the County Commission or may, by written notice to the Governor filed with the Secretary of State within thirty days after the effective date of this Constitution, elect to become a judge of the county court provided by Article V, Section 5 of this Constitution. In the latter event, the office of county judge shall be vacant and shall be filled by the County Commission until the next general election.

(i) No judicial office shall be abolished by the adoption of this Constitution until the expiration of the term of the person who held the office on the effective date of this Constitution or until that person ceases to hold the office, whichever occurs first.

(j) The members of the Judicial Nominating Commission first selected under the provisions of Section 7 of Article V shall serve for the following terms of years: four for two years, four for four years, and three for six years. The holders of the foregoing respective terms shall be determined by lot.

(k) If the merit plan is adopted for selection of appellate judges, the Chief Justice, each justice of the Supreme Court, and each judge of the courts of appeals now in office shall be subject, in the manner provided by law, to approval or rejection at the general election preceding the expiration of the term for which each was elected. Until the merger of the Supreme Court and the Court of Criminal Appeals is accomplished pursuant to Section 19(d) of this Transition Schedule, the Presiding Judge and each judge of the Court of Criminal Appeals now in office shall be subject, in the manner provided by law, to approval or rejection at the general election preceding the expiration of the term for which each was elected.

(l) The terms of all district judges in office on the effective date of this Constitution are hereby extended two years.

(m) Members of the Judicial Qualifications Commission on the effective date of this Constitution shall continue in office and serve as a commission under Section 11(c) of Article V until a commission is established by law pursuant to that Section.

(n) In the event a transfer or transition has not been provided for by this Section or by law, the Supreme Court shall provide by rule for the required orderly transfer or transition.

Section 20. Publicizing Proposed Amendments

Until otherwise provided by law, the Secretary of State and the Attorney General shall follow the procedure prescribed in Section 1 of Article XVII of the Constitution of 1876, as amended, for publicizing proposed amendments to this Constitution.

Adoption Schedule

These Schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted and establishing the general effec-

tive date of this Constitution. No provision of this Schedule shall be published as a part of this Constitution.

Section 1. Effective Date

Except as otherwise provided in Section 1 of the Transition Schedule, this Constitution, if approved by the qualified voters as provided by the Constitution of 1876, as amended, shall take effect on September 1, 1975. The Constitution of 1876, as amended, shall thereafter be of no effect.

Note: Subsequent sections of the Adoption Schedule should spell out the details for adoption of alternative provisions (if submitted), the form of the ballot, and the like.

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Revised ed. Dec. 1973

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PREFACE

This bibliography on state constitutional revision and the Texas constitution has been prepared for the delegates to the 1974 Texas Constitutional Convention as a guide to the materials in the Legislative Reference Library. In addition to the items listed here, the Library also contains copies of all state constitutions and a newspaper clipping file on the Texas constitution and Texas constitutional revision.

Although this publication is a guide to one library collection, we are making the bibliography available to libraries throughout the state in the hope that it will encourage and aid citizen study of the constitutional revision process.

Malinda Allison
Assistant Director

Legislative Reference Library
Austin, Texas
Mr. James R. Sanders, Director

December 1973

PART A - STATE CONSTITUTIONAL REVISION

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Comment

VOL. XXIV, NO. 2 LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS, THE UNIVERSITY OF TEXAS AT AUSTIN FEBRUARY, 1978

The Meaning of the Vote on the Proposed Texas Constitution, 1975

John E. Bebout*

On November 7, 1972, Texas voters, by a vote of 1,549,982 to 985,282 or 61% to 39%, authorized the members of the next Texas legislature to serve, in 1974, as a constitutional convention to consider and propose revision of the Texas constitution. Three years later, on November 4, 1975 by the vote of less than half the number who voted on this authorization in 1972, a revised constitution submitted in the form of a series of eight amendments based on the work of the convention was defeated by margins, on the several amendments, of nearly three to one, or by an average of 73% to 27%.[1]

Murray and Forsbach report "Overall, support for the eight proposals ranged from just 25 percent to 28.1 percent."[2]

What do these votes, taken together, mean? What did the voters have in mind when they voted for or against, or failed to vote on, the constitution prepared in response to their instructions? What do their actions say about the attitude of Texans toward their present constitution? What do they portend for the prospects of future attempts to revise it?

These are important questions. The constitution is important in the governance of state, cities, and counties and affects individual citizens and organized private interests. It affects the role that Texas plays in the nation. The constitution has grown bigger and more complicated since 1876, as some 226 amendments have been adopted, in recent years at an increasing rate. Governors, legislators, civic groups, students of government, newspaper editors, and others have complained about it and repeatedly called for a general simplification, updating, and revision. Since Governor Beauford Jester in 1949 organized a Citizens Committee on the Constitution which called for a revision commission, the issue has been an increasingly active item on the public agenda. Governor John Connally sought legislation for a constitutional convention in 1966-67. There were studies of constitutional revision by the Legislative Council and an official Citizens Advisory Committee in the 1950s and studies and proposals by two constitutional revision commissions. The last was the prestigious Texas Constitutional Revision Commission of 1973 established to prepare for the Convention. This Commission put its conclusions in a draft for a complete new constitution that was widely acclaimed and substantially shaped and influenced the work of the Convention.

This history and the experience of other states strongly indicate that, despite the rejection of 1975, the issue of constitutional revision will not go away, or stay away very long. The better understanding Texans have of the meaning of the votes on the 1972 call for revision and the 1975 defeat of the resulting amendments, the better will be their ability to deal with the revision issue in the future.

There have been various attempts to assess these votes and explain their meaning, by journalists, political leaders, and political scientists. This report tries to synthesize some of the information and insights developed in a number of the attempts. A word about the principal sources drawn upon here may be in order.

From the beginning of the revision movement of the 1970s, the Institute for Urban Studies, University of Houston, offered a broad program of research, information, and technical assistance, pri-

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[1] Janice C. May, *The Texas Constitutional Revision Experience in the '70s* (Austin: Sterling Swift Publishing Co., 1975).

[2] Richard Murray and Curtis Forsbach, "Anatomy of a Landslide: An Analysis of Texas Voters' Rejection of a New State Constitution." Paper published by the Institute for Urban Studies, University of Houston, 1976.

Comment

LYNDON B. JOHNSON SCHOOL
OF PUBLIC AFFAIRS
THE UNIVERSITY OF TEXAS
AT AUSTIN

EDITOR
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Published quarterly in November, February, May and August by the Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, Austin, Texas 78712. Single copies are free upon request; special prices on quantities.

Views and opinions expressed herein are the exclusive responsibility of the author or authors and are not to be interpreted as representing an official position of the School or the University.

Second-class postage paid at Austin, Texas.
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marily for officials and official bodies, especially the Legislature, the Constitutional Revision Commission, the Constitutional Convention, and the Texas Advisory Commission on Intergovernmental Relations. It also provided a certain amount of information to a broader public. In the process it enlisted the help of persons in a number of universities, and other individuals. One of the political scientists, Dr. Janice C. May, Professor of Government at The University of Texas, wrote, among other things, a book, *The Texas Constitutional Revision Experience in the '70s*, issued by the Institute for Urban Studies before the 1975 vote. The book was based not only on research but also on direct involvement of the author as a member of the last two constitutional revision commissions and almost daily attendance at the Constitutional Convention and the 1975 Legislature as it produced the package of amendments that were submitted to the people. Against this background, Dr. May also wrote an article, "Texas Constitutional Revision: Lessons and Laments," which appeared in the February, 1977 number of the *National Civic Review*. After the election, the Institute commissioned Professors Richard Murray and Curtis Forsbach of the University of Houston to do a paper entitled "Anatomy of a Landslide: An Analysis of Texas Voters' Rejection of a New State Constitution." The most distinctive effort of the Institute to find explanations of the 1975 results has been through a survey among residents of the Houston-Galveston Metropolitan Area, conducted as a part of the larger Houston Metropolitan Area Project.[3]

One other Texas source will be referred to, namely, an analysis of voting results by counties and regions, entitled "Patterns of County Support for Constitutional Revision in Texas, 1975" by James A. Curry and Michael W. Mansfield in Jones, Ericson, Brown, and Trotter, *Practicing Texas Politics*, 3rd edition (Houghton Mifflin Co., 1976). Finally, the significance of the Texas experience in these revision elections will be checked against experience in other states as reported in studies of a number of revision efforts in recent years.

Of special interest, because they are presented for the first time, are the results of the questions on the behavior or attitudes of voters and nonvoters with respect to the 1975 revision amendments as reported in the Houston Metropolitan Area survey (HouMAP). This effort to query people in order to assess the meaning of their performance in an election of this sort is highly unusual if not unique. For a variety of reasons, however, the real significance of its findings can be determined only with the help of information and analysis obtained from other sources. For one thing, the answers obtained from only one metropolitan area need to be interpreted by relating the vote in that area to the votes in other parts of the state. For another thing, the vote at a particular time in a given set of circumstances is relatively meaningless unless seen in historical and comparative perspective.

THE 1972 VOTE

Our starting benchmark is the 1972 vote on "Proposition Four," the amendment to the constitution that authorized the members of the next legislature to serve as a constitutional convention. Proposition Four was one of fourteen amendments voted on at the same time, eleven of which passed. Almost fifty (49.7) percent of the registered voters expressed themselves on the amendment, which ranked eighth among the fourteen in the size of the vote cast on it.

It is hard to interpret the full meaning of this vote. Dr. May points out that it attracted fewer votes than a majority of the other amendments and that the margin of "yes" votes was not unusually high for an approved amendment. On the other hand, the fact that more than three out of every five of the approximately half of the registered voters who voted on the question said they wanted to open the door to revision is impressive. Experience in Texas and elsewhere indicates that constitutional revision is seldom a big vote grabber and that people do not generally vote for it absentmindedly or out of mere curiosity. It is hard to escape the conclusion, therefore, that the vote was a meaningful reflection of a long term and fairly widespread dissatisfaction with the Texas constitution noted earlier. It was widely so interpreted at the time.

Dr. May, in Chapter Three of her book on the revision experience, analyzed the vote by Standard Metropolitan Statistical Areas (SMSAs) and by nine political regions.[4] All but two of the twenty-four SMSAs cast favorable votes on Proposition Four, from 87% in Laredo and 73% in El Paso to 51% in Tyler. Odessa and Sherman-Denison turned down the proposition by 51% and 54% respectively. All nine of the political regions went for revision by percentages ranging from 69% in Southwest Texas to 54% in West Texas. The second and third highest votes were cast in the South Texas and Gulf Coast regions, 68% and 66% respectively. The vote by counties is also interesting because it indicates that the most rural areas, in general, were the least supportive of revision, although all but two of the counties in South Texas did turn in majorities for it. However, sixty-two of the eighty-two counties immediately to the north rejected it.

THE VOTE ON THE 1975 REVISION

The vote that defeated the eight amendments in which the revision was embodied in 1975 was far lighter, although much more decisive in terms of percentages, than the vote in support of the *idea* of revision in 1972. The largest vote *on* any of the eight propositions, 1,172,803, was only about 75% of the vote cast *for* Proposition Four in 1972. The average vote cast against the 1975 amendments was about 55% of the "Yes" vote in 1972. These figures reflect the fact that whereas nearly 50% of the registered voters ex-

[3] HouMAP was a full random probability survey of households in the thirteen county Houston-Galveston planning region. Approximately 3300 households were surveyed by telephone during the summer and fall of 1976.

[4] The regions were drawn from Charles Deaton, *The Year They Threw the Rascals Out* (Austin: Shoal Creek Press, 1973).

pressed themselves on Proposition Four, the largest vote cast on a single amendment in 1975 represented less than 25% of those registered. The most obvious explanation for this discrepancy lies in the fact that the vote in 1972 was in a general election in which voter interest had been aroused by a major state political scandal, whereas the 1975 election was a special election. In Houston, however, there was a lively contest for the office of mayor which brought out a sizeable vote. Constitutional revision, like most public questions, does not attract the kind of public interest that candidates for office do. Voting on constitutional amendments is, therefore, always much heavier in general than in special elections.

This is not to suggest that the result would have been different if revision had been submitted in a general election, although the closest students of the returns[5] think that the margin of victory for the opponents would probably have been somewhat smaller. The important point here is to recognize that the final decisions on constitutional issues in Texas are made by small minorities of the potential *voters* in Texas. Less than 18% of the registered voters piled up the largest negative vote on any of the amendments. To make the point on the power exercised by a small minority more emphatic, Murray and Forsbach observe: "When one considers that about 40 percent of the adults in Texas are not registered, this means that only about one in seven Texans over eighteen years old voted on the constitutional questions." And this means that less than eleven percent of the *potential* voters in Texas, even according to the 1970 census, which is out of date, defeated the revision. Since registration and voting in Texas have nowhere to go but up, the effect of nonparticipation in elections represents a large unknown for the future.

THE HouMAP SURVEY

Since the HouMAP survey in the Houston metropolitan area gives the only direct testimony of voters and nonvoters themselves on the 1975 revision election, it will provide the focus for further analysis of the meaning of that election. When it is useful, this evidence from a single area will be put in the context of statewide returns as they have been analyzed by counties in the light of socioeconomic information about the counties.

[5] Murray and Forsbach, Curry and Mansfield, and Janice May.

At the outset, it is necessary to point out certain limitations of the HouMAP survey. These result from the fact that the questions on the revision election had to be included in a much larger, more comprehensive survey which was not conducted until several months after the election. Consequently, it was not possible to ask all the questions that might have been desirable. The time lag meant that memories had grown dim, with the result that answers on some questions were not always as reliable as they would have been immediately after election. However, it is clear from relating the returns from the survey to other information that they are, for the most part, reasonably reliable and that they contribute significantly to an understanding of what went on.

Persons registered to vote were asked if they had voted in the 1975 election. If the answer was "Yes," voters were asked if they had voted for all the propositions, against all, or for some and against others. They were then asked why they thought they had decided to vote as they did. Registered persons who did not vote in 1975 were asked why they did not vote and whether, if they had, they thought they would have favored the new constitution or opposed it. Voters and persons not registered were asked if they could recall whether the governor was *for* or *against* the amendments at the time of the election. All persons were asked whether they thought that the question of constitutional revision should be dropped or, rather, that the state should continue to try to revise the present constitution.

For the purposes of this report, some of the answers have been analyzed separately for the city of Houston and the remainder of the Houston-Galveston metropolitan area. One reason for this is the fact that the mayoralty election brought out a larger vote than in most other parts of the area or the state. The returns have then been broken down by several characteristics of the population: age, ethnicity, education, party affiliation, political ideology (conservative, liberal), and income. There appear to be significant differences in voting behavior for all or most of these variables. Consideration of these differences can be important for at least three reasons. First, they provide some clues as to kinds of influences affecting voting behavior. Second, since the distribution of these characteristics in the population is subject to change, in some cases more or less predictably, the differences give some indication of possible future directions in the way with which the revision issue might be dealt. Finally, they contribute to our general knowledge of the fascinating subject of Texas politics.

PRINCIPAL FINDINGS FROM THE HouMAP SURVEY

The salient facts about constitutional revision revealed by the survey can be analyzed under three main headings: (1) what they show about the attitudes of voters toward the Texas constitution; (2) what they show about the level of voter interest and understanding relative to the revision issue; and (3) what they show about differences among voter groups or communities with respect to constitutional revision. The findings under these heads, combined with information derived from other sources, lead to conclusions about the reasons for the 1975 result and the prospect for future efforts toward general revision of the constitution.

(1) **Attitudes of voters toward the Texas Constitution.** Probably the most significant revelation of the survey is that rejection of the 1975 amendments did not amount to an endorsement of the present constitution. On the contrary, when asked whether constitutional revision should be dropped or continued, only about 25% of respondents said revision should be dropped, while nearly 60% in Houston and Harris County and over 53% in the other twelve counties said it should be continued, the remainder being uncertain.

Answers to certain other questions point in the same direction. When asked why they voted as they did, slightly more than 12% of respondents said: because revision was needed. About the same number said flatly that revision was not needed, but about 29% gave as their reason the fact that they wanted to split their vote, which presumably indicated the feeling

The answers to the question: "Do you recall how you voted?" are puzzling. About 17% of those who said they remembered, both in Houston and in Harris County as a whole, claimed to have voted for all eight propositions and the same number claimed to have voted against all, while more than 65% said they split their vote. In view of the fact that the difference in support between the least and the most popular amendments statewide was only three percentage points, Murray and Forsbach concluded that

most people had probably voted straight tickets, for or against all. That 65% of respondents split their votes seems improbable, although it is statistically possible. Perhaps a number of split votes resulted from failure to vote at all on certain amendments about which voters felt no conviction one way or the other, although the fact is that the vote turnout was about the same on all amendments. Perhaps some voters did not remember correctly. No matter what the explanation, the fact that almost 83% of the respondents think they remember having voted either for all or for at least some proposed amendments seems consistent with the position of a substantial majority that revision should go on.

Further support for this position is found in the response of nonvoters to the question: "If you had voted, do you think you would have favored the new constitution or opposed it?" About 59% of Houston voters said they would have favored it, 41% that they would have opposed it. The corresponding figures for the whole survey region were 56.5% and 43.5% respectively. Whether the nonvoters would really have lined up that way, had they voted, is open to serious question, but their responses are anything but an endorsement of the present constitution.

The evidence of this survey of voters and nonvoters in the Houston-Galveston metropolitan area does not reveal any inherent inconsistency between the decisive vote of 1972 to embark on revision of the present constitution and the decicive vote against the 1975 revisions. Rather, the testimony of respondents, like the vote for Proposition Four in 1972, reflects a persistent feeling that Texas should try to provide itself with a better constitution. The 1975 vote simply means that the people were not satisfied that they had yet been offered such a constitution.

(2) **Level of voter interest and understanding relative to constitutional revision.** Although the survey reveals an endemic dissatisfaction with the present constitution, it also reveals the relative shallowness of any understanding, conviction, or feelings about the constitution on the part of most citizens. This comes out in various ways and is supported by evidence inherent in the very small turnout of voters who took the trouble to express themselves on the eight amendments.

For example, less than 46% of those who said they had voted on the new constitution recalled how they had voted. Of those who answered the question "Why do you think you decided to vote as you did?" more than 40% could not remember or gave a nonanswer. When nonvoters were asked why they had not voted, one third gave no reason. Eight percent gave what could be a very good reason: that they did not know the issues.

Some measure of the information with which voters went to the polls is afforded by answers to the question: "Do you recall at the time of the election whether the governor was *for* or *against* the proposed constitution?" Only 25.6% said correctly that the governor was against it, while 18.2% thought he was for it. More (56%) said they could not recall or did not know. Interestingly, more Houston Republicans (who voted more heavily against revision than either Democrats or Independents) thought Governor Briscoe was for the revision than those who thought he was against it. Houston Republicans apparently had the prize for miscalling the Governor's position, 29.8% thinking he was for the revision to 24.2% that he was against it. The Independents were the best informed, 34.5% reporting that he was against it to 18.8% who thought he was for it.

It is evident that very few Texans cared enough and knew enough about the state constitution to cast informed votes on the revision questions in 1975. This is not surprising in the light of experience in other states. The visibility of state constitutions is too low and the issues raised in connection with their revision are too complex to make it easy and natural for most voters under their own steam to interest and inform themselves enough to go to the polls and cast votes. A large and reasonably confident vote on constitutional revision seldom occurs unless there has been a prolonged and prodigious campaign, involving well-known leaders who play active roles, very extensive public information or education programs, usually on both sides, and a large number of volunteers carrying the word and working the precincts. Obviously, neither the proponents nor the opponents were sufficiently visible and active in 1975 to stir most voters out of their indifference or their sense of incompetency in the face of the revision issue.

(3) **Differences among voter groups.** The HouMap survey reveals significant differences in behavior on revision among various segments of the population as defined by political affiliations, political ideology, age, education, ethnicity, economic status, and geographic location. These have been analyzed in detail for the city of Houston and for the remainder of Harris County, and can be summarized fairly briefly.

Party differences. More Houston Democrats reported voting for all amendments than against all of them, 22.9% to 13.3%, while the Republicans split, 11% for all to 23.5% against, the remainder in each case splitting their votes. The Independents were in between, 14.1% for all to 18.8% against all. As with most other groupings, all three broke more heavily against revision in Harris County outside of Houston, where, for example, more Democrats reported voting against all the amendments than for all. As for continuing the revision effort, there was little difference between Republicans who registered and Democrats who registered (including nonvoters as well as voters) in support for continuing the revision effort. In this case, the Independents opted most heavily for continuation (67% of Houston Independents supporting this position).

Differences by ideology. Among Houston voters who classified themselves by political ideology, the conservatives were most heavily against the revision, (10.3% for all amendments to 19.5% against all) while the moderates were more evenly divided (19.7% for all and 17.6% against all). The liberals were most supportive (26.4% for all to 10.7% against all). However, over 70% of the conservatives reported splitting their votes as against just under 63% of the moderates and liberals. This appears to indicate a readiness to support some revision among voters of all persuasions. It is interesting, and puzzling, that as many as 50% of the nonvoting conservatives said they would have voted for the new constitution had they gone to the polls, while 56.4% of the moderates and 73.4% of the liberals said they would have done the same. It is to be presumed that confronted with the ballot, some of these would have joined the ranks of the ticket splitters and others the "nay" sayers.

Differences by age. The report of voting by age groups presents a somewhat confusing pattern. Of those Houston voters under thirty, 19.2%, and of those sixty or over, 25.5%, reported voting for all amendments as against only 14.9% in the thirty to fifty-nine age group. This would suggest that those in the middle years, who reported no larger percentage of "no" voters than the others, but a larger percentage of vote

splitters, were likely to be more cautious or more deliberate in their voting than the young or the old. A straw in the wind that may point in the same direction is the fact that the middle group were better informed on the position of the Governor than the others. Other figures in the HouMAP survey tend to the conclusion that, in general, the older people were less likely to be receptive to revision than others. They voted more heavily against revision in Harris County outside of Houston than either of the other age groups. Moreover, the older people were much more inclined to say that revision should be dropped than the others, 35.5%, as against 18.9% of those under thirty and 24% of those in the middle years who favored dropping revision. Finally, the nonvoters in the oldest group reported almost two to one that they would have voted against the revision, close to the reverse of the reports from the nonvoters in the remaining age groups. These figures take on added significance when we note that people in both the two upper age groups showed a much higher percentage of registered voters than the under thirties and that the sixty year olds and over showed the highest percentage of those voting, 66.1%.

Differences by education. Respondents were classified by educational attainment: non-high school graduates, high school graduates, some college (one to three years), and college graduates. The answers to the question on how they voted are puzzling, largely because an unusual 93% of the non-high school graduates claimed to have either voted for all amendments or split their votes. The total for high school graduates was 76.7%, while the total for those with some college and those with college degrees were 82.2% and 81.1% respectively. As for the straight ticket voters, those with some, or a full college education, were fairly evenly divided, the proponents having the edge by about one percentage point.

Answers to another question show consistent differences along the rising educational scale. When asked why they voted as they did, more than twice as many persons with college degrees either said they felt revision was needed or wanted to split their vote than persons with less than a high school diploma. As education increased so did support for some revision, while inability to remember why they voted as they did decreased.

Two other questions show striking differences between college graduates and all others. In all categories except college graduates, more thought the Governor supported revision than those who thought correctly that he opposed it. Among college graduates 18% thought he supported it; 41.2% thought he opposed, while only 40.8% said they didn't know or couldn't recall. Among those with some college education, 50.3% admitted that they didn't know, but a whopping 26.6% who thought the Governor supported it obviously didn't know either, as well as some who simply guessed luckily that he did not. Maybe a little college education teaches people to bluff, since almost two thirds of those without its benefits admitted they didn't know.

Differences among ethnic groups. The breakdown by ethnic groups is fairly clear. Black and Hispanic voters were much more supportive of revision than Whites. Only 6.1% of the Black voters in Houston who responded and 8.1% of the Hispanic voters said they voted against all amendments, while over 22% in each case voted for all of them with the remainder splitting their vote. On the other hand, only 15.5% of the Whites said they voted for all, to the 22.3% who said they voted against all. The answers to the question of why they voted as they did were consistent with the answers to the first question. Similarly, 73.8% of the Blacks and 70% of the Hispanics who did not vote said that had they voted they would have been for the revision, as against 53.7% of the Whites. It was only on the question of continuation of the revision effort that the responses of all three groups were fairly close. Slightly more than 60% of the Whites favored continuation, to 55.4% of the Blacks and 65.2% of the Hispanics. At the same time, a larger proportion of Whites than of Blacks or Hispanics favored dropping revision.

These differences undoubtedly show the effect of active leadership and organization support in the Black and Hispanic communities that was lacking in the White. It should be remembered, however, that the potential effect of the Black and Hispanic vote is depressed because of the fact that a smaller percentage of those eligible to vote in these groups actually went to the polls than of those among the Whites.

Among the ethnic groups, the Hispanics in Houston had the best record of reporting the position of the Governor, 34.3% saying he was against it to 22.2% who thought he was for it. The Whites followed, 30.5% saying he was against it, 21.4% that he was for it. More Houston Blacks (17.6%) thought he was for it than against it (9.8%).

Differences by income. When Houston respondents are divided by income levels, we find the largest proportionate vote for all amendments in the lowest income group, under $8,000: 23.7% reporting votes for all, 15.5% against all, the remaining 60.8% reporting split votes. This contrasts with the records of the top income group, $26,000 and over: 16.9% for all amendments to 19.9% against and 63.2% split ballots. The record for the second lowest income group, $8,000-$15,999, is close to that of the lowest income group and the record of the next to highest income group, $16,000-$25,999, is close to that of the top level except that there are fewer reported straight ballots for or against and more split votes. This breakdown for Houston is somewhat atypical. For example, in the remainder of Harris County, 20.9% of the voters in the under $8,000 group voted against all amendments to 15.9% who voted for all. This may be accounted for in part at least by the fact that Houston had a higher proportion of Black and Hispanic voters, who tended to be more favorable to revision, in the lower income groups.

Geographical differences. When responses are broken down by place of residence, we find that Houston voters were most likely to support revision, while voters in the remainder of Harris County were less likely and those in the other twelve counties taken together were least likely. Whereas 17.6% of respondents in Houston said they voted for all amendments, only 14.4% of those in the outlying counties said they had done so, while 17% of Houston voters reported a straight "no" vote against 20.8% in the area outside Harris County. On the other hand, the regional differences among the nonvoters who said whether they would have favored or opposed the new constitution were relatively slight. However, on the question of whether constitutional revision should be continued or dropped, the percentage who would drop it rose from 24.1% in Houston to 28.8% in the area outside of Harris County, while those for continuance of the effort dropped from 59.8% to 53.3%.

A few summary statements may now be made. Among ethnic groups, the strongest support for revision was found among Blacks, followed by Hispanics. Among political and ideological groups the strongest opposition was found among

conservatives and Republicans. Support for revision was significantly greater among Democrats and liberals. The most educated were more likely than others to support revision, especially the continuation of revision efforts. While there are differences among voters related strictly to income levels, they are hard to evaluate because of the distribution of Black and Hispanic voters who were decidedly more favorable to revision than Whites. Similarly, the residential distribution of ethnic groups accounts in part for the greater support for revision found in Houston than in areas outside the city.

It is important, however, not to make too much of these differences. No matter how the respondents are classified, the whole range of reactions toward revision can be found in each group. Significant numbers of conservatives and Republicans lined up with liberals and Democrats. Substantial numbers of Hispanics and Blacks placed themselves among the opponents. Differences in the tendencies of groups to support or oppose constitutional revision are obviously not due to inherent differences in basic attitudes shared by all members. Rather, they are more likely to be due to differences in the messages that the members are likely to receive. This means that members of all groups are wide open to changes in messages from trusted sources with respect to revision in the future. Having noted this, it is important to remember two stubborn facts. One is that there seems to be a pretty durable notion that the Texas constitution ought to be revised sometime, somehow. The other is that any messages about constitutional revision have so far been too weak or too confusing to get most people who are eligible to vote to express themselves clearly at the polls or elsewhere.

FINDINGS FROM ANALYSIS OF ACTUAL VOTES CAST

Some of the findings of the HouMAP survey are worth comparing with findings from analyses of actual votes on the revision amendments throughout the state, done by Murray/Forsbach and Curry/Mansfield in papers referred to earlier. Both of these papers show that counties with large numbers of Hispanics or an unusually high percentage of Blacks gave revision substantially more support than others. They also show that support for revision was largely an urban phenomenon. As Murray and Forsbach put it, the "mostly rural counties usually voted down all the proposals by margins of nine to ten to one." It may be remembered that rural counties were least supportive of Proposition Four in 1972. The only urban county that voted in favor of revision (for seven of the eight amendments) was El Paso by an average vote of 59% on all propositions. There, 66% of the voters in heavily Hispanic precincts and 56% in White precincts supported revision. Murray and Forsbach report that some observers attribute the atypical behavior of El Paso County to "the area's relative isolation from the general political currents of the state; currents which apparently swung strongly against the revision in the days prior to the election." However, this can hardly be the whole explanation. There appears to have been a more active campaign for the new constitution in El Paso than in other counties, a campaign which insulated the voters against the negative tide that turned an expected statewide moderate defeat into a rout for revision.

In general, these and other conclusions from analysis of the votes are compatible with the findings of the HouMAP survey already set forth. For example, the more rural areas of the survey region were much more heavily against revision than the city of Houston. There is one significant difference. As was pointed out, lower income Houstonians were slightly more prone to vote for revision than those in the top economic brackets, whereas, statewide, the reverse was the case. We attributed this in part to the large numbers of Blacks and Hispanics in the lower economic groups in Houston. Other probable factors were the vigorous opposition of the local Republican Party and the mayoral election in Houston that brought out large numbers of affluent White conservatives. Murray and Forsbach found that Harris County was the only one of the ten most urban counties in which precincts largely inhabited by lower income Whites voted more heavily for revision than upper income White precincts. The tendency outside Harris County of more affluent Whites to vote more heavily for revision than lower income Whites is consistent with findings of a comparative study of the politics of revision in seven states that "people of higher socioeconomic status (SES) would be more likely to support the revised constitution than people of lower SES."[6]

[6]Elmer E. Cornwell, Jr., et al., *State Constitutional Conventions: The Politics of the Revision Process in Seven States* (New York: Praeger Publishers, 1975) pp. 204-205.

In Houston as elsewhere the strongest opposition to revision came from conservative voters, whether Republicans or Democrats who tend to vote for conservative candidates in the primaries. Again, to quote Murray and Forsbach, "the best indicator of a county's strong opposition to revision was a past record of high support for conservatives in contested Democratic primaries."

The voting record by ethnic groupings as indicated by the actual votes in precincts selected by Murray and Forsbach as predominately White, Black, or Hispanic in ten urban counties is revealing. In every county where there were predominantly Black or Hispanic precincts, those precincts voted more decisively for revision than White precincts. The mean support percentage for the eight amendments by Black precincts ranged from 48% in Lubbock County to 83% in Nueces. Even in Harris County the affirmative vote in Black precincts was 54%. The range for Hispanic precincts was from 36% in Lubbock and 39% in Harris to 79% in Nueces. Hispanic precincts carried revision in four counties and defeated it in three. Black precincts carried it in six counties and very narrowly defeated it in three, by 51% in Bexar and Dallas and 52% in Lubbock.

As we have said, El Paso was the only urban county in which White precincts carried revision. The mean support among Whites in other counties ranged from a low of under 15% in Lubbock to a high, for upper and lower SES Whites respectively, of 38% and 34% in Bexar, 39% and 31% in Jefferson, and 38% for all White precincts in Travis.

The significance of these figures must be interpreted against the fact of extremely low turnout of eligible Black and Hispanic voters in most counties, from only 4% to 11% in all counties except Harris, where due presumably to the Houston mayoralty election, 20% of the Blacks and 21% of the Hispanics voted. The turnout for White precincts ranged generally in the twenties or low thirties, except in Harris, where 49% came out in the upper SES precincts and 35% in the lower.

LESSONS FROM OTHER STATES

No student of constitutional revision elections in other states would be likely to be much surprised by the "landslide" vote against the eight amendments. Since Missouri adopted a new constitution in 1945, a number of states have adopted

substantially revised constitutions. In almost every case, including Missouri, New Jersey, Michigan, Pennsylvania, Florida, Hawaii, Illinois, Montana, and Louisiana, vigorous well financed and well staffed state-wide campaigns for the new constitution were mounted by its proponents. Virginia won with a relatively low key campaign. In every case, the active proponents included top political leaders and the bulk of the delegates to the convention or, in the case of Florida, the Commission that prepared the constitution. In most cases the incumbent governor played active supporting roles. Governor Edwards was the spark plug in the campaign for the Louisiana constitution. The lack of firm support from the governor in Missouri was made up for by an exceptionally astute and well organized campaign conducted by a coalition of civic and political forces, a prototype for campaigns to come in New Jersey and other states. The opposition of Governor Swainson of Michigan was more than neutralized by the dynamic leadership given to the revision forces by a governor in the making, George Romney. A classic formula for success developed in Pennsylvania, where the current governor was strongly supportive, the two preceding governors, Scranton and Leader, provided bipartisan leadership for the campaign, and 161 of the 163 convention delegates became active members of the Committee for Five "Yes" Votes which the former governors headed.

None of these conditions existed in Texas in 1975. The Governor opposed the constitution, although three other top elected officials, the Lieutenant Governor, the Attorney General, and the Land Commissioner, as well as the Speaker of the House campaigned for it. Some of the legislators who submitted the constitution gave it visible and audible support, but many of the members displayed a notable lack of enthusiasm, while several of them led the opposition. Judge Calvert, Chairman of the Constitutional Revision Commission that had prepared the way for the Convention, made a valiant effort to create a campaign organization but was unable to obtain the money or muster the staff, the political support, or the army of volunteers that have been evident in successful revision campaigns elsewhere. This effort was no match for general opposition mounted by conservative establishment business interests and strong opposition to individual amendments by particular interest groups. So Texas joined the ranks of other states—Maryland, Rhode Island, New York, Arkansas, and New Mexico—where new constitutions have been defeated in recent years. It shared with all those states a failure to put together a vigorous campaign by a strong, well led and well financed coalition of proponent forces. Maryland failed to mount an effective campaign, partly because of overconfidence resulting from widespread "expert" acclaim for the integrity of the convention and the excellence of its work, and revision suffered a stunning defeat. New Mexico lost its new constitution by a narrow margin because of sheer inertia. Arkansas, by a wide margin, partly through ineptness and lack of drive on the part of proponents, also failed to adopt a new constitution.

The Texas convention shared image problems with recent conventions in New York and Rhode Island. Whether justifiably or not, all three conventions were seen by many voters, and many newspaper writers from whom the voters gained impressions, as exemplifying state house politics as usual. This was partly the result of the role of legislators in each convention. Although the Texas assembly was the only all-legislator convention, the other two had large and self-assertive minorities of legislators who carried disproportionate weight in the proceedings. In New York, a number of judges, dedicated to preserving the existing judicial system, accentuated the impression of a body of self-serving delegates. Other adverse political factors in each state marred the ideal image of a body of devoted founding fathers (and mothers). In Texas, the failure of the convention to agree on a document, after thirty-two submission resolutions were turned down under intense lobbying, produced a very sour feeling in the electorate which evidently was not fully neutralized by the salvage operation by which the next legislature repackaged the document in eight intricately interrelated amendments.

It is appropriate to compare the Texas experience with that of New Jersey in the forties. The 1944 New Jersey legislature, authorized by vote of the people to act in lieu of a convention, submitted a new constitution, which the voters decisively rejected. Yet, three years later, a very similar document, submitted by a specially elected convention, was approved by almost 78% of the votes cast. The difference derived partly from the contrasting images of the two bodies, and more importantly from the leadership of a new governor and extremely adroit political footwork that turned opponents of the legislative draft into supporters of the convention draft without making drastic changes in basic features of the document. The final outcome also represented the payoff of sustained campaigning for a new constitution that started in the gubernatorial campaign in 1940 when both candidates for governor called for a convention.[7]

Constitutional revision is serious and difficult business. It requires a sense of important purposes shared by people of diverse views and interests, astute and energetic civic and political leadership that commands the confidence of a fairly broad spectrum of the electorate, and a readiness to stick with the enterprise regardless of setbacks and the stretching out of time. Needless to say it costs considerable money and a great deal of manpower, most of it not compensated in the coin of the realm. Unless these conditions and assets exist or can be developed, an effort at constitutional revision may be educational and may set the stage for more gradual constitutional change as it has in Maryland, but it will not produce a new constitution approved by the people. No matter what the merits, people always appear who fear the consequences of change and communicate that fear to others. In the absence of strong reasons to believe that the benefits of changes proposed will exceed the risks, most voters will abstain or vote "no." Without a forceful positive campaign that reaches large numbers of people, the nay sayers will almost certainly have their way. This clearly is the way it was in Texas in 1975. The campaigns in New York, New Mexico, and Rhode Island have been described as "examples of virtual noncampaigns" and that in Arkansas as "almost a copy book case study of an ineffectual campaign effort," or in the words of its executive director, as "amateurish, uninspiring and ineffective." The Maryland campaign has

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[7] For reports on experience in other states, see Albert L. Sturm, *Thirty Years of State Constitution Making: 1938-1968*, New York: National Municipal League, 1970, and a series of books published by the League on constitutional revision efforts in a number of states. See also Elmer E. Cornwell, et al., *Constitutional Conventions: The Politics of Revision*, New York: National Municipal League, 1974, and by the same authors, *State Constitutional Conventions, op. cit.*

been characterized by the same authorities as a clear "instance of too little and too late."[8]

Of course, a vigorous campaign does not in itself guarantee victory at the polls for a new constitution or a candidate for public office. There must be a product that can have positive appeal to the voters. Mistakes in judgment or accidents of timing may overturn a promising prospect. However, after reviewing the record of successes and failures, and admitting that "there are no sure bets," three of the closest students of the revision process arrive at this conclusion about the importance of campaigning: "the first point that we want to stress is that a major campaign effort on the part of those supporting ratification is a must."[9]

As we have already pointed out, the data available to us do not indicate that the chronic feeling of uneasiness about the present Texas constitution cannot be translated into an effective revision effort. Whether or when that will be done depends upon the coming together of such prerequisites for success as have spelled victory for revisionists in such diverse states as New Jersey, Illinois, Montana, and Louisiana. The next Texans who undertake the effort should bear heavily in mind one clear lesson of their own experience and that of others: "there is no adequate substitute for unremitting effort in achieving a favorable vote."[10] That effort must, of course, start long before the final "campaign" on adoption. The groundwork must be laid for it in dedication and purpose tempered by a degree of realism and flexibility on the part of the sponsors of the enterprise. Much depends on the image and demeanor of the ultimate constitution-writing body, and the behavior of its members in presenting their handiwork to the people. The members of the Texas legislator-convention and the subsequent legislature were not necessarily seeking the task of writing a new constitution. That responsibility was thrust upon them as an added and in many cases an unwanted burden. It is not likely that Texas will again ask its legislatures to perform this dual role. Members of a specially elected convention would be more likely to take a less passive role than many members of the legislature in sending a new constitution to the voters. As the record shows, the more active most of the members of a convention are in explaining and advocating their proposals, the better the chances of adoption. When Texas does get a new constitution, it will be partly because many people who worked and voted against the 1975 revision have been persuaded that the new one is worth working for.

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[8] Cornwell et al., *Constitutional Conventions*, op. cit., pp. 74, 77 and 78.

[9] Ibid., p. 80 and p. 74.

[10] Sturm, op. cit., p. 102.



FEBRUARY, 1978

Comment

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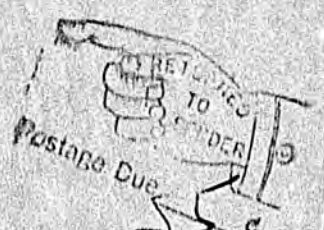

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NOV 10 1975

CORPUS CHRISTI CALLER

Will legislators feel backlash?

11-11-75

Caller Austin Bureau

AUSTIN — "No, no, a million times no. We'd rather die than say yes."

That was the word the Texas Legislature got from the voters, who slapped flat the new and modernized constitution Tuesday.

The Legislature which wrote the discredited document in two years of hard work may be wondering if the same resounding "no" will be echoing against them if and when they run again in 1976.

Speculation in 1974 that the voters would turn out the Legislature which spent half a year in session and failed to produce a new constitution was smothered when virtually all of the legislators of 1974 who ran again were re-elected. Only one senator and four House members were defeated.

Now, perhaps, that can be interpreted as a vote of approval of their failure as a Constitutional Convention, to submit a new document to the voters.

If so, then will the voter reaction in 1975 be just the opposite — a turn-'em-out attitude on the legislators who submitted a new constitution which was so distasteful that only a bare handful of counties gave a majority vote to even one of the eight propositions.

And, on the other hand, the state officials who supported it so warmly can be grateful that they do not have to face the voters in 1976 because of the switch to four-year terms.

Defeat of the new constitutional proposals will mean, of course, that there will be elections in 1976 for members of the two high courts, the Supreme Court and Court of Criminal Appeals. Had the judiciary article been adopted and the two high courts combined, it might have been six or eight years before there would have been an opening for the new high court. Defeat of that proposition means that Justices Martin Dies Jr., of the Beaumont Court of Civil Appeals and Charles W. Barrow can get on with their races for the Supreme Court they had announced early this year.

Of course, there is the problem of Associate Justice Ross Doughty of Uvalde, now serving in the place Associate Justice Ruel Walker held.

If Doughty should decide to run for a full six-year term, the two younger men would be up against a decision of taking on an incumbent, even though he is an appointed incumbent.

Of course, there are the 16 senators who were lucky on the draw and got four year terms in the 1975 drawing. But the other 15 senators and all 150 members of the House of Representatives will be facing the voters again in 1976 if they want to keep on making laws.

The list of those not planning to run again will be growing, since the prospect of an increase in the $129-a-week salary was dashed by the voters last Tuesday.

The reaction of most leaders for constitutional revision right after the election was there would be no point in trying again for several years at least. But some went back to the idea of submitting one article each two years to the voters, which some conservatives have felt all along would be the better way to approach revision.

Others will play with the idea of asking the Legislature to ask the voters to call a new Constitutional Convention made up of citizens who do not hold public office. The experience of Illinois, Maryland and other states has been that the voters will buy a citizens' constitution after turning down a legislators' constitution.

But decisions can't be made now. The voters will say what's to be done in 1976, by voting for candidates who want to do what the electorate wants to do about constitutional revision — if, indeed, they want anything at all done about constitutional revision.

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SAN ANTONIO LIGHT

NOV 10 1975

Let People Write Our New Constitution

11-10-75

WE'VE SAID it before; we'll say it again:

Texas needs a new constitution.

And, we believe we still have a chance to get one.

Texans this past week rejected a new constitution because they felt—rightly or wrongly—that the proposed document gave too much power to the state legislature.

We believe that if Texans are presented a new constitution which is written at the hands of the people, rather than through the legislature, they will approve it.

We hope the powers that be move immediately to set in motion the plans to call a constitutional convention of citizen delegates to draft a new state charter.

The Light's Don Politico yesterday summed it up this way:

"The feeling among many analysts is that those who voted 'no' last week weren't so much against a new constitution for Texas as they were against THAT new constitution. If Texans were served up a proposed constitution they feel is better than the 100-year-old, over-amended one we have now, they'd quite possibly go for it.

"It just makes sense to the Old Don that if the PEOPLE THEMSELVES write a new constitution, the PEOPLE THEMSELVES will vote for it."

We agree with the Old Don.

Texas is being governed under a constitution which was written for a different time, a different situation. The Texas of 1876 can be compared but in few ways to the Texas about to enter our nation's 200th birthday celebration.

Let's celebrate our nation's 200th year with a citizen-represented constitutional convention to bring Texas into the 20th century—even the 21st century—constitutionally.

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NOV 10 1975

SAN ANGELO STANDARD TIMES

Legislators Get The Word: 'No, No, A Million Times No'

11-10-75

By STU LONG

AUSTIN — "No, no, a million times no. We'd rather die than say yes."

That was the word the Texas Legislature got from the voters, who slapped flat the new and inodernized constitution Tuesday.

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Others will play with the idea of asking the Legislature to ask the voters to call a new Constitutional Convention made up of citizens who do not hold public office. The experience of Illinois, Maryland and other states has been that the voters will buy a citizens' constitution after turning down a legislators' constitution. It might perhaps be the old cartoon of "would you buy a used car from this man?," and the answer is that the public is more likely to buy from the public than from those immersed in the business of state government.

Indications are strong that 1975 was a year in which the voters didn't want to do anything about constitutional revision. At least, they didn't want to do anything like what had been proposed this time.

AUSTIN, TEXAS 78711

NOV 10 1975

DALLAS NEWS



Carolyn Barta

Revision election to be issue?

11-10-75

Political Writer of The News

If you think you've heard the last of the constitutional revision question for a while, think again. There are likely to be reverberations from last Tuesday's election throughout the local campaigns of 1976.

At least there are some who intend to make the constitutional election an issue in 1976—primarily in legislative races, but it could spill over into others.

Those who actively campaigned in favor of the document are going to be targeted for defeat by some of the opponents.

Stance to affect election

Dallas County Democratic Chairman Manuel DeBusk as much as said election night that the Democrats will be using the constitution as an issue in going after Republicans Bob Maloney and Frank Gaston.

Maloney, in the Park Cities 33-E district, and Gaston, in the East Dallas-White Rock 33-M district, both actively campaigned in favor of the document which failed miserably.

While DeBusk did not say he will try to displace some of his own Democrats, he feels John Bryant's pro-new constitution campaigning will affect his re-election campaign in the Pleasant Grove District 33-L.

Bryant had some particularly unkind words about DeBusk's own opposition to the proposed constitution, which may come to haunt him if a "DeBusk Democrat" gets into that primary.

It undoubtedly will become an issue in the county chairman's race if former State Rep. Jim Vecchio of Grand Prairie challenges DeBusk, as he is threatening.

That would provide a clear head-on confrontation between DeBusk, who quite early jumped out on his limb of opposition, and Vecchio, who became the co-chairman of Dallas County forces in favor of the proposed Constitution.

DeBusk further predicts that Jim Mattox will be called to answer for his support of six of the propositions in his campaign for the 5th Congressional District.

Some of the real leaders of the local "fors" will be spared, however. Rep. Dick Geiger of Oak Cliff won't be running again if he gets his judge's appointment, as expected. Rep. Ray Hutchison has already said he will not run again since he is now Republican state chairman, and Sen. Oscar Mauzy is the only one of Dallas County's four state senators whose term is not up next year.

There are some, however, who do not buy the "DeBusk doctrine" on the constitutional spillover.

Bryant, for one, is comfortable with his position on the issue, noting that he had a lot of company.

If voters turn out of office all legislators who favored the document, there would be a bigger turnover than resulted from Sharpstown.

AND DALLAS voters surely will remember that it was they who, in 1972, voted by greater than 60 per cent to authorize the Legislature to sit as a constitutional convention and write a new document to be submitted in a popular election.

Our best guess is that people are sick of hearing about the issue, will have forgotten about it by next year's election, or could care less.

Sen. Ron Clower puts it even stronger. "People forgot about constitutional revision when the TV was turned off Tuesday night . . . It was a $5 million bad dream."

An analysis of the returns by the staff of the organized opposition shows, incidentally, that little influence was exerted by those legislators actively speaking in favor of the document—at least in their own legislative districts.

The Oak Cliff district of Dick Geiger (co-chairman of the local forces in favor) voted 12 boxes against, one in favor and four split. Bryant's 16 precincts voted against. Hutchison's northeast Dallas district went 21 against and 3 split, while Gaston's district voted 19 boxes against, one for. Mattox's East Dallas district voted 12 against, 3 split.

Eddie Bernice Johnson may have obtained the greatest success in her Oak Cliff district by obtaining 7 split boxes (favoring some propositions and defeating others) and only eight totally against.

Mauzy affirms position

ODDS AND ENDS: Republican Tom Pauken is trying to build his base in the 16th Senatorial District by expanding Republican and financial establishment support. Russell Perry, prominent Republican and Dallas Chamber board chairman, was host for a luncheon to raise seed money recently from other key GOP financiers.

State Sen. Oscar Mauzy said at his 49th birthday celebration-fund-raiser last week he is not, repeat not, looking seriously at Dale Milford's 24th Congressional District.

County Commissioner Jim Jackson showed last week that fund-raisers don't have to be fun-less, with a western dance and dinner at Brook Hollow which drew 500 Republicans and Democrats alike. Among the dancers was former Democratic County Judge W.L. (Lew) Sterrett.

If Rep. Chris Semos should hang 'em up, for some reason after this, his 5th legislative term, former Democratic state committeeman Guy Callison, treasurer of the Carpenters Federal Credit Union here, wouldn't waste any time jumping in a 33-F race.

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NOV 9 1975

HOUSTON POST

Charter voting not attack on reform

11-9-75

By DARRELL HANCOCK
Post State Capital Bureau

AUSTIN — The defeat of the proposed new constitution by Texas voters is not a repudiation of the great "reform" movement of 1972. It is, instead, a return to the century-old conservative political tradition in the state.

Shocked by scandals, the voters three years ago purged the top ranks of Texas' government. A lot of worthwhile changes resulted. Lawmakers, particularly in the Texas House, made their procedures more democratic and wrote open meetings, open records and disclosure laws that let the sunshine into many previously dark corners.

In that same 1972 election voters overwhelmingly asked that the poorly constructed 1876 state constitution be overhauled.

Many observers saw those events as a fundamental shift in the state's political history — something akin to the great revolutions in the state's economy as it shifted from the farm to the oil field and finally to skyscrapers, refineries and other industrial plants.

It appeared that Texas had a new class of political leaders. Most of those elected in 1972 were, while not liberals, at least more progressive than previous Texas politicians.

It even seemed that the state had begun a tradition of public service by heirs of the old Texas families — similar to the practices of the Rockefellers, Kennedys and other eastern families — as Lt. Gov. Bill Hobby and House Speaker Price Daniel Jr., both sons of former governors, took up the gavels in the Senate and House.

If there had been a fundamental shift, it stood to reason that the constitution should also have been ratified as the new leaders gave the state a new direction. Hobby, Daniel, Atty. Gen. John Hill and new House Speaker Bill Clayton all endorsed the document.

But it was crushed better than two-to-one as voters elected to keep the severely limited form of government adopted by agrarians during the unsettled post-Reconstruction era.

The sparkplug for the anti-revision movement was the old Houston business establishment. A restricted government is good for the economic climate, its members said.

The Houston leaders are part of the business elite which has strongly influenced, if not controlled, Texas government in recent decades. Business figures have financed the campaigns, their lobbyists have helped write the laws and their corporations and banks have provided good jobs for friendly politicians who retired.

In killing the constitution, they had valuable allies in the real estate industry, county courthouse officials and local school officials who also preferred the status quo.

And while the campaign against the new constitution, financed largely by a handful of Houston businessmen, oversimplified many issues, ignored others, and resorted occasionally to outright falsehoods, it was not the million-dollar hard-sell campaign predicted by revision advocates. It skillfully raised doubts and fears, especially about such volatile subjects as an income tax, property taxes on cars and a runaway legislature.

In the end, rather than following the leadership of the new class of politicians, voters heeded the warnings of the old establishment that the state had prospered under the present system and that change was dangerous.

After a century, it was now clear, Texans still distrusted strong government. And their distrust was freshly nurtured by the general national conservative reaction to the calamities in New York City and to the liberalism of the 1960s.

From this new perspective, the events of 1972 take on a different meaning. When voters threw out the rascals, they were evidently calling for more honest and trustworthy public stewards, not basic changes in the structure of government.

Or perhaps they just changed their mind like Dolph Briscoe, the governor they elected that year and a man whose rural, business-oriented conservatism perfectly symbolizes the old order.

He praised the revision process and wished it well, but offered no leadership. In the end, confronted with a document that would have strengthened government, he voted with thousands of other Texans against the change.

The immediate prognosis is clear — the legislature will be allowed to write annual budgets, the governor will be given control of the sprawling bureaucracy, the property tax system will be overhauled and the court system will be streamlined only when the old order agrees to such changes. New politicians are in office, but old-time conservativism still governs the people.

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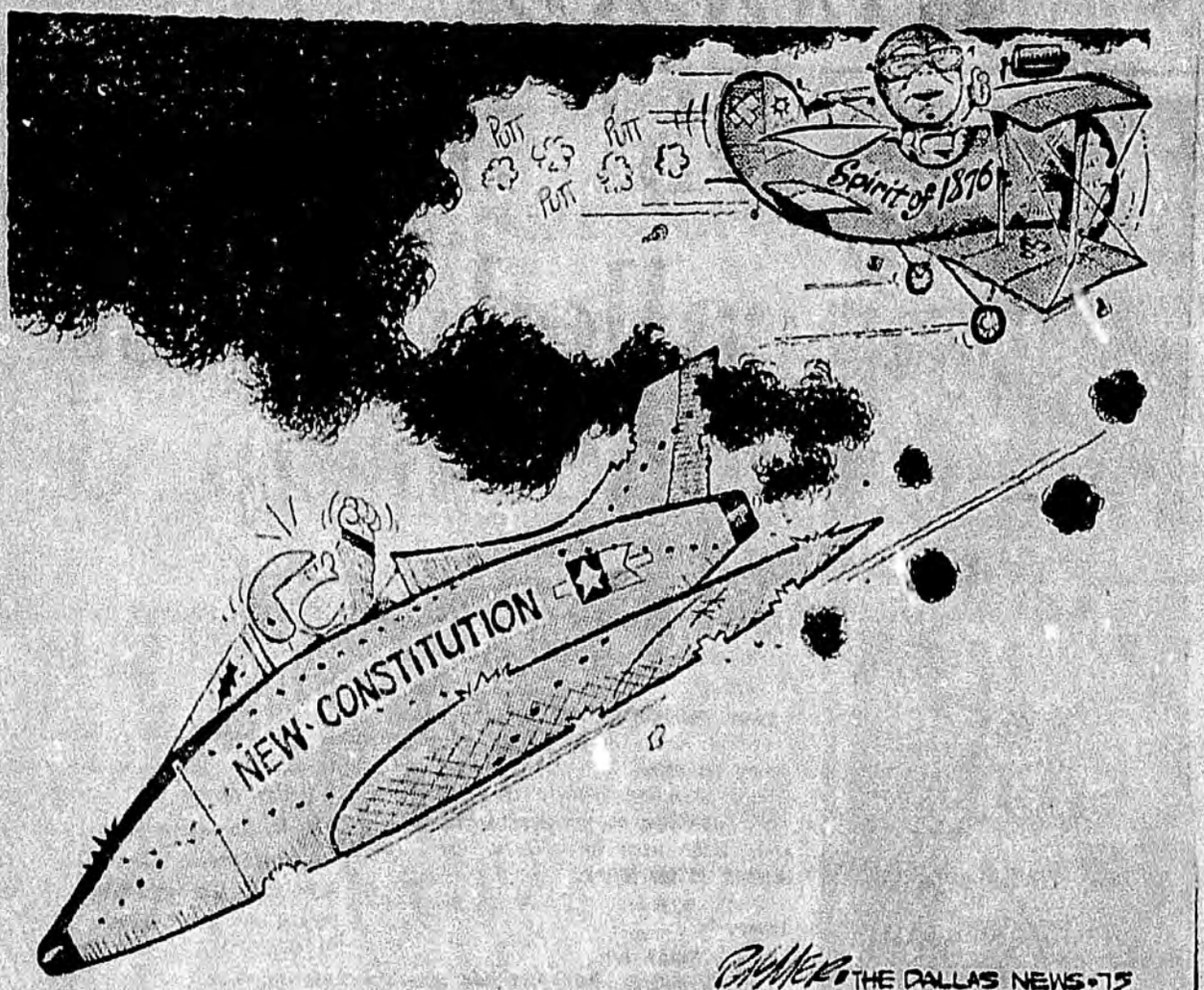
NOV 9 1975 DALLAS NEWS

'Curse You, Dolph Briscoe!'

By JIM PALMER
Dallas News Staff Cartoonist



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NOV 6 1975

DALLAS NEWS

New state charter defeated badly in large counties

11-6-75

By SAM KINCH JR.

AUSTIN—Semi-final statewide totals showed Wednesday that all eight of the constitutional revision amendments were defeated by margins of at least 2 to 1.

Further, the proposed new state charter was beaten badly in the very places where it had to win big margins in order to have any chance of adoption statewide—in the big city counties.

In addition, the small percentage of split-ticket voting—that is, voting for some propositions and against others—obviously indicated the Legislature's strategy of mix-and-match adoption was a failure.

With the exception of the finance article, the difference between the biggest and smallest vote for a proposition was only 2.5 per cent—and even with finance included, it was only 6 per cent.

LEGISLATORS had split the proposed new constitution into eight parts on the theory that voters might object to one or two, but would accept the others.

The proposed new constitution, in fact, was approved by voters in only three counties—El Paso, Webb and Duval. And in the biggest-vote counties, which in 1972 provided a 470,000-vote margin in favor of the revision process, the document was defeated by a margin of more than 250,000.

But even with the revision proposal buried alive by the voters, proponents of constitutional change plotted future activities—after a decent interval for analysis of what went wrong.

League of Women Voters President Betty Anderson of Lubbock vowed "renewed vigor" in the battle for revision, beginning with a pitch for a New Citizens' convention to do the drafting.

Mrs. Anderson said the league is taking that approach "in the hopes that the polarized politicization which contributed to the defeat of the (new constitution) can be avoided."

BUT LEGISLATIVE leaders were less anxious to begin moving right away, particularly since the lawmakers are not scheduled to meet again until January, 1977.

Lt. Gov. Bill Hobby flatly declared the revision movement dead in its tracks, but left an avenue open for future options. He had been a citizens' convention advocate after the 1974 Constitutional Convention failed, and was converted late to support the Legislature's submission of the document on Tuesday's ballot.

House Speaker Billy Clayton, however, indicated the Legislature should get on with the revision effort as soon as lawmakers can figure out exactly what went wrong and why. He predicted a "pulse of the people" eventually will show the way.

But Clayton absolutely rejected any attempt to compromise with leading legislative opponents of the proposed constitution—Sens. Peyton McKnight of Tyler and O. H. (Ike) Harris of Dallas, for example. "How could you —why would you—(compromise) when they wouldn't participate in the writing process this time?" Clayton asked.

OTHER LEGISLATORS indicated, however, they will force legislative opponents of the document to be good to their word—particularly McKnight's concession that some "deadwood" can be eliminated from the 100-year-old Texas Constitution.

Indeed, Rep. Ray Hutchison of Dallas, who is not seeking another House term next year, said the "logical and feasible" approach is to put a clean-up version of the current constitution —without any substantive changes—on the ballot as soon as possible.

Then, over a decade or more, the Legislature can propose amendments to make the changes that will be forced on the state by the federal courts, he said.

Rep. Lyndon Olson of Waco, another leader in the revision effort, agreed that a "no gimmicks" rewrite of the constitution is needed in order to satisfy the voters. He said voters then might become convinced that article-by-article change is needed to "solve our problems before the federal courts jump in and deal with them."

LAMB COUNTY, Clayton's home, rejected the revision proposal by an 8 to 1 margin. Hutchison's Dallas County rejection rate was 2 to 1, while Olson's McLennan County rejection margin was 6 to 1.

McKnight, whose Smith County constituents voted 8 to 1 against the document, was not talking about a citizens' convention to rewrite the constitution, as some proponents thought he implied throughout the campaign.

Instead, McKnight said any changes that are needed "should be made by the orderly process of amendment rather than through wholesale revision."

Both McKnight and his top antirevision supporter, Gov. Dolph Briscoe, didn't gloat about their triumph, however. Briscoe, by long distance, called on both sides to continue working on his 1974 campaign theme of "Cooperation for Progress."

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NOV 6 1975 AUSTIN AMERICAN STATESMAN

'Not enough of the body left for an autopsy'

LP-6-25

By JON FORD
Political Editor

Only one group — the League of Women Voters — had anything optimistic to say about the future of Texas constitutional revision Wednesday.

Margin of defeat for a proposed new constitution — nearly 3 to 1 — in Tuesday's statewide election humbled most proponents and sent them off to lick their wounds in silence. Some stated frankly they hope voters will soon forget their roles in the campaign.

Others read stern warnings for legislators (who submitted the revision document with its broadened powers for lawmakers and government in general) from the election returns.

"There was some mighty strong feeling expressed to us by the voters," said a Central Texas legislator. "I'm going to keep a low profile for a while."

Asked for his analysis of the crushing defeat, Lt. Gov. Bill Hobby reportedly answered: "There is not enough of the body left for an autopsy."

State Rep. Ronald Earle of Austin Tuesday night indicated an interest in starting legislative action toward a new citizens constitutional convention in 1977. But Earle appeared to have cooled a little on the subject Wednesday.

The League of Women Voters of Texas issued a statement that its members, long-time proponents of revision, are "undaunted by defeat (and) will work with renewed vigor for a revised constitution for Texas."

State League President Betty Anderson said the group remains convinced the rejected document was better than the present constitution.

"We will now seek the establishment of a citizens convention to draft a new document in the hopes that the polarized politicization which contributed to the defeat of the constitution can be avoided. And we will continue our efforts to educate citizens toward an understanding of the needs for revising our present constitution," said Anderson.

"There will be no overall revision in the near future," said House Speaker Bill Clayton. "It would be futile for the legislature to try to deal with (another total revision) in view of the voters' expression."

Only a handful of Texas' 254 counties supported the proposed new constitution.

Duval and Webb in South Texas apparently were the only counties voting for all eight propositions on the Tuesday ballot. El Paso County voters endorsed seven, but rejected Proposition 1 (to rewrite the legislative-executive-separation of powers articles).

Black precincts provided the only bloc support for revision in Houston, where the propositions were rejected about 70-30. Three articles were approved and five rejected by Kenedy County voters.

Final unofficial election returns from all 254 counties (with only about 800 votes from five boxes in four counties uncounted) to Texas Election Bureau showed these results of the Tuesday voting:

Proposition 1 — 300,466 for to 863,090 against; judiciary article — 327,713 for to 830,342 against; voting and elections article — 322,878 for to 836,179 against; education article — 319,425 for to 840,442 against; finance article — 251,706 for to 885,346 against; local government — 305,891 for to 851,963 against; general provisions — 305,980 for to 853,252 against, and mode of amending the constitution — 329,336 for to 837,252 against.

The total voter turnout was about 1,164,000 — a little more than 23 per cent of an estimated 4.9 million eligible.

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NOV 6 1975

FT. WORTH STAR-TELEGRAM

Why proposed constitution got a no-no

11-6-75

No.

Not only no but heck no.

That was the word from Texans — or, at least, from the less than one in four qualified-to-vote Texans who bothered to go to the polls — on the proposed, new state constitution, a proposal which cost $5 million and took five years to formulate.

By as much as 30 to 1 in some places and as little as 2 to 1 in other places, Texans pointedly made their position clear.

Why?

A complete analysis will take a while.

But some points can be made now.

Point 1 — The proposal should not have been written by the legislature. A citizens committee should have done it. Many, including this newspaper, felt the proposal would have made the legislature too powerful.

Point 2 — Many did not understand the proposal. Many Texans no doubt do not understand the 63,000-word present constitution either. But they know what kind of government they have under the present document and they were not sure of what they would get under the proposed document. Fearful of what the proposal might permit, they said no.

Point 3 — There appears to be a growing mood that there already is too much government and too much government spending. Gov. Dolph Briscoe and State Sen. Peyton McKnight of Tyler, two leading opponents of the proposal, expressed this opinion during the campaign. They said voters would reject the proposal for these reasons and the outcome backs up their contention.

Point 4 — The opposition organized sooner and may have been better funded than the proponents. The opposition hammered away at the contention more government would result and governmental costs would rise and the proponents, obviously, were not able to overcome the opposition's effective strategy.

Point 5 — Governor Briscoe, who emerged as the man in the white hat on the issue, greatly influenced many Texans to oppose it. The governor, who had little input into the proposed document, came out strongly against it only weeks before Tuesday's election. Proponents, to stand any real chance of winning, needed the governor's considerable influence plus that part of the state Democratic party machinery which he can deliver.

Point 6 — The effort to get a new constitution was poorly handled from the start. As stated, it was badly conceived as a project for the legislature when it should have been handled by a citizens committee. Then, the campaign to "sell" the proposal to Texans was slow to jell — if indeed, it ever fully did.

Point 7 — Many Texans obviously voted a straight ticket — either for all eight propositions or against all eight propositions.

Point 8 — Voter apathy had its effect. Some Texans didn't care. In Tarrant County, only about one in five qualified voters bothered to go to the polls. Around the state, the figure was about one in four.

Other points can be made, of course, but the point right now is that the nays have it in Texas. They have etched their no in convincing fashion. They have said they prefer the constitution which has served Texas for nearly a century.

And, judging from the overwhelming way they said it, it appears it may be a spell before a serious effort is made to get Texans to say yes to the idea of writing a new constitution.

HAWAII STRATEGY?

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NOV 6 1975

HOUSTON POST

New charter demands still kicking

11-30-75

By FELTON WEST
Chief, Post State Capital Bureau

AUSTIN — Demands for a "citizens'" constitutional convention to revise the 1876 Constitution continued Wednesday after the voters' overwhelming rejection of a proposed constitution written by the all-legislator 1974 convention and submitted to the people by the 64th Legislature.

State League of Women Voters President Betty Anderson said her organization, a longtime agitator for constitutional revision, would work with renewed vigor for that goal.

Anderson said the league was disappointed by defeat of the proposed charter Tuesday, but "we will now seek the establishment of a citizens' convention to draft a new document, in the hopes that the polarized politicization which contributed to the defeat of the constitution can be avoided." She added the league will continue efforts to "educate citizens toward an understanding of the needs for revising our present constitution."

Meanwhile, State Rep. Ron Waters, D-Houston, called for a special session of the legislature to pass legislation necessary to call a "citizens' convention." He urged Lt. Gov. Bill Hobby, House Speaker Bill Clayton and Atty. Gen. John Hill to join him in "pressuring" Gov. Dolph Briscoe to call a special session.

Waters viewed Tuesday's defeat of the proposed constitution was not a rejection of revision but "rejection of the politicians in the legislature" who wrote it.

Unless convention legislation is passed now, he said, it would be 1978 before a new revision effort could begin.

His proposal was likely to receive a cool reception from Gov. Briscoe, Hobby and Clayton.

After the proposed charter was defeated, Gov. Briscoe, who had opposed all eight parts of it, said the existing constitution had served Texas well and would continue to serve well for years to come.

Lt. Gov. Hobby said he considered constitution revision "dead for the foreseeable future," while Clayton said he thought it had been set back for "quite a few years."

Sen. Peyton McKnight, D-Tyler, who led the statewide group that fought to retain the present charter, said future revision should be attempted by the normal amendment process rather than wholesale rewriting of the document.

Final unofficial returns from the Texas Election Bureau showed Wednesday that each of the eight propositions that were to make up the new constitution was beaten by a landslide.

Statewide they lost by margins ranging from 2.5 to 1 to almost 3 to 1.

In Harris County, where proponents of the document had hoped to roll up the bulk of their support to offset rural-area opposition, the propositions were likewise all defeated. The margins ranged from 2.2 to 1 to 2.7 to 1 against them.

Only in two of the state's 254 counties — Duval and Webb, both in South Texas, did all eight propositions win approval. In El Paso County the controversial Proposition 1, embracing changes in the executive and legislative branches of the state government, was defeated, but the other seven propositions were approved.

Voters in sparsely populated Kenedy County, in South Texas, approved the first three propositions and rejected the last five.

Otherwise the proposed charter lost overwhelmingly everywhere. In Andrews County in West Texas, it was rejected about 30-1.

Voter turnout — unofficially 1,163,556 — was less than most advance predictions. This showed Texans of 1976 much less interested in constitutional revision than Texans were in 1876, when the present constitution (since amended 220 times) was adopted.

About 15 per cent of the state's population voted then, but less than 10 per cent of the population — now 10 times as big — voted Tuesday, even though the percentage of eligible voters has more than doubled because of enfranchisement of women and 18 to 21-year-olds since 1876.

Harris County's voter turnout, about 30 per cent of the registered voters, amounted to only about 22 per cent of the statewide turnout, despite advance predictions that the Houston city and school board elections might pull out 40 per cent of the state vote.

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BEAUMONT ENTERPRISE JOURNAL

NOV 5 1975

Area nixes change

11-5-75

By SHARON ENGLADE
Staff Writer

Jefferson, Orange and Chambers county voters followed the statewide trend Tuesday, defeating the proposed rewrite of the century-old state constitution.

Almost 20 per cent of Jefferson County's almost 105,000 registered voters turned up at the polls, with the vote running heaviest against the eight amendments in south county.

The finance revision amendment, proposition 5, was defeated by the largest margin, 13,043-6,219.

The voters in Jefferson County turned the entire revision effort down by almost a 3-1 margin.

Members of the Southeast Texas legislative delegation who, as a body, endorsed the entire document laid the blame for defeat at a poor job of educating the public.

"This is another example of the public is not supporting something it does not fully understand," said 172nd District Judge Thomas A. Thomas.

Former House Speaker Price Daniel Jr., president of the constitutional convention, called the negative vote a "major setback," adding, that opponents were able to raise enough questions, fears and doubts "that it seemed the safest thing to do" to vote against it.

"I think the people were completely confused," said Orange State Rep. Wayne Peveto. On one hand you have the governor and the comptroller urging its defeat and then other top state officials calling for its adoption, he said.

He and Beaumont State Reps. Pike Powers and Chester Slay predicted that full-scale revision efforts are dead for many years to come.

"This is a real shame," Powers said, "not so much for the people who voted today, but for their children and grandchildren."

Slay said he feels it will be 25 or 30 years before people once again clamor for a new constitution. Peveto suggested the first area which will be hit with one-shot revision would be the judiciary which is "at crisis proportions now."

Jefferson County Criminal District Judge Larry Gist, who actively sought the defeat of proposition 2, the judicial revision article, agreed, saying reform in this area is vitally needed..."but this (constitutional amendment proposal) was not the method or technique to choose."

He added he hopes those people who were so anxious to see the proposition pass, "and I know they were genuinely interested in improving the quality of justice, will settle down and get together and find something more acceptable."

Port Arthur Rep. Carl Parker said he thinks those proponents of a revised constitution "did not have the machinery to make the people understand the difference between the proposed and present constitution. We're part-time representatives and didn't have the wherewithal to inform the public."

In Jefferson County, the proposed document came closest to victory, turning it down by a 5-4 margin. The vote in the mid-county and Port Arthur boxes was a more than 2-1 against the document.

The county vote on the eight amendments was:

— Proposition 1, calling for the revision of the separation of powers, executive and legislative articles, 12,267-6,115.

— Proposition 2, the judiciary, 11,803-6,556.

—Proposition 3, changing the voting and election provisions of the present constitution, 11,704-6,681.

— Proposition 4, revising the education provisions, 11,822-6,664.

— Proposition 5, affecting the finance provisions of the present constitution, 13,043-6,219.

— Proposition 6, the local government issue, 12,620-6,608.

— Proposition 7, the general, or "catch-all" provision revision, 12,551-6,712.

— Proposition 8, revision of the method of amending the constitution, 12,459-6,829.

Only the Bill of Rights contained in the 1876 document was retained in the proposed new constitution.

Orange County

Voters in Orange County overwhelmingly rejected all eight propositions by a 3-2 margin as 16.9 per cent of eligible voters turned out.

Only one of the 28 polling places showed any real support for the new constitution, Box 10 at the Orange Community Center. A total of 415 votes were cast with all eight propositions winning by modest margins.

Box 4 in the predominantly black area of Navy Park, where 54 votes were cast, the last seven proposition carried by two to eight votes and the first lost by a single ballot.

Out of a total of 32,103 registered voters, only 5,443 went to the polls.

Chambers County

Chambers County voters defeated all propositions by margins ranging from 82 to 86 per cent.

Proposition 4 got the most "for" votes, 267 to 1,284 against, and proposition 5 suffered the worst defeat, 203 to 1,315.

The turnout was larger than the absentee vote had indicated, with 1,576, or 27.3 per cent of the county's registered vote of 5,760, going to the polls.

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NOV 5 1975

SAN ANGELO STANDARD TIMES

New Constitution Defeated

11-5-75

By The Associated Press

From the big cities to the small towns, Texas voters overwhelmingly rejected a new state constitution in a special election Tuesday.

The metropolitan areas of Houston, Dallas, San Antonio, and Austin, beat down the eight proposals by margins of 2-to-1 to 3-to-1.

The smaller counties, from the piney woods of East Texas to the plains of West Texas, were even more lopsided.

Polk County in deep East Texas rejected the constitutional changes by an 11-to-1 margin.

Sterling County in far West Texas voted against 9-to-1.

Less than two hours after polls closed, Lt. Gov. Bill Hobby, one of the pilots of constitutional revision, conceded the the cause was lost.

Voters spoke loud and clear from the beginning of vote tabulations.

"The voters of Texas have rejected five years of effort directed toward constitutional revision by as decisive a margin as anyone could imagine. I want to thank all the civic groups and concerned citizens who have devoted countless months of efforts in this attempt to modernize our state government. It was a good fight but we lost," Hobby told The Associated Press.

When only less than 10 per cent of the expected 1 million votes were counted it seemed obvious voters were on their way to beating down the constitutional changes.

Eighty-five per cent of the rural voters were against the constitution at that point.

It fared a little better in urban areas where it was losing by a two to one margin.

Voting against the proposed revision was heavy in conservative East Texas, perhaps due in part to criticism that the new constitution favored big timber companies in that heavily forested part of the state.

Articles in the constitution would have allowed farm, ranch and timberland in production to be considered separately for property taxation from other real estate.

Poll watchers expected voters in Harris County (Houston) to swing the big stick because of a mayorial election which would draw out more voters than could be expected ordinarily. Voting was running four to one against revision with 66,500 of Houston's expected 350,000 votes counted. Worst loser on the ballot in Houston was Proposition 5 dealing with finances which was failing 49,922 against and 15,631 for. The amendments proposal was doing best of the eight although losing 44,971 to 17,723.

Webb and Duval counties were the only two found late in the evening which had approved of the constitution. The two South Texas counties, however, also voted for George McGovern in the 1972 presidential election.

Nueces County, the first big county where vote counts were completed, defeated the measure by a two to one margin.

In Lubbock County, it went down eight to one. In Smith County (Tyler), home of state Sen. Peyton McKnight, a leading opponent of constitutional change, the revision lost by an eight to one edge.

In Austin, voter opposition ran 55 to 60 per cent against all eight propositions.

Waco area voters turned down the proposals with heavy negative votes. The separate powers article lost 14,080 to 2,492.

McKnight said he was gratified by the massive disapproval and hoped the legislature realized change in the constitution must come through amendment, not wholesale revision.

"If there is any lesson we should have learned from this election it is that the people have a right to impose restraints upon their government and they still want to do so," McKnight said.

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A New Constitution for Texas
Text. Explanation. Commentary



Texas Constitutional Revision Commission

A New Constitution For Texas

Text, Explanation, Commentary

Report of the

Texas Constitutional Revision Commission

November, 1973

Austin, Texas

Texas Constitutional Revision Commission

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James F. Ray, Executive Director

November 30, 1973

To the Honorable William P. Hobby
Lieutenant Governor

To the Honorable Price Daniel, Jr.
Speaker of the House of Representatives

To the Members of the 63rd Legislature

The Constitutional Revision Commission is pleased to submit this report of recommendations for change in the State constitution as directed by Article XVII, Section 2 of the Constitution of 1876 and Senate Concurrent Resolution Number 1 enacted by the 63rd Texas Legislature.

This report is the second of a series which together will portray the results of the intensive constitutional research which has occurred during the months of the Commission's life. In an earlier report submitted to the Legislature on November 1, 1973, the Commission, as required by Senate Concurrent Resolution Number 1, presented recommendations for the text of a new constitution. This second report provides a more detailed description of the Commission's work and a commentary on each section of that new document.

The new constitution submitted by this Commission represents the first thorough attempt to draft a new constitution for Texas since the present one was adopted in 1876. Perhaps the most noticeable difference between the Commission's recommended draft and the present constitution is the difference in length. This is due to the fact that the 1876 Constitution contains a number of duplicative or overlapping provisions as well as a considerable amount of obsolete material. There was a conscious effort on the part of the Commission to keep unnecessary details out of the new document. In general, the new constitution is intended as a source of fundamental guidance for the future. It will allow greater opportunity for the modification of State law without

constitutional amendments as unpredictable needs and circumstances arise in the years ahead.

Any change in the constitution of the State is a matter for serious and thoughtful consideration because it is a change in the fundamental law which governs the relationship between the people of Texas and their government. The attention given to the recommendations of this Commission should be consistent with the thorough change which this report suggests for the fundamental law of the State.

Similarly, the importance of the Commission's task is reflected in the consideration and debate of many issues for which the unanimous agreement of each member could not be reached. The Commission agreed early in its deliberations that there should be an opportunity for members to prepare and submit statements in support of views which did not prevail and could not therefore be reflected in the Commission recommendations. Statements of minority viewpoints will be included in a separate document to be published at a later date.

Although the viewpoints of individual Commission members vary on a number of the recommendations, all agree that the new constitution represents a very significant improvement over the existing document. The Commission voted unanimously to submit the new constitution contained in this report for the consideration of the members of the constitutional convention.

Respectfully yours,

Beryl Bradley Milburn

Mrs. Malcolm Milburn
Vice Chairman

Robert W. Calvert

Robert W. Calvert
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RWC/BBM:cwj

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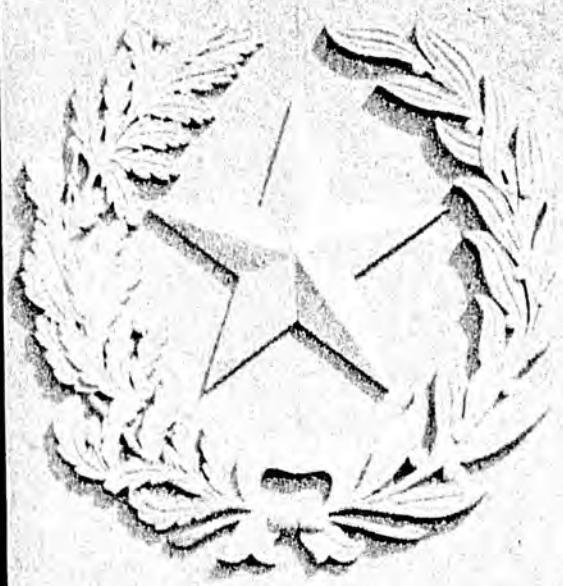
Chapter One

Text of the New Constitution



ALL POLITICAL POWER IS INHERENT IN THE PEOPLE AND ALL FREE GOVERNMENTS ARE FOUNDED ON THEIR AUTHORITY AND INSTITUTED FOR THEIR BENEFIT;...

FIRST CONSTITUTION, STATE OF TEXAS, 1845

Preamble

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

Article I
Bill of Rights

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 1. Freedom and Sovereignty of State

Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Section 2. Inherent Political Power; Republican Form of Government

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Section 3. Equal Rights

All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Section 3a. Equality under the Law

Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative. (Added Nov. 7, 1972.)

Section 4. Religious Tests

No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Section 5. Witnesses Not Disqualified by Religious Beliefs; Oaths and Affirmations

No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Section 6. Freedom of Worship

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. Appropriations for Sectarian Purposes

No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Section 8. Freedom of Speech and Press; Libel

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 9. Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Section 10. Rights of Accused in Criminal Prosecutions

In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Added Nov. 5, 1918.)

Section 11. Bail

All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Section 11a. Multiple Convictions; Denial of Bail

Any person accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor may, after a hearing, and upon evidence substantially showing the guilt of the accused, be denied bail pending trial, by any judge of a court of record or magistrate in this State; provided, however, that if the accused is not accorded a trial upon the accusation within sixty (60) days from the time of his incarceration upon such charge, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder. (Added Nov. 6, 1956.)

Section 12. Habeas Corpus

The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Section 13. Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Section 14. Double Jeopardy

No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Section 15. Right of Trial by Jury

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury. (As amended Aug. 24, 1935.)

Section 15-a. Commitment of Persons of Unsound Mind

No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury. (Added Nov. 6, 1956.)

Section 16. Bills of Attainder; Ex Post Facto or Retroactive Laws; Impairing Obligation of Contracts

No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Section 17. Taking, Damaging or Destroying Property for Public Use; Special Privileges and Immunities; Control of Privileges and Franchises

No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Section 18. Imprisonment for Debt

No person shall ever be imprisoned for debt.

Section 19. Deprivation of Life, Liberty, Etc.; Due Course of Law

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Section 20. Outlawry or Transportation for Offense

No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.

Section 21. Corruption of Blood; Forfeiture; Suicides

No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Section 22. Treason

Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Section 23. Right to Keep and Bear Arms

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Section 24. Military Subordinate to Civil Authority

The military shall at all times be subordinate to the civil authority.

Section 25. Quartering Soldiers in Houses

No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Section 26. Perpetuities and Monopolies; Primogeniture or Entailments

Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Section 27. Right of Assembly; Petition for Redress of Grievances

The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Section 28. Suspension of Laws

No power of suspending laws in this State shall be exercised except by the Legislature.

Section 29. Provisions of Bill of Rights Excepted from Powers of Government; to Forever Remain Inviolate

To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Article II
Separation of Powers

Section 1. Separation of Powers

The government of the State of Texas shall be divided into three branches: legislative, executive, and judicial. Except as otherwise authorized by this Constitution, each branch shall exercise the powers appropriate thereto.

Article III
The Legislature

Section 1. Legislative Power

The legislative power of the State of Texas shall be vested in two houses, a Senate and a House of Representatives, which together shall be styled "The Legislature of the State of Texas."

Section 2. Composition

As shall be provided by law, the Senate shall consist of not fewer than thirty-one nor more than fifty members, and the House of Representatives shall consist of not fewer than ninety-three nor more than one hundred fifty-five members. The number of members of the House of Representatives shall be a whole multiple of the number of members of the Senate.

Section 3. Qualification of Members

(a) A person shall be eligible for election to the Senate if a citizen of the United States, a qualified voter, twenty-five years of age or older, and a resident of this State for five years and of the senatorial district for one year immediately preceding the election.

(b) A person shall be eligible for election to the House of Representatives if a citizen of the United States, a qualified voter, twenty-one years of age or older, and a resident of this State for two years and of the representative district for one year immediately preceding the election.

(c) In the general election following a redistricting, a person shall be eligible to be elected to the Legislature from any new district that contains a part of the district in which that person was eligible for election on the effective date of the redistricting, but only if within thirty days after the date of filing as a candidate in the primary election that person becomes a resident of the new district.

(d) A member of the Legislature may not hold any other office or position of profit or trust under this State, the United States, or any foreign government, except as a member of the National Guard, National Guard Reserve, or any of the armed forces reserves of the United States, as a retired member of the armed forces of the United States, or as a notary public.

Section 4. Election and Terms of Members

(a) Senators and Representatives shall be elected at a general election.

(b) Each Senator shall serve a term of four years beginning on the date provided in this Constitution or by law for convening the Legislature in regular session. The qualified voters shall elect a new Senate after each statewide senatorial redistricting, and the Senators shall decide by lot which shall serve four-year terms and which shall serve two-year terms, so that one-half shall be chosen every two years thereafter.

(c) Each Representative shall serve a term of two years beginning on the date provided in this Constitution or by law for convening the Legislature in regular session.

(d) Vacancies in the Senate and House of Representatives shall be filled by special election as provided by law.

Section 5. Redistricting

(a) Before August 15 following publication of each federal decennial census, the Legislature shall by law divide the State into single-member senatorial districts and each senatorial district into single-member representative districts.

(b) All senatorial districts shall contain as nearly as practicable an equal number of inhabitants. All representative districts within a senatorial district shall contain as nearly as practicable an equal number of inhabitants. All districts shall be composed of compact and contiguous territory.

(c) A county entitled to more than one Senator or Representative shall be divided into the required number of districts. Population in excess of that required for complete districts within the county, or the population of a county insufficient to comprise a district, shall be joined with population of another county or counties to form one district.

(d) Senatorial and representative districts shall not divide counties unless necessary to prevent a significant population variance between districts.

(e) A Legislative Redistricting Board shall be constituted within twenty days after August 15. The board shall consist of the Governor, Lieutenant Governor, Speaker of the House of Representatives, Attorney General, and five members appointed by the Governor. The appointed members shall be from different geographical regions of the State, and due regard shall be given to the division between urban and rural areas. No appointed member shall be a public officeholder, and not more than three shall be from the same political party. The Legislature shall provide funds for the board's clerical, technical, and other expenses.

(f) If the Legislature fails to redistrict by August 15 or if its redistricting plan is declared invalid, the State shall be redistricted by the board. In the event of failure to redistrict, the board shall convene as soon as practicable after it is constituted. In the event the legislative redistricting plan is declared invalid, the board shall convene as soon thereafter as is practicable. The board shall make and file its redistricting plan with the Secretary of State within twenty-five days after its first meeting.

(g) If the board fails to complete its redistricting in accordance with the requirements of this Section, the Supreme Court of Texas shall have original jurisdiction to compel the board to perform its duties and may provide such remedies and penalties as may be appropriate.

(h) The board shall be dissolved immediately following the first general election held in accordance with a valid redistricting plan.

Section 6. Compensation

Each member of the Legislature shall receive compensation and allowances as provided by law, not to exceed the amount recommended by the salary commission. Any increase in compensation shall become effective only at the first regular session following the next general election.

Section 7. Sessions

(a) The Legislature shall meet at least once every two years and at such times and for such duration as provided by law.

(b) All legislative proceedings shall be open to the public.

(c) Neither house may adjourn or recess for more than three days without the consent of the other.

(d) The Legislature shall meet at the seat of government unless otherwise provided by law.

Section 8. Organization and Procedure

(a) Each house shall be the judge of the qualifications and election of its own members, but contested elections shall be determined as provided by law.

(b) Each house shall adopt its rules of procedure. The Legislature by majority vote of the membership of each house shall adopt joint rules. Rules, once adopted, shall remain in effect until amended, repealed, or otherwise changed by the same or succeeding Legislatures.

(c) At the beginning and end of each session the Senate shall elect from its members a president pro tempore who shall perform the duties of president when the Lieutenant Governor is absent or disabled, or when the office is vacant.

(d) When first assembled the House of Representatives shall organize and elect a speaker from its members.

(e) All elections held by either house of the Legislature shall be by individual voice votes to be recorded in the journal.

(f) Two-thirds of the membership of each house shall constitute a quorum for transacting business, but fewer members may recess or adjourn from day to day and compel the attendance of absent members.

(g) Each house shall prepare and publish a journal of its proceedings. At the request of any three members present, the votes on any question shall be recorded in the journal.

(h) Each house may punish a member for disorderly conduct or for cause deemed sufficient by that house and may expel a member by two-thirds vote of its membership, but not a second time for the same offense.

Section 9. Legislative Immunity

No member shall be questioned in any other place for speech or debate during a legislative proceeding.

Section 10. Conflict of Interest

(a) No member may vote for the appointment of another member to any office filled by the Legislature.

(b) During the term for which elected a member shall be ineligible for (1) any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased, during such term, or (2) any office or position the appointment to which may be made, in whole or in part, by either house of the Legislature. The ineligibility shall terminate on the last day in December of the last full calendar year of the term for which the member was elected.

(c) A member privately interested in a bill, resolution, or other matter before the Legislature shall disclose the interest and shall not vote on the bill, resolution, or other matter.

(d) No member may have a pecuniary interest in any contract with the State.

(e) No member shall for compensation other than the emoluments of office appear before or have dealings with an executive or administrative unit of State government; and no member shall directly or indirectly share in any fee paid to any other person for such appearance or dealings.

(f) A continuance shall not be granted in any judicial proceeding solely because a party or attorney is a member of the Legislature.

Section 11. Bills

(a) The Legislature shall enact no law except by bill.

(b) A bill may originate in either house. After a bill passes either house, the other may amend or reject it, but neither house may so amend a bill as to change its original purpose.

(c) Every bill shall be limited to a single subject, which shall be expressed in its title. A general appropriation bill shall be limited to the subject of appropriations. A statutory revision bill shall be limited to that subject.

(d) A bill, amendatory in form, shall set out the complete section, as amended, of the statute it amends.

(e) Before a house considers a bill it must have been referred to a committee of that house and reported at least five days before adjournment of the session.

(f) Before a bill becomes law it must be read on three separate days in each house. Either house by four-fifths record vote of the members present and voting may suspend this requirement.

(g) If a bill or resolution is defeated by a vote of either house, no bill or resolution containing the same substance shall be passed during the same session.

(h) The presiding officer of each house shall, in the presence of that house, certify the final passage of each bill or resolution requiring the concurrence of both houses. The fact of certification shall be recorded in the journal.

(i) No law except the general appropriation act and redistricting acts shall take effect until ninety days after it becomes a law or ninety days after adjournment of the session at which it was enacted, whichever is earlier. The Legislature, by three-fourths record vote of the membership of each house, may authorize an earlier effective date.

Section 12. Local or Special Legislation

The Legislature may not enact a local or special law if a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Section 13. Impeachment

(a) The House of Representatives shall have the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the record vote of two-thirds of its membership, to impeach executive officers and justices of the Supreme Court.

(b) Any officer against whom articles of impeachment have been preferred shall be suspended from the exercise of the duties of the office during the pendency of the impeachment. The Governor may make a temporary appointment to fill the vacancy occasioned by the suspension of the officer until the decision on the impeachment.

(c) Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall affirm or take an oath to try impartially the party impeached. If the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. A person may be convicted of impeachment charges only by record vote of two-thirds of the membership of the Senate.

(d) A judgment of conviction by the Senate shall not extend beyond removal from office and disqualification to hold any office of honor, trust, or profit of this State. An impeached person, whether convicted or acquitted, shall be amenable to prosecution, trial, judgment, and punishment according to law.

Section 14. Advice and Consent of the Senate

Two-thirds of the members present and voting shall constitute consent to any appointment which this Constitution requires to be with the advice and consent of the Senate. The Legislature may provide by law for interim appointments made when the Senate is not in session.

Article IV
The Executive

Section 1. Officers Constituting the Executive Department

The Governor shall be the Chief Executive Officer of the State. The Executive Department shall consist of a Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, Commissioner of the General Land Office, and such other officers as may be provided by law.

Section 2. Selection, Terms, and Residence of Officers of Executive Department

The Governor, Lieutenant Governor, Attorney General, and Comptroller of Public Accounts shall be elected by the qualified voters of the State at general elections beginning with 1978. The Secretary of State shall be appointed by the Governor. The Commissioner of the General Land Office shall be elected or appointed as provided by law. Appointive officers of the Executive Department shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor. Elective officers of the Executive Department shall serve four-year terms. All officers of the Executive Department shall reside at the seat of government.

Section 3. Returns of Election; Declaration of Election; Tie Votes; Contests

Election returns for executive officers shall, until otherwise provided by law, be sealed and transmitted to the Secretary of State, who shall open the returns and promptly certify the winner but shall do so no later than the first Monday in January. The person receiving the highest number of votes for an office shall be declared elected. If two or more persons shall have the highest and an equal number of votes for an office, one of them shall be chosen immediately by joint vote of both houses of the Legislature. Contested elections for executive offices specifically named in Section 1 of this Article shall be determined by both houses of the Legislature in joint session.

Section 4. Governor's Eligibility and Installation

(a) The Governor shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a resident of this State at least five years immediately preceding election.

(b) The Legislature shall provide appropriations for a staff and office space for a new Governor-elect prior to inauguration. A new Governor-elect shall be entitled to receive from governmental agencies those reports to which an incumbent Governor is entitled.

(c) The Governor shall be inaugurated on the second Tuesday in January or as soon thereafter as practicable. In those years when a new Governor is inaugurated, the Legislature shall convene in regular session one day prior to inauguration and shall organize but shall not act as a deliberative body for the consideration and passage of bills and resolutions until forty-five days thereafter, except on matters called for by the Governor.

Section 5. Gubernatorial Succession

(a) If before inauguration the person elected Governor fails to qualify, is disabled, or dies, the person elected Lieutenant Governor shall be inaugurated and shall serve as Governor

until the person elected Governor at the next general election assumes office for the remainder of the term.

(b) If after inauguration the Governor dies, resigns, becomes disabled, or is removed from office, the Lieutenant Governor shall become Governor and shall serve for the remainder of the term unless the vacancy occurs within sixteen months after inauguration in which event the Lieutenant Governor shall serve only until the person elected Governor at the next general election assumes office for the remainder of the term.

(c) If after a vacancy occurs in the office of Governor and the Lieutenant Governor becomes Governor and thereafter dies, resigns, becomes disabled, or is removed from office, the Speaker of the House of Representatives, if qualified, shall become Governor under the same conditions and for the same term as provided for the Lieutenant Governor.

(d) If the Governor is absent from the State, the Lieutenant Governor shall act as Governor until the Governor returns. If both the Governor and Lieutenant Governor are absent from the State, the Speaker of the House of Representatives shall act as Governor during such absences.

(e) While serving or acting as Governor, the Lieutenant Governor or Speaker of the House of Representatives shall receive only the compensation payable to a Governor.

(f) The Legislature may provide by law for further succession to the office of Governor. No person shall serve as Governor unless qualified for that office.

Section 6. Disability of Elective Officers of Executive Department

The disability of any elected officer of the Executive Department to perform the duties of the office during the term for which elected shall be determined in a proceeding in the Supreme Court of the State under such rules of procedure as may be prescribed by that court. A majority vote of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, Speaker of the House of Representatives, and President pro tempore of the Senate shall initiate such proceedings.

Section 7. Compensation of Officers of Executive Department

The compensation of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, and Commissioner of the General Land Office shall be as provided by law, not to exceed the amount recommended by the salary commission. The compensation of officers of the Executive Department shall not be diminished during their term of office. The Governor shall have the use of the Governor's Mansion.

Section 8. Dual Office Holding; Other Compensation

No officer of the Executive Department shall hold any other civil or corporate office or practice any profession; nor shall any such officer receive any salary, reward, or compensation from non-governmental sources.

Section 9. Commander-in-Chief; Calling Forth Militia

The Governor shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States, and shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

Section 10. Execution of Laws; Conduct of Business With Other States, The United States, and Foreign Nations

The Governor shall cause the laws to be faithfully executed and shall conduct, in person or in such manner as shall be provided by law, all intercourse and business of the State with other states, the United States, and foreign nations.

Section 11. Convening the Legislature in Special Session

The Governor may, on extraordinary occasions, convene the Legislature in special session, stating specifically the purpose and duration of the session.

Section 12. Governor's Message

At the beginning of each legislative session the Governor shall, and at other times may, give the Legislature information on the condition of the State, and may recommend legislative action.

Section 13. Action on Bills and Resolutions

(a) Every bill that passes both houses of the Legislature shall be presented to the Governor. The Governor may approve the bill by signing it in which event it shall become law and shall be filed with the Secretary of State. The Governor may veto the bill by returning it with objections to the house in which it originated. That house shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill passes that house by a two-thirds record vote of the membership, it shall be sent with the Governor's objections to the other house which shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill likewise passes that house by a two-thirds record vote of the membership, the bill shall become a law and shall be filed with the Secretary of State. If the Governor fails to veto a bill within ten days (Sundays excepted) after it is presented, the bill shall become a law and shall be filed with the Secretary of State. If the Legislature by its adjournment prevents a veto, the bill shall become a law and shall be filed with the Secretary of State unless within twenty days after adjournment the Governor files the bill and objections with the Secretary of State and gives public notice thereof by proclamation. If the same Legislature meets again, the Secretary of State shall return the bill with the Governor's objections to the house in which the bill originated for reconsideration in the manner provided above.

(b) The Governor may veto or reduce any item of appropriation in a bill, except that no item consisting of an appropriation for the salary for a single office or position may be reduced. Portions of a bill not vetoed and the reduced amount of items shall become law. Items vetoed and the amount by which items are reduced together with the Governor's objections shall be returned to the house in which the bill originated for reconsideration in the manner provided in Subsection (a).

(c) All orders and resolutions requiring the concurrence of both houses of the Legislature, except those concerning adjournment and legislative rules and those proposing amendments to the Constitution or a referendum on incurring State debt, shall be presented to the Governor. If the Governor disapproves an order or resolution, it shall not become effective unless repassed in the manner provided for in Subsection (a).

Section 14. Chief Planning Officer

The Governor shall be the chief planning officer of the State and may require information in writing and reports from all State agencies and officers upon any subject relating to their duties, conditions, management, and expenditures.

Section 15. Budget Preparation

At the beginning of each session at which appropriations are to be made for the general operation of the government the Governor shall submit to the Legislature a budget for all proposed State expenditures for the applicable fiscal period, accompanied by an appropriation bill covering the proposed expenditures. This bill, to be known as the Budget Bill, shall be introduced immediately in each house by the respective chairmen of the committees on appropriations for consideration and passage as in the case of any other bill. Until the Budget Bill has been enacted, neither house shall finally pass any other appropriation bill, except emergency bills recommended by the Governor and appropriations for the operation of the Legislature.

Section 16. Budget Execution

The Governor shall be responsible as provided by law for the proper execution and administration of the total State budget and shall require of all State governmental agencies such expenditure plans, fiscal reports, and accounts as deemed necessary to supervise the expenditure of previously appropriated funds.

Section 17. Administrative Reorganization

The Governor may from time to time submit to the Legislature written reorganization plans reassigning functions among or consolidating or abolishing any State governmental agencies. Within sixty days after submission or within sixty days after the Legislature can act as a deliberative body, whichever comes later, either house may reject a plan by resolution. Unless rejected the plan shall become effective by its terms.

Section 18. Reprieves, Commutations, and Pardons; Remission of Fines and Forfeitures

The Governor shall have power as provided by law to grant reprieves relating to the execution of death sentences, and to grant commutations, pardons, and the remission of fines and forfeitures.

Section 19. Lieutenant Governor

The Lieutenant Governor shall possess the same qualifications as provided for the Governor. The qualified voters shall cast separate votes for the candidates for Governor and Lieutenant Governor. The Lieutenant Governor shall, by virtue of the office, be President of the Senate and when the Senate is equally divided may cast a deciding vote.

Section 20. Secretary of State

The Secretary of State shall perform the duties required by this Constitution and such other duties as may be provided by law.

Section 21. Attorney General

The Attorney General, except as expressly provided by law to the contrary, shall represent the State in all suits in which the State may be a party in all the courts of the State and of the United States, shall have all the powers of the office as at common law, and shall have such other duties as may be provided by law. The Attorney General must be qualified to practice before the Supreme Court of this State.

Section 22. Comptroller of Public Accounts

The Comptroller of Public Accounts shall perform the duties required by this Constitution and such other duties as may be provided by law.

Section 23. General Land Office

There shall be one General Land Office in the State at the seat of government, where all land titles emanating from the State shall be registered. The Commissioner of the General Land Office shall perform the duties required by this Constitution and such other duties as may be provided by law.

Section 24. Vacancies in Statewide Offices

Unless otherwise provided by this Constitution, all vacancies in elective statewide offices shall be filled by appointment of the Governor with the advice and consent of the Senate. An appointee shall serve for the remainder of the term unless the vacancy occurs within sixteen months after the elected officer assumed office, in which event the appointee shall serve only until a successor elected at the next general election assumes office for the remainder of the unexpired term.

Section 25. State Agencies

(a) The length of the term of members appointed by the Governor to State governmental agencies created by statute and with a life of not less than six years shall be two years, unless the number of appointed members is three or a whole multiple thereof in which case the length of the term shall be six years. Two-year terms shall expire between February 1 and April 1 of odd-numbered years. In the case of agencies with members who serve six-year terms, the terms of the members appointed by the Governor shall be staggered. The terms of one-third of such members shall expire between February 1 and April 1 of odd-numbered years.

(b) At the time of appointing members of multi-member agencies with six-year terms, the Governor may designate the chairman. If the Governor fails to designate a chairman prior to April 1, the members of an agency shall choose the chairman from among its membership.

Section 26. Seal of State and Commissions

There shall be a Seal of the State which shall be kept by the Secretary of State and used by that officer officially under the direction of the Governor. The Seal of the State shall be a star of five points encircled by olive and live oak branches and the words "The State of Texas." All commissions shall be in the name and by the authority of the State of Texas, sealed with the Seal of the State, signed by the Governor, and attested by the Secretary of State.

Article V
The Judiciary

Section 1. Unified Judicial System

The judicial power of the State is vested in the Judicial Branch. The State unified judicial system shall be composed of a Supreme Court, courts of appeals, district courts, and county courts. No other courts shall be created except municipal courts, as provided by law or charter, and justice courts. All courts shall have jurisdiction as provided by law, but jurisdiction of courts of the same level shall be uniform throughout the State.

Section 2. Supreme Court

(a) The Supreme Court shall be the highest court of the State and shall consist of the Chief Justice of Texas and at least eight other justices. The court may sit in sections as designated by the court to hear argument of cases and to consider applications for writs of error or other preliminary matters, but a majority of the court shall be necessary to decide a case.

(b) The Supreme Court shall have the duty and authority to provide for the efficient and just operation of the judicial system. It may transfer cases from a trial court to a court of appeals or to the Supreme Court, and from one court of appeals to another or to the Supreme Court.

(c) The Supreme Court shall have authority to prescribe rules of civil and criminal procedure, but any rule of procedure expressly disapproved by the Legislature shall have no effect thereafter. The Supreme Court may prescribe other rules as provided by law.

Section 3. Courts of Appeals

The Legislature shall provide by law for one or more courts of appeals, each consisting of a chief judge and two other judges, and such additional judges as may be provided by law. Not fewer than three judges shall sit in any case.

Section 4. District Courts

The State shall be divided by law, or by an agency acting under authority of law, into geographical judicial districts. In each district there shall be one district court with one or more district judges and such other officials as provided in this Article or by law.

Section 5. County Courts

The Legislature shall provide by law for county courts. A county court may serve one or more counties, but no county shall have more than one county court. Each county court shall have one or more judges and such other officials as provided by law.

Section 6. Justice Courts

The governing body of each county shall establish and maintain one or more justice courts and, if more than one, shall divide the county into justice precincts and provide a justice court for each precinct.

Section 7. Qualifications of Judges

Each justice or judge shall be a citizen of this State and shall have such other qualifications as provided by law. Each justice and judge in the unified judicial system must be licensed to practice law in this State.

Section 8. Merit Selection and Nonpartisan Election*

(a) There is hereby created a Judicial Nominating Commission of eleven members, a majority of whom shall be non-lawyers. The Governor, Lieutenant Governor, and Speaker of the House of Representatives acting together shall select the members of the Judicial Nominating Commission and designate the chairman. The selection of the members shall be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the State.

(b) Members of the commission shall serve six-year terms, and no person shall serve more than one full term. Vacancies shall be filled by the selection committee for the remainder of the term.

(c) No member of the commission shall hold an elective or salaried public office or office in a political party, or shall be eligible for appointment to a State judicial office during the term for which appointed.

(d) When a vacancy occurs in the office of the Chief Justice of Texas, a supreme court justice, or a court of appeals judge, the vacancy shall be filled by the Governor from a list of three nominees submitted by the commission within forty-five days after the vacancy occurs. In selecting nominees, the commission shall consider only those who are well qualified from experience and knowledge of the law, but, among those so qualified, shall give fair consideration to the sexes, ethnic groups, and geographical regions of the State. If the Governor fails to make the appointment within sixty days after receiving the list of nominees, the Lieutenant Governor shall make the appointment from the list. A justice or judge appointed pursuant to this Subsection shall be subject, in the manner provided by law, to approval or rejection on a nonpartisan ballot at the first general election held more than ten months after the appointment is made, and every sixth year thereafter.

(e) If the Supreme Court determines that the Chief Justice is temporarily disabled, it shall designate another justice of the Supreme Court to serve temporarily as acting Chief Justice until the disability ends.

(f) District and county judges shall be elected on a nonpartisan ballot by the qualified voters as provided by law. Judges of the district courts shall serve six-year terms, and judges of the county courts shall serve four-year terms. Vacancies in the office of judge of the district and county courts shall be filled until the next succeeding general election by the Governor with the advice and consent of the Senate.

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* *The Commission voted its preference for merit selection of appellate judges but also recommends that the following proposal for nonpartisan election be submitted to the qualified voters as an alternative:*

ALTERNATIVE SUBMISSION

Section 8. Nonpartisan Election of Appellate Judges

(a) The Chief Justice and justices of the Supreme Court shall be elected by the qualified voters of this State every six years on a nonpartisan ballot in the manner provided by law. Judges of the courts of appeals shall be elected by the qualified voters of their respective districts every six years on a nonpartisan ballot in the manner provided by law.

(b) Vacancies in the offices of justices and judges of the Supreme Court and the courts of appeals shall be filled until the next succeeding nonpartisan election by the Governor with the advice and consent of the Senate.

(g) Justices of the peace shall be elected every four years by the qualified voters of the county or precinct. Vacancies in the office shall be filled by the County Commission for the remainder of the term.

(h) No active justice or judge in the unified judicial system may engage in the practice of law. If any justice or judge files as a candidate for any elective nonjudicial office, the judicial office shall immediately become vacant.

Section 9. Compensation

The State shall pay the basic salaries of all justices and judges of the unified judicial system, subject to any supplementation by counties, and shall pay such other expenses of the system as provided by law. The salaries of such justices and judges shall not exceed the amount recommended by the salary commission. Funds collected by the courts may not be used to support the unified judicial system except to the extent of reimbursement of salaries and other expenses.

Section 10. Mandatory Retirement of Judges

The office of each justice and judge in the unified judicial system shall become vacant on the first day of January of the year following the date on which the incumbent reaches the age of seventy-five years or an earlier age, not less than seventy years, as provided by law.

Section 11. Removal of Judges

(a) Any justice of the Supreme Court shall be removed by the Governor, after a hearing by the Legislature and a vote by two-thirds of the membership of each house, for willful neglect of duty, incompetency, oppression in office, or other reasonable cause not a sufficient ground for impeachment.

(b) Any justice, judge, or other judicial officer may be removed from office, suspended, or censured by the Supreme Court for willful or persistent conduct which is clearly inconsistent with the proper performance of duties of the office, or which casts public discredit upon the judiciary or the administration of justice, and may be involuntarily retired or removed by the Supreme Court for disability seriously interfering with the performance of duties of the office if the disability is, or is likely to become, permanent.

(c) The Legislature shall establish by law a Judicial Qualifications Commission which shall operate under rules promulgated by the Supreme Court. The commission shall have authority to issue an order of public censure and to recommend to the Supreme Court suspension, removal, or retirement of any justice, judge, or other judicial officer.

Section 12. Judicial Council

(a) There is hereby created a Judicial Council which shall consist of the Chief Justice of Texas as chairman and the following members, each of whom shall serve a two-year term: two judges of the courts of appeals, three trial judges, one district clerk, and one county clerk, each appointed by the Supreme Court of Texas; four members of the State Bar appointed by its board of directors; and two members of each house of the Legislature appointed by each house. Vacancies shall be filled by the appointing authority for the remainder of the term.

(b) The council shall prescribe rules of administration for the unified judicial system and shall perform other duties as provided by law. Rules of administration shall not become effective until approved by the Supreme Court.

(c) Pursuant to rules of administration prescribed by the council, the Chief Justice may delegate administrative powers to active or retired judges, and temporarily assign a judge to any court of the same level and from a court of appeals to the Supreme Court. By such assignments, the membership of any court may be temporarily increased. The council shall also prescribe rules for filling vacancies temporarily for the purposes of trying cases and hearing appeals. If for any reason a judge feels aggrieved by any administrative action of the Chief Justice, the judge may petition the Supreme Court for review of such action.

Section 13. Clerks

(a) The Supreme Court and each court of appeals shall appoint a clerk who shall serve for a term of four years unless sooner removed by the court for good cause entered on the minutes of the court. These clerks shall give bond as required by law.

(b) District courts may remove their district clerks from office upon a jury finding of incompetence, official misconduct, or other causes defined by law.

Section 14. Juries

(a) Grand juries in the district courts shall consist of twelve persons, nine of whom shall constitute a quorum.

(b) Trial juries in the district courts shall consist of twelve persons and verdicts shall be unanimous, except that the Legislature or the Supreme Court pursuant to its rule-making power may provide that a verdict may be rendered in civil and misdemeanor cases in the district courts by fewer than twelve but not fewer than nine who shall concur in and sign the verdict.

(c) Trial juries in county courts shall consist of six persons and verdicts shall be unanimous, except that the Legislature or the Supreme Court pursuant to its rule-making power may provide that in civil cases a verdict may be rendered by fewer than six jurors.

(d) The qualifications of grand jurors and trial jurors shall be as provided by law.

(e) Any party shall have a right of trial by jury in civil causes in the district and county courts upon demand as provided by law or rule of the Supreme Court. A jury shall not be empaneled in any cause until a jury fee is paid if required by law or by rule of the Supreme Court.

Section 15. Suspension of Sentence and Probation

Courts having original jurisdiction of criminal cases shall have power to suspend sentence, place a defendant on probation, and reimpose sentence, subject to regulation by law.

Section 16. Appeal by State

The State shall have no right of appeal in criminal cases.

Section 17. Appeal by Accused

The right of appeal granted to an accused by Article I, Section 11a of this Constitution shall be direct to the Supreme Court of Texas.

Article VI
Suffrage

Section 1. Qualified Voter

Any citizen of the United States eighteen years of age or older who meets the registration and residence requirements provided by law, who is not serving a sentence for a felony, whether incarcerated, on parole, or on probation, and who is not of unsound mind as determined by a court, shall be a qualified voter.

Section 2. Elections

All elections by the qualified voters shall be by secret ballot. The Legislature by law shall provide the requirements for residence, registration, absentee voting, and administration of elections, and shall ensure the purity of elections and guard against abuses of the electoral process.

Section 3. General Elections

General elections shall be held in even-numbered years on a date provided by law.

Article VII
Education

Section 1. Equitable Support of Free Public Schools

(a) A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable provision for the equitable support and maintenance of an efficient system of free public schools and to provide equal educational opportunity for each person in this State.

(b) In distributing State resources in support of the free public schools, the Legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the State as a whole and that State supported educational programs shall recognize variations in the backgrounds, needs, and abilities of all students. In distributing State resources, the Legislature may take into account the variations in local tax burden to support other local government services.

Section 2. Permanent and Available School Fund

(a) The Permanent School Fund consists of all property set apart for support of the free public schools. The Permanent Fund shall not be expended but shall be preserved and invested at the direction of the State Board of Education in the manner prescribed by law.

(b) The Available School Fund consists of income from the Permanent Fund together with all State taxes dedicated to support the free public schools.

(c) The Available Fund shall be appropriated by the Legislature to support the free public schools, including the provision of free textbooks and such other instructional materials as may be required in academic programs.

Section 3. Prohibition of Aid to Non-Public Schools

Public funds shall not be used for support of religious, church-affiliated, or proprietary schools that provide education below the college level; nor shall public funds be provided to any students for payment of expenses incurred by attending such schools.

Section 4. Dedicated School Tax

One-fourth of the revenue from State occupation taxes and one-fourth of the net revenue from the State motor fuel tax are dedicated to the Available School Fund.

Section 5. State Board of Education

There shall be a State Board of Education which shall have the duties provided in this Article and by law. The Legislature may provide either for appointed or elected members whose terms shall not exceed six years. If the board is elective, the Governor shall appoint four additional members to the board. In making appointments the Governor shall give consideration to fair and equitable representation of the sexes, ethnic groups, social groups, and economic groups.

Section 6. School and Community College Districts

The Legislature shall define by general law the duties and functions of school and community college districts and shall provide for establishing, financing, altering, consolidating, and abolishing such districts.

Section 7. First Class Colleges and Universities

The Legislature shall provide for a system of higher education of the first class which shall include The University of Texas System, the Texas A&M University System, universities, colleges, community colleges, and other first class institutions or systems as may be provided by law.

Section 8. Permanent University Fund, Its Administration, Its Investments; Available University Fund and Its Expenditure

(a) The Permanent University Fund consists of the two million acres of land set apart and appropriated for the establishment and maintenance of The University of Texas by the Constitution of 1876 and the Legislative Act of April 10, 1883, together with the proceeds of the sale of such land, including the sale of oil, gas, and other minerals from such land, and the securities and other assets purchased with the proceeds. All proceeds shall be invested, and only the income from the Permanent University Fund may be appropriated and expended.

(b) The Permanent University Fund shall be held in trust for the people of Texas and for the use and benefit of the Texas A&M University System and The University of Texas System. The land set apart to the Permanent University Fund, if sold, shall be sold under such regulations, at such times, and on such terms as may be provided by law.

(c) The Board of Regents of The University of Texas System may invest the Permanent University Fund in securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government, or any of its agencies, in bonds issued by the State of Texas or any political subdivision thereof, and in such bonds, debentures, obligations, preferred stocks, or common stocks issued by corporations, associations, or other institutions as the Board of Regents of The University of Texas System may deem to be proper investments for the Permanent University Fund. However, not more than one percent of the Fund shall be invested in the securities of any one corporation nor shall more than five percent of the voting stock of any one corporation be owned by the Fund. In making each and all investments, the Board of Regents shall exercise the judgment and care under the circumstances then prevailing that men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The Board of Regents shall make full disclosure of all investments as provided by law.

(d) The net income (that is, dividends, interest, and other income less administrative expense) of the Permanent University Fund, exclusive of net income attributable to grazing leases of Permanent University Fund land, shall constitute the Available University Fund. Out of one-third of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Directors of the Texas A&M University System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such one-third of the Available University Fund shall be appropriated by the Legislature for the support and maintenance of Texas A&M University at College Station. Out of the other two-thirds of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund

bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the Legislature for the support and maintenance of The University of Texas at Austin.

Section 9. Texas A&M University System; The University of Texas System; Permanent University Fund Bonds or Notes

(a) The Board of Directors of the Texas A&M University System and the Board of Regents of The University of Texas System for the benefit of all the institutions now included in their respective systems are each hereby authorized to issue in amounts not to exceed for the Texas A&M System ten percent, and for The University of Texas System twenty percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance, negotiable bonds and notes for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) refunding any bonds heretofore or hereafter issued.

(b) Any bonds or notes issued pursuant to this Section shall be payable solely out of the Available University Fund. Bonds or notes so issued shall mature serially or otherwise not more than thirty years from their respective dates.

(c) Institutions now included in the Texas A&M University System and The University of Texas System, and entitled to participate in the Permanent University Fund, shall not receive any general revenue funds for acquiring land either with or without permanent improvements, or for constructing and equipping new buildings or other permanent improvements except in case of fire, flood, storm, or earthquake occurring at any such institution. In such an event an appropriation in an amount sufficient to replace the uninsured loss may be made by the Legislature from general revenue funds.

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the Boards are severally authorized to pledge the whole or any part of the respective interests of the Texas A&M University System and The University of Texas System in the Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this Section shall be approved by the Attorney General of Texas and when so approved shall be incontestable.

Section 10. State Higher Education Tax Fund for the Benefit of Certain Institutions of Higher Education

(a) The Legislature shall levy a State ad valorem tax on property at a rate not less than ten cents on the one hundred dollars valuation sufficient to provide a level of support necessary to promote the attainment of first class status for all State institutions of higher education except those institutions included in the Texas A&M University System and The University of Texas System, all public community colleges, and all State technical institutes.

(b) The proceeds of this tax shall comprise the Higher Education Tax Fund.

(c) The Higher Education Tax Fund may be pledged to secure or refund bonds issued heretofore or hereafter for acquiring land, either with or without permanent improvements thereon, constructing, equipping, repairing, rehabilitating buildings or other permanent improvements, and for acquiring capital equipment and library books and materials at the in-

stitutions for which the Fund is created. After appropriating an annual sum sufficient to pay the principal and interest due on such bonds, the Legislature shall appropriate the remainder of the Fund for the support and maintenance of State institutions of higher education other than The University of Texas at Austin, Texas A&M University at College Station, the public community colleges, and the State technical institutes.

(d) The Legislature shall provide by law for each issue of bonds authorized by this Section and for equitable distribution of the proceeds on the basis of statewide needs. Responsibility for issuance of bonds and allocation of proceeds shall be vested as provided by law.

(e) From the date on which they became eligible to participate in the special tax fund established in this Section, the institutions participating in this fund shall not receive any general revenue funds for acquiring land or permanent improvements, or for constructing and equipping new buildings or other permanent improvements, except that in the case of fire or natural disaster the Legislature may appropriate from general revenue an amount sufficient to replace the uninsured loss.

(f) If for any reason the tax authorized by this Section is held invalid, the Legislature shall provide an equal amount of revenue from other sources.

Article VIII
Finance

Section 1. Taxation

Taxes shall be levied and collected by general law.

Section 2. Property Tax Exemptions

(a) There shall be exempt from all ad valorem taxation:

(1) The property of the State except as provided by law and all other public property used for public purposes;

(2) All household goods and personal effects not used for the production of income; and

(3) All farm products in the hands of the producer and family supplies for home and farm use.

(b) There shall be exempt from State ad valorem taxation:

(1) Three thousand dollars of the assessed value of all residence homesteads; and

(2) The property of political subdivisions of the State.

(c) The Legislature by general law may exempt from ad valorem taxation:

(1) Property used exclusively for educational or charitable purposes or places of burial not held for profit;

(2) Up to three thousand dollars of the assessed value of property owned by a disabled veteran of the armed services of the United States or by the surviving spouse and surviving minor children of a disabled veteran of the armed services of the United States;

(3) Up to three thousand dollars of the assessed value of property owned by the surviving spouse or surviving minor children of any member of the armed services of the United States whose life was lost while on active duty;

(4) Actual places of religious worship;

(5) Any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society if the property yields no revenue to the church or religious society, but such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; and

(6) Any other property validly exempt at the time of adoption of this Constitution.

(d) The governing body of any political subdivision may exempt from ad valorem taxes not less than three thousand dollars of the assessed value of a residence owned and occupied by persons sixty-five years of age or over. If no exemption has been granted, the governing body,

upon a petition signed by qualified voters equal in number to at least twenty percent of those voting in the last preceding election held by the political subdivision, shall call an election to determine by majority vote whether to grant such an exemption in the amount, not less than three thousand dollars, specified in the petition.

(e) The Legislature by general law may provide relief from residential ad valorem taxes for persons determined to be in need of such relief because of age, disability, or economic circumstances. Any such law shall provide for the reimbursement of political subdivisions for revenue losses caused by such relief.

(f) No exemptions from ad valorem taxation shall be granted except as authorized under this Section.

Section 3. Highway-User Revenues

Subject to legislative appropriation, allocation, and direction, all net revenues from motor vehicle registration fees and three-fourths of net revenues from all taxes on fuels and lubricants used to propel motor vehicles over public roadways, except gross production and ad valorem taxes, shall be deposited in the State Highway Fund. Such revenues shall be used solely for acquiring rights-of-way, constructing and maintaining a State highway system; for policing public roadways; and for administering laws pertaining to the supervision of traffic and safety on public roadways. One-fourth of net revenues from these taxes shall be allocated to the Available School Fund. The net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each county, or less than the percentage allowed to be retained, under the laws in effect at the time of adoption of this Constitution.

Section 4. State Taxes on Income

If a law is enacted levying an income tax, the tax may be on personal or corporate income, or both, and may be graduated or otherwise. The law may define income by reference to the laws of the United States as they then exist or may thereafter be changed.

Section 5. State Debt

(a) State debt shall mean bonds or other evidences of indebtedness which are secured by the general credit of the State or are to be repaid, directly or indirectly, from tax revenue and are incurred for the State or for an agency of the State.

(b) No State debt shall be authorized or incurred except as provided in this Constitution.

(c) State debt may be authorized by general law to refund outstanding State debt.

(d) State debt may be incurred if approved by two-thirds vote of the membership of each house of the Legislature and submitted to and approved by a majority of the qualified electors voting on the question.

Section 6. Appropriations

(a) Money may not be drawn from the State Treasury except in accordance with specific appropriations made by law.

(b) Any appropriation from the State Treasury expires two years after its effective date.

(c) No bill containing an appropriation may be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts certifies that the amount appropriated is within the estimated revenue for the applicable fiscal period.

(d) No appropriation in excess of the estimated revenue shall be valid unless it is made in response to imperative public necessity and approved by four-fifths vote of the membership of each house of the Legislature.

Section 7. Public Funds

Public money and public credit shall be used for public purposes only.

Section 8. Public Purposes

Public purposes, as that term is used in this Constitution, include, but are not limited to, purposes for which taxes could be levied or public money or public credit could be used before the adoption of this Constitution.

Article IX
Local Government

Section 1. Counties

The counties of the State are those that exist on the date of adoption of this Constitution. Changes in county boundaries, the merger and division of counties, and the removal of county seats shall be subject to the approval of a majority of the qualified voters voting on the question in each county affected.

Section 2. Powers of County Government

The powers of counties shall be those granted by this Constitution and by general law.

Section 3. County and District Officials

(a) The governing body of each county, to be known as the County Commission, shall consist of a County Judge elected by the qualified voters of the county and four County Commissioners, each elected by the qualified voters from separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The County Judge shall serve as presiding officer.

(b) A Sheriff, Treasurer, Tax Assessor-Collector, County Clerk, and District Clerk shall be elected for each county, except that a single County Clerk may be elected to perform the duties of county and district clerk as provided by law.

(c) County Attorneys, District Attorneys, and Criminal District Attorneys shall be elected in such numbers and for such counties as provided by law.

(d) The County Commission may provide for the election of one or more Constables.

(e) The qualifications, duties, and functions of county officials and the grounds and procedure for disqualification, suspension, and removal shall be as provided by law.

(f) Notwithstanding any of the foregoing provisions, the qualified electors of a county, as provided by general law, may by charter, or by a majority vote of those voting on the question, alter the governing body, create additional offices, eliminate offices, combine the duties and functions of offices, and change the method of selection of any one or more county officials. In such an event the county shall provide for the performance of all duties and functions required by State law.

(g) Vacancies in county offices shall be filled as provided by general law or charter. Vacancies in district offices shall be filled as provided by law.

Section 4. County Charters and Ordinances

(a) The Legislature shall by law provide procedures by which any county with a population of not less than twenty-five thousand may adopt, amend, or repeal a charter with the approval of a majority of qualified voters voting on the question. A charter election may be initiated by petition of the qualified voters of the county or by resolution of the governing body as provided by law. No charter or ordinance shall be inconsistent with the Constitution or laws of the State.

(b) The qualified voters of a county without a charter may by a majority of those voting on the question grant the county governing body the power to enact ordinances as authorized by law.

(c) If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance shall prevail within its jurisdiction as defined by law.

(d) Neither county charters nor ordinances shall affect jurisdiction or venue or the duties of personnel of courts which are part of the State unified judicial system.

Section 5. General Law Cities

Cities and towns having a population of one thousand five hundred or less may be chartered only by general law. They may levy, assess, and collect such taxes as may be authorized by law.

Section 6. City Charters

Cities and towns having more than one thousand five hundred inhabitants may, by a majority vote of the qualified voters voting on the question, adopt, amend, or repeal their charters as provided by law. No charter or ordinance shall be inconsistent with the Constitution or general laws of the State. Cities which adopt charters under this Section may levy, assess, and collect any taxes authorized by law or charter. No city shall lose the power to amend or repeal its charter because its population drops below one thousand five hundred.

Section 7. Special Districts and Authorities

The Legislature shall provide by general law for establishing, financing, consolidating, and abolishing special districts and authorities and shall define their powers by general law. No special district or authority shall be created if the service it is to provide can be provided by an existing political subdivision. The provisions of this Section shall not be applicable to school and community college districts.

Section 8. Terms of Office

The terms of office for all elected officials of political subdivisions shall be as provided by law or charter.

Section 9. Compensation of Officials

Elected officials of political subdivisions shall be compensated only on a salary or per diem basis.

Section 10. Local Redistricting

Within the calendar year following that in which each federal decennial census is published, and at such other times as the governing body of any political subdivision may deem necessary, each governing body not entirely elected at large shall divide its geographical area into districts for the election of those representatives to the governing body not elected at large. The districts shall be composed of contiguous territory and shall be as compact and as nearly equal in population as practicable.

Section 11. Local Debt

Political subdivisions shall not issue general obligation bonds, except refunding bonds, unless approved by a majority of qualified voters voting on the question. No debt shall be

created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.

Section 12. Intergovernmental Cooperation

A political subdivision may, by act of its governing body, cooperate or contract with one or more other political subdivisions, the State, or the United States with respect to the exercise of any function, power, or responsibility, or the use of public funds and credit in the public interest.

Article X
General Provisions

Section 1. Official Oath

All State and local officials shall take the following oath before they enter upon the duties of their office:

"I, ..., do solemnly swear that I will faithfully execute the duties of the office of..... and will to the best of my ability preserve, protect, and defend the Constitutions and laws of the United States and of the State of Texas, so help me God."

Section 2. Residence of Civil Officials

All elected and appointed officials shall reside within the State. All elected and appointed officials of a political subdivision shall reside within the political subdivision which they serve, and shall keep their offices at such places as required by law. Failure to comply with these conditions shall vacate the office.

Section 3. Officials to Serve Until Successor Qualified

All officials may continue to perform the duties of their offices until their successors shall be duly qualified.

Section 4. Forfeiture of Residence by Absence on Public Business

No person shall forfeit the right of suffrage, or of election or appointment to any office because of absence from the State or a political subdivision on business of the United States, this State, or a political subdivision.

Section 5. Vacancies Filled for Unexpired Term

Except as otherwise provided in this Constitution, elections to fill vacancies in office shall be for the remainder of the term only.

Section 6. Disqualification from Constitutional Office

In addition to the grounds and procedures provided in this Constitution, the disqualification, suspension and removal from any constitutional office, withholding of salary, and temporary filling of vacancies shall be as provided by law, but no statute enacted under the authority of this Section may be applicable to conduct committed before its enactment.

Section 7. Qualification for and Disqualification from Statutory Office

Unless otherwise provided in this Constitution, the qualifications, grounds for disqualification, suspension and removal from office, withholding of salary, and temporary filling of vacancies for statutory officials shall be as provided by law.

Section 8. Appointments to State Agencies

The authority responsible for appointing the members or filling vacancies for State gov-

ernmental agencies shall make appointments that fairly and equitably represent the sexes, ethnic groups, economic groups, and geographical regions of the State.

Section 9. Salary Commission

(a) A salary commission shall be established to recommend rates of compensation for members of the Legislature, judges in the State unified judicial system, and officials of the executive branch, and to perform such other duties pertaining to compensation as may be provided by law. Compensation paid by the State shall not exceed the rates recommended by the commission.

(b) The salary commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate. Members of the commission shall serve six-year terms. Vacancies shall be filled by the Governor for the remainder of the term with the advice and consent of the Senate. No member of the commission may hold another public office at the same time.

Section 10. Environment

The State and each person shall maintain and improve a clean and healthful environment in Texas for present and future generations. The Legislature shall provide for the administration and enforcement of this duty. The Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 11. Separate and Community Property of Husband and Wife

All property owned or claimed by each spouse before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of each spouse in relation to separate property as well as that held in common with one another. A husband and wife may from time to time and by written instrument partition between themselves in severalty or into equal undivided interests all or any part of their existing community property. In like manner, they may exchange between themselves the community interest of one in any property for the community interest of the other in other community property. The portion or interest set aside to each by partition or exchange shall be and constitute a part of the separate property of such spouse. A partition or exchange under this Section shall not prejudice the rights of preexisting creditors. This provision is self-operative, but laws may be passed prescribing reasonable requirements not inconsistent herewith.

Section 12. Homestead

(a) The homestead of a family and of such other persons as may be designated by law is protected from forced sale for the payment of all debts, except for purchase money therefor, taxes due thereon, and for work and material used in constructing improvements thereon when the work and material are contracted for in writing by the owner but, in the case of married persons, only if both spouses consent to the contract in the manner required when a homestead is sold. A homestead of married persons may be sold only with the consent of both spouses, except that when the homestead is the community property or the separate property of the spouse desiring to sell, it may be sold as provided by law without the consent of the other spouse if the latter is incompetent, has disappeared, or has abandoned the homestead, as provided by law. No mortgage, trust deed, or other lien on a residential homestead shall be valid except for the purchase money therefor or for improvements made thereon, as provided above. Liens may be created on non-residential homesteads but only in the manner required for a conveyance thereof. All pretended sales of the homestead involving any condition of defeasance shall be void.

(b) The homestead not in a city, town, or village shall consist of not more than two hundred acres of land, which may be in one or more parcels with the improvements thereon. Of the two hundred acres, only fifty acres on which the home is located shall be classified as residential and the remainder shall be classified as non-residential. The homestead in a city, town, or village shall consist of land valued at the time of establishment thereof, and without reference to the value of any improvements thereon, at no more than ten thousand dollars or any larger sum as may be provided by law. A homestead in a city, town, or village is a residential homestead if used as a home and is non-residential if used as a place for the exercise of the calling or business of the head of a family or such other person as may be designated by law. A home remains a homestead while temporarily rented only so long as no other homestead is acquired.

(c) The homestead of married persons shall descend and vest like any other real property, except that the homestead shall not be partitioned so long as it is used and occupied as a home either by the surviving spouse, or by minor children if the use and occupancy have been granted by the court.

Section 13. Protection of Personal Property from Forced Sale

The Legislature shall provide by law for the protection from forced sale of certain portions of the personal property of all adults and heads of families.

Section 14. Wages Not Subject to Garnishment

No current wages for personal service shall be subject to garnishment.

Section 15. Private Corporations

No private corporation shall be created except by general laws.

Section 16. Foreign Corporations with Banking and Discounting Privileges

No foreign corporation, other than national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

Section 17. Alcoholic Beverages

(a) The Legislature shall regulate the manufacture, sale, possession, and transportation of alcoholic beverages, and shall preserve the right of any county, justice precinct, or incorporated town or city to exercise local option by election to legalize or to prohibit the sale of alcoholic beverages of various types and various alcoholic content.

(b) In any county, justice precinct, or incorporated town or city in which the manufacture, sale, barter, or exchange of alcoholic beverages of any of various types and various alcoholic content was prohibited at the time of the adoption of this Constitution, the same shall continue to be unlawful unless and until a majority of the qualified voters in such political subdivision voting on the question in an election shall determine such to be lawful.

Section 18. Practitioners of Medicine

The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

Article X

Section 19. Gambling Enterprises

Neither the State nor any political subdivision thereof shall sponsor or operate lotteries or any other gambling enterprises.

Section 20. Liens of Mechanics, Artisans, and Materialmen

Mechanics, artisans, and materialmen of every class shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Section 21. Pension and Retirement Systems

Any pension or retirement system of this State, or of any political subdivision thereof, or of any governmental agency of either, now in effect shall be continued. No funds held pursuant to any such system shall be used for any purposes inconsistent therewith.

Article XI
Mode of Amending the Constitution of the State

Section 1. Amendments to the Constitution

(a) Amendments to this Constitution may be proposed to the qualified voters of the State by a record vote of two-thirds of the membership of each house. Before either house votes, a proposed amendment shall be submitted to the Attorney General who shall within twenty days of receipt of a request render an opinion on its effect on other provisions of this Constitution and on whether the proposal can be enacted without a constitutional amendment.

(b) A proposed amendment shall be submitted at the next general election following the expiration of ninety days after it is proposed by the Legislature. Procedures shall be provided by law for publicizing proposed amendments.

(c) A proposed amendment shall become a part of this Constitution on approval by a majority of the qualified voters voting on the question.

Section 2. Constitutional Convention

(a) The Legislature by a record vote of a majority of the membership of each house may submit to the qualified voters of the State the question of whether to call a constitutional convention. The question shall be submitted at the first general election occurring at least six months after the Legislature proposes the question. A constitutional convention shall be called if approved by a majority of the qualified voters voting on the question.

(b) The question of whether to call a constitutional convention shall be submitted to the qualified voters at least once every twenty years.

(c) The Legislature shall, at the next legislative session following approval of a constitutional convention by the qualified voters, provide by law for the time, place, and duration of the convention; fix and provide for the pay, allowances, and expenses of delegates and officers; and provide for the expenses of the convention. The first meeting of the convention shall be within three months after the election of delegates.

(d) One delegate shall be elected from each representative district and shall have the same qualifications for office as a member of the House of Representatives. Delegates shall be elected and vacancies filled as provided by law, except that no justice or judge, no member of the Legislature, and no elective official of the executive branch may serve as a delegate.

(e) The constitutional convention may, by a majority vote of its membership, propose any revision or amendments to the Constitution. The convention shall determine the manner of submission, the date of the election, which shall be not less than two nor more than six months after the convention adjourns, and the manner of publicizing the proposals to be voted on.

(f) Any proposed revision or amendments shall become effective, as the convention provides, if approved by a majority of qualified voters voting on the question.

Transition Schedule

The following schedule provisions shall remain part of this Constitution until they have been executed. Once each year the Attorney General shall review this Schedule and certify to the Secretary of State which remaining provisions have been executed. Any provisions so certified shall be removed and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

(a) Sections 14 and 15 of Article IV shall become effective on January 1 1975.

(b) Section 10 of this Transition Schedule shall become effective on January 1, 1975.

Section 2. Existing Laws, Rights, and Proceedings

All laws not inconsistent with this Constitution shall continue in force until they expire by their own limitation or until amended or repealed, and all existing writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles, and rights shall continue unaffected except as modified in accordance with the provisions of this Constitution.

Section 3. Validity of Issued and Unissued Bonds

(a) All bonds or other evidences of indebtedness validly issued by or on behalf of the State or any agency or political subdivision thereof under authority previously granted by the Constitution of 1876, as amended, remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions notwithstanding the repeal of such authority by virtue of the adoption of this Constitution. The State and any such agency or political subdivision, as the case may be, shall continue to provide for source or sources of payment in accordance with the terms of such bonds or other evidences of indebtedness, whether from taxes or otherwise, until such bonds or other evidences of indebtedness are paid in full.

(b) Any bonds or other evidences of indebtedness previously authorized to be issued by or on behalf of the State or any agency or political subdivision thereof but unissued on the effective date of this Constitution may be validly issued subject to all applicable terms and conditions under the authority previously granted by the Constitution of 1876, as amended, notwithstanding the repeal of such authority by virtue of the adoption of this Constitution. Any such unissued bonds or other evidences of indebtedness may be issued bearing any rate of interest within the limits permitted by the Constitution of 1876, as amended, until the Legislature, by law, hereafter removes such limits or authorizes new limits.

Section 4. Continuation of Grants of Power to Counties

The powers directly granted by the following designated provisions of the Constitution of 1876, as amended, are continued in force and effect until the effective date of a general law that continues the power or by its terms diminishes or discontinues the power:

(a) Subsection (c) of Section 52 of Article III;

(b) Section 52d of Article III;

(c) That Section 52e of Article III that was added in 1967;

(d) That Section 52e of Article III that was added in 1968; and

(e) Section 6b of Article VII.

Section 5. Ten Cent State Ad Valorem Tax

The State ad valorem tax of ten cents on the one hundred dollars valuation levied by Section 17 of Article VII of the Constitution of 1876, as amended, is hereby levied until the Legislature levies an ad valorem tax pursuant to Section 10 of Article VII. The proceeds of such levies shall be used for the purposes specified in that Section.

Section 6. County Ad Valorem Tax

Counties may continue to levy an ad valorem tax of not more than eighty cents on the one hundred dollars valuation as provided by Article VIII, Section 9 of the Constitution of 1876 until the Legislature by general law grants to counties power to levy an ad valorem tax of a different amount.

Section 7. Assessment of Agricultural Lands

Until otherwise provided by law, Section 1d of Article VIII of the Constitution of 1876, as amended, shall continue in force and effect.

Section 8. Continuation of Power Granted to Independent School Districts and Community College Districts

The powers directly granted to independent school districts and community college districts by Section 3b of Article VII of the Constitution of 1876, as amended, are continued in force and effect until the effective date of a general law that continues the powers or by its terms diminishes or discontinues the powers in whole or in part.

Section 9. Compensation of Legislature and Lieutenant Governor

Members of the Legislature and the Lieutenant Governor shall receive the compensation provided for in the Constitution of 1876, as amended, until otherwise provided by law.

Section 10. Anticipatory Legislation

Laws may be enacted in 1975 in anticipation of the effective date of this Constitution but such laws shall not become effective prior to September 1, 1975.

Section 11. Retirement Systems

The provisions of the following sections of the Constitution of 1876 pertaining to retirement systems shall continue in force and effect unless and until changed by law:

(a) Article III, Section 18a; Fund for Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities;

(b) Article III, Section 18b; Teacher Retirement System of Texas;

(c) Article III, Section 51-e; Municipal Retirement Systems and Disability Pensions;

(d) Article III, Section 51-f; State-wide Retirement and Disability System for Municipal Officers and Employees;

(e) Article V, Section 1-a; Retirement, Censure, and Removal of Justices and Judges; State Judicial Qualifications Commission;

(f) Article XVI, Section 62; State and County Retirement, Disability and Death Compensation Funds;

(g) Article XVI, Section 63; Teachers and Employees Retirement Systems, Service Credit; and

(h) Article XVI, Section 66; Texas Rangers; Retirement and Disability Pension System for Rangers Ineligible for Membership in Employees Retirement System.

Section 12. Special Elections for Members of the Legislature

Until otherwise provided by law, the Governor shall issue writs of election to fill vacancies in either house of the Legislature.

Section 13. Terms of Office

(a) The terms of all offices affected by Section 25 of Article IV are hereby extended to February 1, 1977, 1979 and 1981, if they expire prior to those dates but after January 31, 1976, 1978 and 1980, respectively, and are shortened to March 31, 1977, 1979 and 1981, if they expire subsequent to those dates but prior to February 1, 1978, 1980 and 1982, respectively. The foregoing adjustments are applicable only to offices that are not abolished.

(b) The Commissioner of the General Land Office and the Treasurer elected at the general election held in 1974 shall serve for the terms for which they are elected.

(c) Except as otherwise provided in this Transition Schedule, all elected officers in this State shall continue in office until the end of their terms unless their offices are sooner abolished in accordance with this Constitution or laws enacted pursuant thereto.

(d) Until otherwise provided by law, general law cities and towns, by majority vote of the qualified voters voting at an election called for the purpose, may provide for terms of office of its elected officers not exceeding four years.

(e) Until otherwise provided by law, the terms of office and system of staggered terms created by Sections 64 and 65 of Article XVI of the Constitution of 1876 shall remain in effect.

(f) Until otherwise provided by law, the requirement of Article XVI, Section 65 of the Constitution of 1876 that the candidacy of district, county, and precinct officers for any office other than the office held shall constitute an automatic resignation, if the unexpired term of the office then held shall exceed one year, shall remain in effect.

Section 14. Commissioner of the General Land Office and State Treasurer

The Commissioner of the General Land Office and the State Treasurer shall continue to be elected officials until the Legislature otherwise provides by law.

Section 15. Board of Pardons and Paroles

Until otherwise provided by law, the Board of Pardons and Paroles shall continue to be chosen and shall continue to operate as provided in Section 11 of Article IV of the Constitution of 1876, as amended.

Section 16. Constitutional Powers Omitted from Implementing Statutes

Any power directly granted to any of the following designated boards by the applicable designated section of the Constitution of 1876, as amended, not also granted by statute shall remain in force and effect until the effective date of a statute either granting such power or otherwise specifically superseding the power hereby continued. No statute may supersede any power the continuation of which is made necessary by the provisions of Section 3 of this Schedule.

(a) State Board of Trustees of the Teacher Retirement System of Texas—Section 48b of Article III.

(b) Veterans' Land Board—Section 49b of Article III.

(c) Texas Water Development Board—Sections 49c, 49d and 49d-1 of Article III.

(d) Texas Water Quality Board or any successor agency—Section 49d-1 of Article III.

(e) State Board of Trustees of the Employees Retirement System of Texas—Section 62 of Article XVI.

Section 17. Dual Officeholding

Until otherwise provided by law, the prohibitions and exceptions thereto contained in Sections 12, 33 and 40 of Article XVI of the Constitution of 1876, as amended, shall continue in force and effect as to all persons except members of the Legislature.

Section 18. Conflict of Interest

No member of the Legislature on the effective date of this Constitution shall be in violation of Section 10(a) of Article III if on that date the member has a pecuniary interest in a contract with the State and that interest would not have violated Section 18 of Article III of the Constitution of 1876, as amended. This preservation of a pecuniary interest shall not extend beyond the term for which the member was elected.

Section 19. The Judiciary

(a) All courts, except those authorized by Article V and the Court of Criminal Appeals, are hereby abolished and all matters pending therein transferred to the courts created by or pursuant to this Article. The Court of Criminal Appeals shall be merged with the Supreme Court as provided by Section 19(d) of this Transition Schedule. The courts into which the matters are transferred shall assume full jurisdiction of the matters and shall have full power and authority to dispose of them and to execute or otherwise give effect to all orders, judgments, and decrees issued by the predecessor courts. The courts created pursuant to Article V shall succeed to all records and property of the courts abolished hereby.

(b) Except to the extent inconsistent with the provisions of Article V, all laws and rules of court in force on the effective date of this Constitution shall continue in effect until superseded as authorized by law.

(c) All appeals docketed but not heard by the Court of Criminal Appeals on the effective date of this Constitution are hereby transferred to that Court of Appeals, formerly the Court of Civil Appeals, in which the appeal would have been docketed if it had been an appeal in a civil case. Until such time as the Supreme Court promulgates specific rules

for appeals of criminal cases from the courts of appeal, the rules presently in force for appeals from courts of civil appeals shall be used in criminal cases.

(d) Two alternative methods for selection of appellate judges are proposed in Article V, Section 8.

(1) If the merit plan for selection of appellate judges is adopted, the following provision will govern.

On the effective date of this Constitution, the Chief Justice of the Supreme Court shall become the Chief Justice of Texas. After the effective date of this Constitution, the offices of the first five justices of the Supreme Court and judges of the Court of Criminal Appeals, other than the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals, who cease to be members of the Supreme Court or Court of Criminal Appeals shall cease to exist. The Supreme Court and Court of Criminal Appeals, after the effective date of this Constitution, shall continue to function separately until a majority of each court determines that the number has been reduced sufficiently for the total membership of the two courts to function properly as one court, but no later than when the total membership has been reduced to nine. Thereupon, the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals shall immediately file with the Secretary of State a statement certifying that such determinations have been made and that the courts have been merged. Whereupon, the Presiding Judge and other judges of the Court of Criminal Appeals shall become justices of the Supreme Court of Texas. At the same time each commissioner of the Court of Criminal Appeals shall become a commissioner of the Supreme Court of Texas, but when he ceases to hold that position, the position shall cease to exist. Upon the filing with the Secretary of State of the statement certifying that the courts have been merged, the Supreme Court of Texas shall assume all authority and jurisdiction of the Court of Criminal Appeals.

(2) If the nonpartisan election method for selection of appellate judges is adopted, the following provision will govern.

On the effective date of this Constitution, the Chief Justice of the Supreme Court shall become the Chief Justice of Texas. After the effective date of this Constitution, the offices of the first five justices of the Supreme Court and judges of the Court of Criminal Appeals, other than the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals, who die, resign, retire, or who are removed or fail to file for reelection shall cease to exist. The Supreme Court and Court of Criminal Appeals, after the effective date of this Constitution, shall continue to function separately until a majority of each court determines that the number has been reduced sufficiently for the total membership of the two courts to function properly as one court, but no later than when the total membership has been reduced to nine. Thereupon, the Chief Justice of Texas and the Presiding Judge of the Court of Criminal Appeals shall immediately file with the Secretary of State a statement certifying that such determinations have been made and that the courts have been merged. Whereupon, the Presiding Judge and other judges of the Court of Criminal Appeals shall become justices of the Supreme Court of Texas. At the same time each commissioner of the Court of Criminal Appeals shall become a commissioner of the Supreme Court of Texas, but when he ceases to hold that position, the position shall cease to exist. Upon the filing with the Secretary of State of the statement certifying that the courts have been merged, the Supreme Court of Texas shall assume all authority and jurisdiction of the Court of Criminal Appeals.

(e) Chief Justices of the courts of civil appeals shall become chief judges of the courts of appeals; justices of the courts of civil appeals shall become judges of the courts of appeals.

(f) Each district judge or judge of a criminal district court, domestic relations court, special juvenile court, or special designated probate court shall become a judge of a district court.

(g) Each judge of a county court at law, county civil court at law, county court for criminal cases, county criminal court, or county court of criminal appeals shall become a judge of a county court.

(h) Judges of the county court elected pursuant to Article V, Section 15 of the Constitution of 1876 shall remain as presiding officers of the County Commission as provided by Article IX, Section 3(a) of this Constitution. Any judge of the county court who is licensed to practice law may elect to preside over the County Commission or may, by written notice to the Governor filed with the Secretary of State within thirty days after the effective date of this Constitution, elect to become a judge of the county court provided by Article V, Section 5 of this Constitution. In the latter event, the office of county judge shall be vacant and shall be filled by the County Commission until the next general election.

(i) No judicial office shall be abolished by the adoption of this Constitution until the expiration of the term of the person who held the office on the effective date of this Constitution or until that person ceases to hold the office, whichever occurs first.

(j) The members of the Judicial Nominating Commission first selected under the provisions of Section 7 of Article V shall serve for the following terms of years: four for two years, four for four years, and three for six years. The holders of the foregoing respective terms shall be determined by lot.

(k) If the merit plan is adopted for selection of appellate judges, the Chief Justice, each justice of the Supreme Court, and each judge of the courts of appeals now in office shall be subject, in the manner provided by law, to approval or rejection at the general election preceding the expiration of the term for which each was elected. Until the merger of the Supreme Court and the Court of Criminal Appeals is accomplished pursuant to Section 19(d) of this Transition Schedule, the Presiding Judge and each judge of the Court of Criminal Appeals now in office shall be subject, in the manner provided by law, to approval or rejection at the general election preceding the expiration of the term for which each was elected.

(l) The terms of all district judges in office on the effective date of this Constitution are hereby extended two years.

(m) Members of the Judicial Qualifications Commission on the effective date of this Constitution shall continue in office and serve as a commission under Section 11(e) of Article V until a commission is established by law pursuant to that Section.

(n) In the event a transfer or transition has not been provided for by this Section or by law, the Supreme Court shall provide by rule for the required orderly transfer or transition.

Section 20. Publicizing Proposed Amendments

Until otherwise provided by law, the Secretary of State and the Attorney General shall follow the procedure prescribed in Section 1 of Article XVII of the Constitution of 1876, as amended, for publicizing proposed amendments to this Constitution.

Adoption Schedule

These Schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted and establishing the general effec-

tive date of this Constitution. No provision of this Schedule shall be published as a part of this Constitution.

Section 1. Effective Date

Except as otherwise provided in Section 1 of the Transition Schedule, this Constitution, if approved by the qualified voters as provided by the Constitution of 1876, as amended, shall take effect on September 1, 1975. The Constitution of 1876, as amended, shall thereafter be of no effect.

Note: Subsequent sections of the Adoption Schedule should spell out the details for adoption of alternative provisions (if submitted), the form of the ballot, and the like.

Chapter Two

Introduction

Chapter Two

Introduction

Constitution writing is a democratic process deeply ingrained in Texas history. The earliest constitution governing the state dates back to the early 1800's when Texas was a part of Mexico. In 1836 the Republic of Texas was established and a new fundamental law was written for that fledgling nation. Succeeding constitutions were adopted in 1845 when Texas became part of the United States, in 1861 at the time of secession, and again in 1866 and 1869 during the Reconstruction period. The present constitution of the state, adopted in 1876, was written in the aftermath of that troubled era.

Delegates to the constitutional convention of 1875, concerned about governmental corruption and irresponsibility during Reconstruction, drafted the state's present constitution with many of the specific problems of that time in mind. Numerous safeguards were included to prevent the misuse of public funds as well as prevent the concentration of political power in any officer or branch of government. Opinions as to the adequacy of that document have varied over the years. But perhaps the best test of a constitution, which is intended to be the state's fundamental law, is its adaptability to changing needs and circumstances. Since 1876 the constitution has been amended 218 times in attempts to keep it current with the needs of a rapidly changing society.

Efforts to bring about constitutional reform in Texas have gained momentum in recent years as citizens of the state have become increasingly aware of the need to modernize the institutions of government. Recent study efforts which have contributed to the increased awareness and knowledge of the constitution include a study published by the Legislative Council in 1960. That study led eventually to the deletion of much obsolete material by a "clean-up" amendment in 1969. In addition, a study commission created by the Legislature made its recommendations for revision in 1968.

The current effort for constitutional revision began with the adoption of a resolution by the 62nd Texas Legislature in May, 1971. The resolution called for an amendment to be submitted to the voters in November, 1972. If approved, the amendment would set in motion a process leading to a thorough study and recommended revision of the state's fundamental law. (The amendment is reproduced as Appendix A.) With the support of numerous legislators, civic leaders, and private citizens the amendment was approved by the people by a substantial margin. The amendment specifically called for the creation of a citizens' commission whose recommendations for constitutional change would be acted upon by the Legislature sitting as a constitutional convention. Proposals for constitutional change agreed upon by the Legislature would then be submitted to the voters of Texas for their approval.

The Constitutional Revision Commission

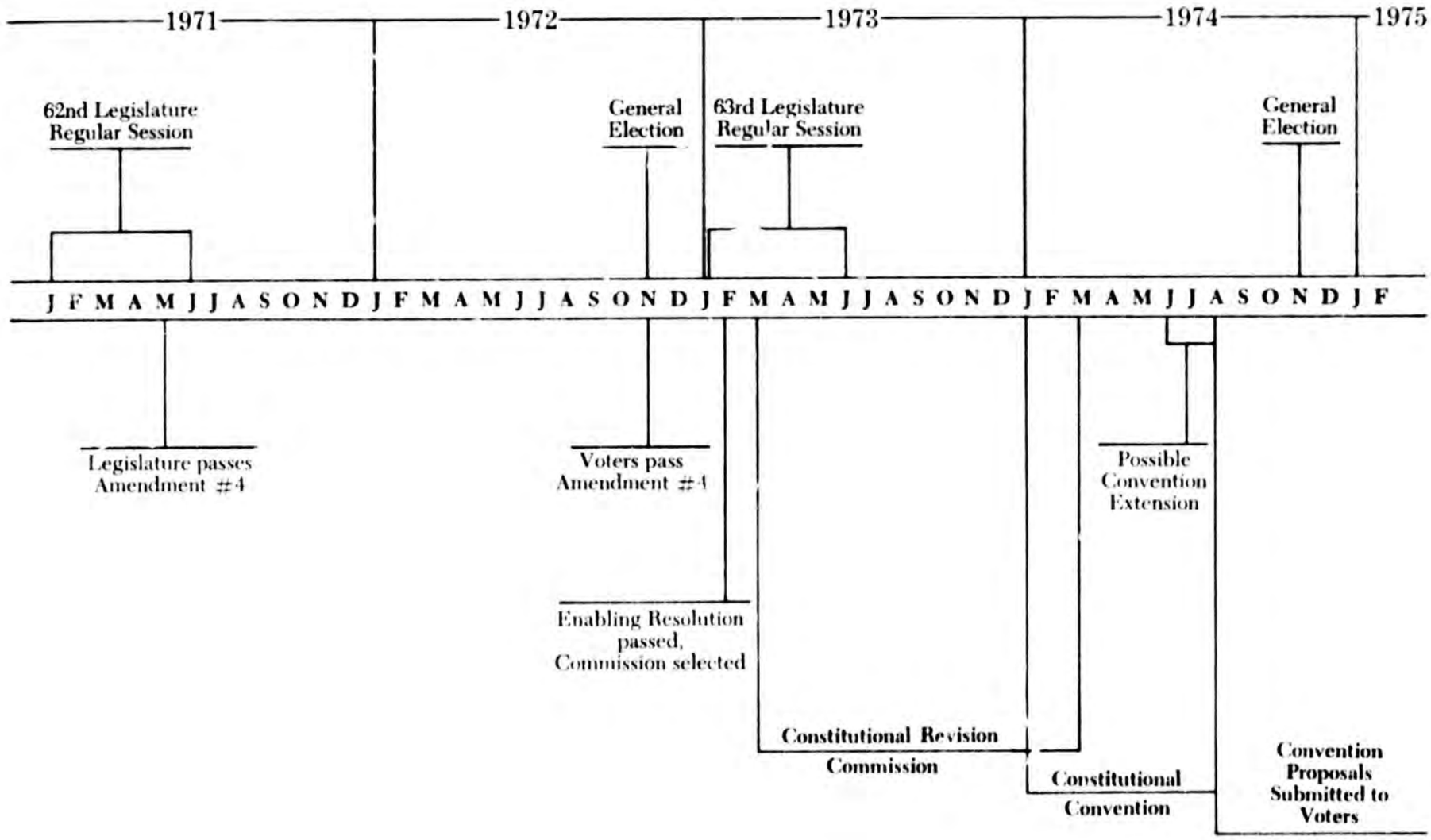
Within a few months after approval of the proposal for constitutional reform by the voters, the Legislature passed a resolution establishing the Texas Constitutional Revision Commission. On February 12, 1973, Senate Concurrent Resolution Number 1 (S.C.R. 1), was signed into law, creating the Commission for the purpose of studying the need for constitutional change and reporting its recommendations to the Legislature not later than November 1, 1973. The resolution provided that the recommendations would be considered by the Legislature sitting as a constitutional convention beginning in January, 1974. (S.C.R. 1 is reproduced as Appendix B.)

Shortly after the passage of S.C.R. 1, a selection committee composed of Governor Dolph Briscoe, Lt. Governor William P. Hobby, Jr., Speaker of the House Price Daniel, Jr., Attorney General John Hill, Chief Justice Joe Greenhill of the Supreme Court, and Presiding Judge John Onion of the Court of Criminal Appeals met and began the process of selecting 37 persons to serve on the Constitutional Revision Commission. By February 24, 1973, the 37 had been chosen from a list of approximately 1,000 names submitted for consideration.

The final membership of the Commission was broadly representative of the ethnic groups and geographic areas of the state. Occupations of members included banking, education, law, farming and ranching, journalism, medicine, organized labor, and public service. (The members are listed in Appendix C.) From among the members, the selection committee appointed Judge Robert W. Calvert, retired Chief Justice of the Texas Supreme Court, as chairman. Mrs. Malcolm Milburn, prominent in civic work and Republican Party politics, was named vice-chairman.

The Commission began its task with a mandate from the people and a list of duties and responsibilities laid down in constitutional amendment and public law. On

Figure 2.1
Significant Dates in the Implementation of Constitutional Revision



March 10, 1973, the members convened in Austin for an organizational meeting during which the basic structure of the Commission was decided upon. An important organizational decision, in that it provided the framework for much of the future work of the Commission, was the establishment of seven committees which would study specific areas of the existing constitution and make recommendations back to the full Commission.

On March 28, 1973, seven study committees were appointed and were assigned responsibility, respectively, for the executive branch, the legislative branch, the judicial branch, local government, finance, general provisions, and education. In addition, the Commission decided to form a style and drafting committee to oversee the organization of the new document and to ensure that its language would be clear and consistent.

Using preference lists submitted by each Commission member, the chairman and vice-chairman appointed committee members and designated officers for each. (The composition of the study committees is included as Appendix D.) At the same time, each committee was assigned articles of the 1876 Constitution for study.

Public Participation in the Revision Process

Public Hearings. After establishing the basic framework to be used in the revision process, the Commission began its charge to study the need for constitutional change. Heeding the concurrent resolution's command to "provide for maximum participation at the grass roots level," the Commission scheduled a series of nineteen public hearings across Texas, thereby more than trebling the requirement in S.C.R. 1 that public meetings be held in a minimum of six geographical areas of the state.

Beginning on April 25, 1973, in Amarillo, and ending on June 30, 1973, in Austin, the Revision Commission toured the state and listened to citizens in every geographic area express their thoughts and concerns on what should or should not be included in a new constitution for Texas. An average of approximately 200 attended each public hearing. Local residents were vocal in their support of and opposition to such issues as legislative pay, voting rights, the composition of the executive branch, the method of selecting judges, the environment, local government, home rule, public school financing, and the length and frequency of legislative sessions.

Many of those testifying at the hearings presented detailed recommendations. In several cases, a complete new constitution was presented for consideration. At the other extreme were those who made very broad recommendations with regard to the length or general content of a new constitution. Still another viewpoint was that no changes should be made in the Constitution of 1876.

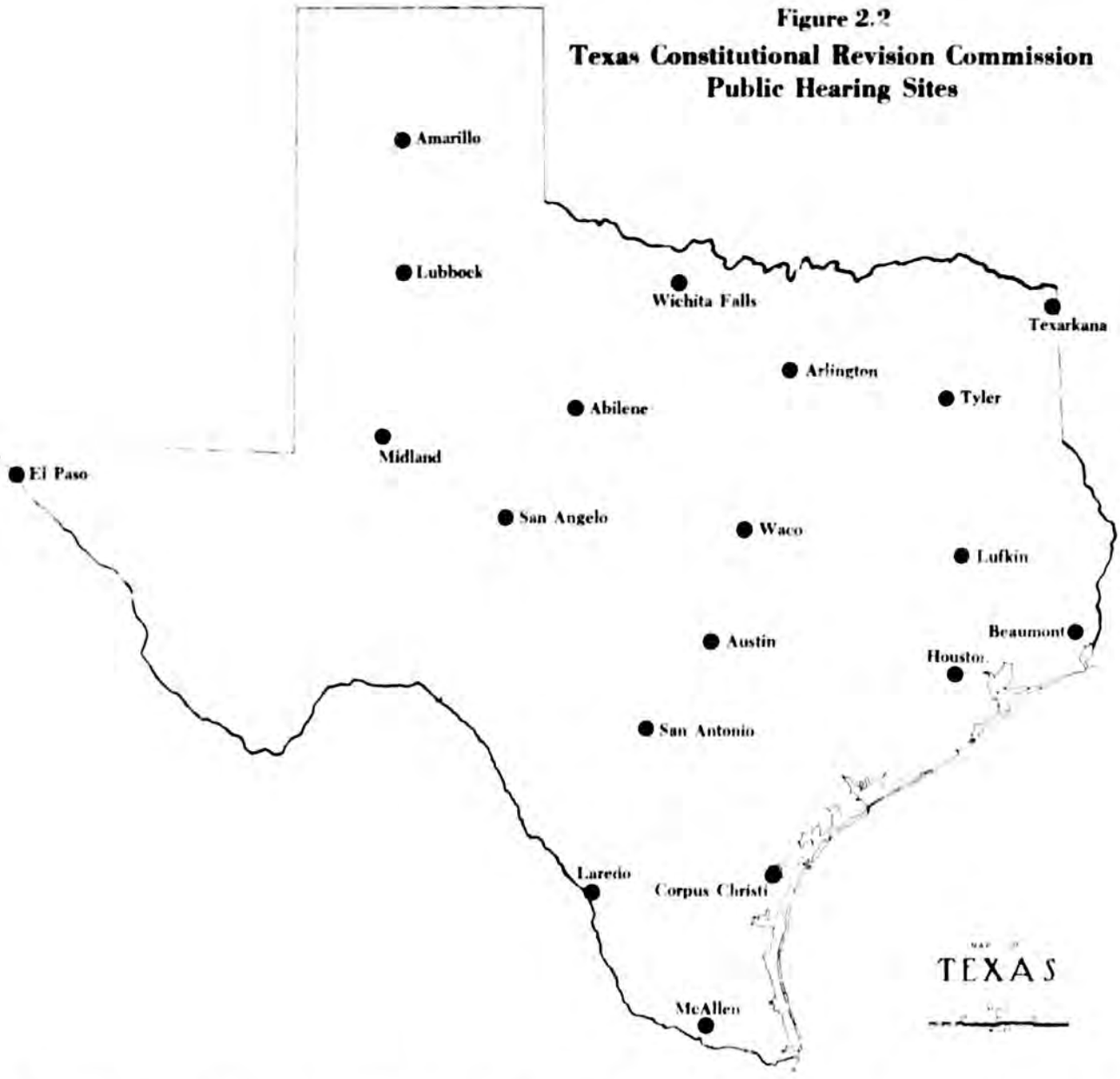
Just as there was marked diversity in the subject matter of the testimony presented at the public hearings, the backgrounds of those testifying were as varied as the terrain of Texas. The people who came to testify were rural residents and city dwellers, rich and poor, farmers and salesmen, great-grandmothers and teenagers, college presidents and college students. By the end of the last public hearing on June 30, 1973, the Revision Commission had been directly involved with over 4,000 citizens who represented almost every segment of the Texas population. (For a tabular summary of public hearings, see Appendix F.)

Citizen Advisory Committees. At the same time that the Commission was discharging its obligation under S.C.R. 1 to hold public hearings, it was fulfilling another provision of S.C.R. 1 which empowered the Commission to select citizen committees to assist in its work. Realizing the importance of involving as many Texans as possible in constitutional revision, the Commission began in mid-April of 1973 to appoint local citizen advisory committees in those areas scheduled to have public hearings.

Ultimately, over 40 local advisory committees were formed, with a total membership of almost 3,000 persons. Ranging in size from 44 to 401, the committees were generally very broad-based and represented a



Figure 2.2
Texas Constitutional Revision Commission
Public Hearing Sites



cross section of the local area's population. Specific functions of local advisory committees included helping organize public hearings in each area, assisting the Commission in identifying local citizens desiring to give testimony at the hearings, helping the Commission become informed on local perceptions concerning the strengths and weaknesses of the Texas Constitution, and aiding in the dissemination of the findings and recommendations of the Commission.

In almost every city the Commission's expectations were realized by involving sizeable numbers of local residents through the advisory committees. Citizens in practically every area of the state turned out enthusiastically for advisory committee meetings. To encourage maximum local flexibility, the Commission did not issue any standardized rules or procedures, but allowed the committees to organize and set about their tasks in different ways. In many localities, citizen advisory committees held additional hearings to supplement Commission hearings in their areas. Others conducted public opinion polls with questionnaires mailed out to individuals and printed in local newspapers. Still others appointed subcommittees to study the various sections of the constitution and recommend changes to their full advisory committees and subsequently to the Revision Commission.

All of the advisory committees took their responsibilities seriously and worked diligently to produce information and recommendations useful to the Commission. The Commission, impressed by both the quantity and quality of the advisory committees' work, made every effort to involve them in the revision process as much as possible and tried to draw upon the expertise possessed by local committee members on a continuing

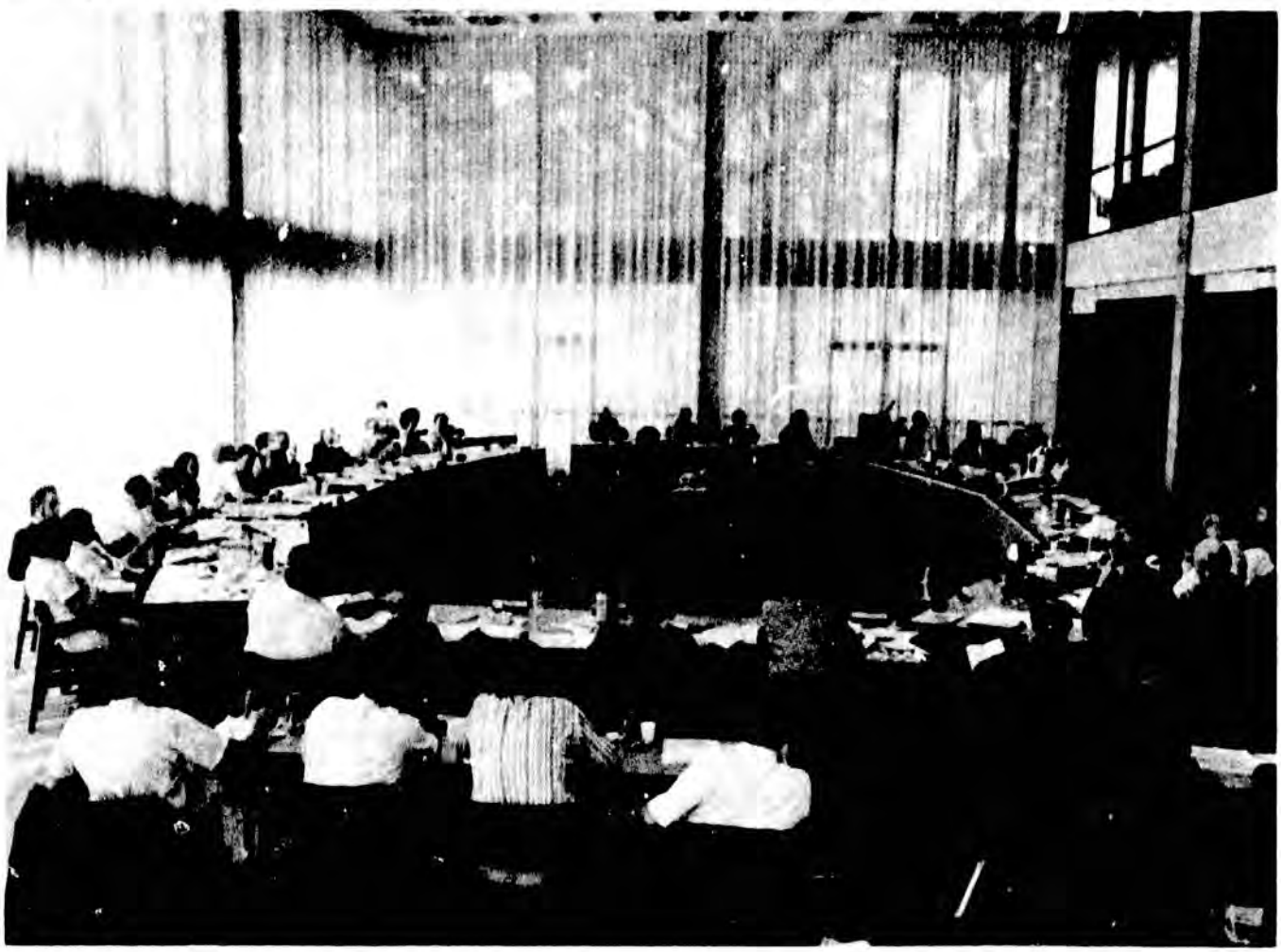
basis. Advisory committees were regularly sent draft recommendations as they were formulated by the Commission and asked to respond to them. In addition, at a special meeting for advisory committee chairmen held in Austin on August 22, 1973, representatives of the committees were given detailed explanations of Commission proposals prior to adoption and were asked to comment on them from local perspectives.

Drafting a New Constitution

The Commission established a policy early in April not to make any substantive decisions until after the citizens of Texas had made known their views in the public hearings, and therefore did not begin its deliberations in earnest until early July, 1973. Utilizing the results of staff research, information and suggestions obtained from the citizen advisory committees, and testimony at the nineteen public hearings, the Commission began at that time to discuss issues and make tentative recommendations for a new constitution. In order to supplement the information gathered earlier, however, the Commission's seven study committees held a number of committee hearings at several locations around the state. Authorities on such subjects as municipal bonds, state executive department structure and operations, the judiciary, and state boards and commissions were invited to attend and discuss with the committees their areas of expertise and ramifications of alternative courses of action.

Findings of the committee hearings were integrated with information previously gathered and became part of the subject matter of numerous and lengthy committee and Commission meetings held during July, August, and September, 1973. During these meetings, recommendations were gradually refined from preliminary conceptual statements to final constitutional provisions. By the time of the last Commission meeting prior to presenting the final document to the Legislature, practically every sentence in every article and section had come under repeated scrutiny and discussion. Opposing viewpoints were aired, defended, and in most cases reconciled. In those instances where agreement could not be reached, separate statements were prepared for later distribution.

The revision process culminated on September 29, 1973, with the approval of a new constitution reflective of many hours of study and deliberation on the part of the Commission as well as the unprecedented involvement of Texas citizens. The results are contained in the pages that follow.



Chapter Three

Overview of the Commission's Report

Chapter Three

Overview of the Commission's Report

To those familiar with the Constitution of 1876, it can be seen readily in even a brief glance through the new constitution appearing in the front of this report that there are marked changes in both style and content. Although the Commission began its deliberations with the Constitution of 1876 and retained a number of its provisions, these have been rewritten appropriately to fulfill the present and future needs of the state. The new constitution is intended as a complete replacement document and not a reorganized or otherwise superficially changed version of the Constitution of 1876. The new document is much shorter, having only eleven articles instead of seventeen as in the 1876 Constitution, and is written so as to be understandable to persons without legal training.

Much of the reduction in length was achieved by deleting obsolete or duplicative sections of the 1876 Constitution and by removing statutory detail not felt to be appropriate in a constitution. Most of such provisions are already included in the laws of the state. In those instances in which provisions were not carried forward in the new document and it was necessary to ensure that no existing laws or rights were threatened as a result, the provisions were retained in a Transition Schedule so that they would continue in force until they lapse of their own accord or are amended or repealed.

The Transition Schedule contains all provisions necessary for an orderly change from the old constitution to the new one. It is part of the text of the new constitution found at the front of this report.

Major Proposals Contained in the New Constitution

The following summary contains the highlights of the recommendations of the Texas Constitutional Revision Commission contained in this document. A more complete discussion of these recommendations is presented in Chapter IV of this report. In that chapter, each new article and section is listed along with a discussion of each section and the effects of the proposals.

Article I, Bill of Rights

The Commission recommends no changes in this article since the constitutional amendment which set the revision process in motion required that the Bill of Rights be retained in full.

Article II, Separation of Powers

This article continues the basic separation of legislative, executive, and judicial power that is contained in the 1876 Constitution. The revised article provides additional flexibility in the sharing of powers by the various branches.

Article III, The Legislature

Composition. The Commission recommends flexibility in the number of members of the Senate and the House of Representatives. The Senate would consist of not fewer than 31 nor more than 50 members, and the House of not fewer than 93 nor more than 155 members. A fixed ratio of House and Senate seats would be required. For example: either 2-1, 3-1, 4-1, or 5-1.

Compensation. The Commission recommends that salaries of legislators and other state officials be set according to law. Under the Commission proposals, a salary commission would be created to recommend levels of compensation for state officers. The Legislature could accept or reject these proposals but could not enact higher rates of compensation.

Sessions. The Commission recommends that the Legislature meet at least once every two years at such times and for such duration as provided by law.

Districting. The Commission recommends that all representative districts be single member and that representative districts be contained within senatorial districts in the same ratio throughout the state. The concept of a redistricting board is retained in the event the Legislature fails to redistrict the state following a decennial census.

Election of Officers. The Commission recommends the open election of all officers, including the Speaker of the House of Representatives.

Conflict of Interest. Provisions in the new Legislative Article would prevent a member of the Legislature from appearing before state executive or administrative units on behalf of clients or others for compensation.

Article IV, The Executive

Executive Department Officers. Elected officers named in the new constitution include the Governor, Lieutenant Governor, Attorney General, and Comptroller of Public Accounts. The Secretary of State remains an appointed officer, but serves at the pleasure of the Governor, and the Commissioner of the General Land Office may be either elected or appointed, as provided by law. The Legislature may provide for other executive department officers, if necessary.

The Governorship. The Commission recommends additional authority to the Governor to supervise the operations of state government. Recommendations include:

(a) A retention of the current line-item veto, and the additional authority of a new reduction veto for certain appropriation items;

(b) Budget execution authority, as provided by the Legislature;

(c) Authority to submit administrative reorganization plans to the Legislature that would take effect unless disapproved; and

(d) The constitutional duty of submitting a budget bill to be considered by the Legislature.

Agencies, Boards, and Commissions. The terms of office of appointed members of most state boards and commissions expire in such a manner that the Governor may appoint one-third of the members within the first few months after assuming office. The Governor may also designate the chairmen of the boards and commissions, but this is not a mandatory duty.

Article V, The Judiciary

Appellate Courts. The Court of Criminal Appeals is merged with the Supreme Court. The present courts of civil appeals become courts of appeals with jurisdiction that includes criminal as well as civil cases.

State Unified Judicial System. The Judiciary Article vests power in the Legislature to create a unified judicial system including the courts of appeals described above and trial courts at the district and county levels. Municipal courts and justice courts continue to operate subject to the provisions of general law, but are not part of the unified judicial system.

Merit Selection and Nonpartisan Elections. Justices and judges of the Supreme Court and courts of appeals remain in office subject to voter approval of their judicial records. Vacancies in the appellate courts are filled by appointment of the Governor from a list of nominees provided by the Judicial Nominating Commission. District and county judges in the unified judicial system are elected on nonpartisan ballots.

Qualifications. Except for judges who preside over county commissions, justices of the peace, and municipal court judges, all judges are required to be qualified attorneys.

Nonpartisan Election of Judges. The Commission recommends the selection of appellate judges according to the merit plan, but believes that the voters should have the opportunity to express their preference for the merit plan or for the election of all judges on a nonpartisan ballot. An alternative proposal for nonpartisan election is therefore included in the Judiciary Article.

Article VI, Suffrage

Qualified voters are defined in conformance with recent United States Supreme Court cases and in conformance with the recent Twenty-Sixth Amendment to the United States Constitution. The Legislature may establish additional requirements by law.

Article VII, Education

Equal Educational Opportunities. The Commission recommendations include a policy statement that each person is guaranteed an equal educational opportunity, and that the quality of education should not depend on the resources of the local school district.

Aid to Private Schools. The Commission recommendations prohibit public aid to private schools below the college level, but do not affect tuition equalization grants for students attending private institutions of higher learning.

Permanent School Fund. The Permanent School Fund for the support of free public schools is retained as a constitutional fund which will be invested at the direction of the State Board of Education as provided by law.

Permanent University Fund. The provisions of the 1876 Constitution concerning the Permanent University Fund for the support of Texas A&M University and The University of Texas are retained. The recommended provision includes requirements that land set apart to the permanent fund be sold only according to legislative directions and that investments of the fund be limited by specific requirements contained in the constitution. Proceeds from bond sales secured by income from the Permanent University Fund may be used to pay for construction or repair of permanent improvements and

for the purchase of capital equipment and library books at all institutions now included in the Texas A&M and University of Texas Systems.

Dedicated Tax for Colleges and Universities. The present constitutional provision for a state property tax to support institutions of higher learning outside The University of Texas and Texas A&M Systems is retained. The Legislature may increase the amount of the tax to provide additional funds in the future.

Article VIII, Finance

Taxation. The Commission recommends that taxes be levied and collected by general law. Property tax exemptions are continued for residence homesteads, household goods and personal effects not used for the production of income, and farm products in the hands of the producer. The Legislature is given authority to make or to continue property tax exemptions for educational, religious, and charitable organizations, for disabled veterans and the survivors of veterans disabled or killed on active duty, and for those determined to be in need of relief because of age, disability, or economic circumstances. The dedicated gasoline tax for constructing, maintaining, and policing highways is maintained.

Pay as You Go. The Commission proposals retain the constitutional requirement that appropriations not exceed the revenue estimated to be available for the fiscal period.

State Debt. The existing safeguards against the incurrence of state debt are retained. Under the new constitution, state debt could only be incurred after approval by a two-thirds vote of both houses of the Legislature and by a statewide referendum. This is currently the process by which the incurrence of debt is authorized by constitutional amendment. Under the new procedure, the same strict voting requirements are retained, but details concerning bond issues, rates of interest, and methods of repayment would be left in statutes rather than placed in the constitution.

Spending Public Funds. The Commission proposals retain the concept that public funds should be used only for public purposes.

Article IX, Local Government

Counties. The present elected county and district officers are retained in the new constitution with some minor changes. The county surveyor becomes a statutory officer, and the number of constables is left up to each county governing body. The county judge who presides over the county commission exercises administrative responsibilities only. The Judiciary Article contains provisions for a system of county courts and a separate office of county judge for those courts.

Additional Flexibility for Counties.

(a) Upon a favorable vote of the county voters, counties may combine existing offices or create new offices.

(b) Counties may enact ordinances if that power is granted by vote of the people.

(c) Upon a favorable vote of the county voters, counties over 25,000 population may adopt charters and exercise powers similar to that of cities.

Home Rule and General Law Cities. The new constitution retains the provision for city home rule and the provision that authorizes the creation of general law cities. The population limit for home rule status is reduced from 5,000 to 1,500.

Special Districts. Provisions affecting special purpose governments, such as hospital, airport, and conservation and reclamation districts, are removed from the new constitution and are retained in statutory form. These lengthy sections are replaced by a single provision which allows the Legislature to establish and to regulate special districts by general law.

Article X, General Provisions

Homestead. The homestead provisions of the 1876 Constitution are carried forward with some changes. These include allowing the Legislature to extend the homestead exemption to unmarried persons, allowing the Legislature to increase the dollar amount of exempt property, and authorizing a voluntary mortgage of the business homestead.

Garnishment of Wages. The prohibition against laws which would allow garnishment of wages contained in the 1876 Constitution is carried forward in the Commission recommendations.

Alcoholic Beverages. The current provisions which allow local option liquor elections and require that an election be held before alcoholic beverages are sold are retained in the Commission's proposal.

Environment. A new provision on the environment states it is the duty of individuals as well as the state government to maintain an improved, clean, and healthful environment in Texas. The environmental provision requires that the Legislature provide for the administration and enforcement of this duty.

Pension and Retirement Systems. The Commission proposals require continuation of any pension or retirement systems of the State or any of its political subdivisions.

Community Property. The provision defining the community property of husband and wife is retained with minor changes to reflect the 1972 equal rights amendment to the Constitution of 1876.

Banking. The prohibition against branch banking in the Constitution of 1876 was not carried forward in the new constitution in order to allow the Legislature flexibility to deal with changing conditions in the banking industry. The provision which prevents foreign banks from operating in the state was retained without change.

Gambling Enterprises. The Commission recommends that the state government and its political subdivisions be prohibited from sponsoring lotteries or other gambling enterprises.

Usury. Since the provisions of the 1876 Constitution concerning usury and rates of interest have not proved effective, the Commission recommends that the Legislature regulate such matters by law.

Article XI, Amending the Constitution

The Commission recommendations contain proposals for an amendment process similar to that of the present constitution. However, the recommendations also contain provisions for calling a constitutional convention. The article requires that the question of whether to call a constitutional convention is to be submitted to the voters at least once every 20 years.

Chapter Four

Text of the New Constitution with Commentary

Chapter Four

Text of the New Constitution with Commentary

In this part of the Commission's report each article and section of the new constitution, with the exception of the Bill of Rights, is listed along with a commentary which explains each section and the effects of the proposed change.

The following format is used throughout.

1. Article...., Section.....
   (Text of recommended section)
2. **Origin**

   (In this space, the relevant sections of the Constitution of 1876 are listed. Consistent terminology is used to indicate the relationship of the new section to the old section or sections. The term *revises* is used to indicate substantive changes, whether by addition or deletion. The term *rewords* is used to indicate grammatical changes, reordering of sentences, or other nonsubstantive changes. The term *new provision* is self-explanatory and is included to indicate that no similar provision is contained in the 1876 Constitution. In a few cases sections of the 1876 Constitution have been retained without change and this fact is reflected by *retained unchanged.*)
3. **Commentary**

   (Under this heading each section is discussed to explain what the proposed language means, the intended legal effect of the section, the reasoning behind its adoption, and in some cases other alternatives which were considered.)

The Commission did not undertake any changes in the Bill of Rights (Article I of the Constitution of 1876) since the constitutional amendment which initiated the revision procedure requires that the Bill of Rights be retained in full. Therefore, no commentary for the Bill of Rights is provided in this report. The Bill of Rights of the Constitution of 1876 is reproduced in full as Article I of the new constitution printed at the front of this report.

Article II

Separation of Powers

Article II
Separation of Powers

Section 1. Separation of Powers

The government of the State of Texas shall be divided into three branches: legislative, executive, and judicial. Except as otherwise authorized by this Constitution, each branch shall exercise the powers appropriate thereto.

Origin

Revises Article II, Section 1.

Commentary

Section 1 preserves the principle of separation of powers which is fundamental to the organization of state government in the United States. About 40 states have a separation of powers clause in their constitutions. The revised section provides for a less rigid separation of powers than is contained in the 1876 Constitution.

The Commission believes that a separation of powers provision is desirable but recognizes that it is impractical and unwise to require an overly rigid separation principle. The proposed Section 1 recognizes that with separation of powers there should be checks and balances to prevent the abuse of power by one branch and that there are instances in which powers of one branch are exercised by another. Some examples of overlapping powers are as follow:

(1) The Governor exercises legislative power by vetoing acts of the Legislature;

(2) The Lieutenant Governor, although a member of the Executive Department, presides over the Senate;

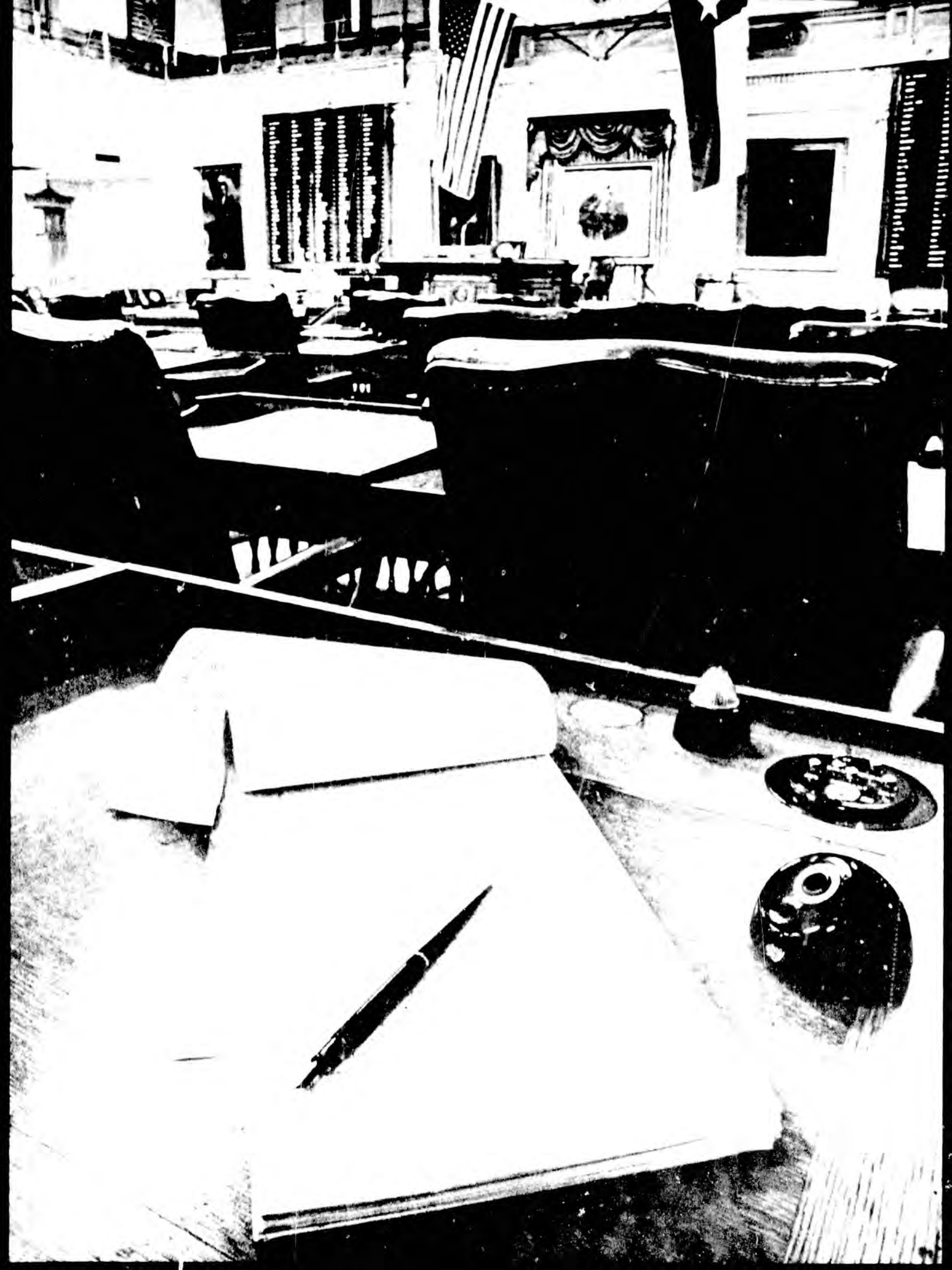
(3) The Supreme Court is permitted to exercise legislative power in making certain rules; and

(4) The Legislature is authorized to impeach and remove executive officers and Supreme Court justices.

The Commission has recommended the language of Section 1 in a careful attempt to solve a difficult problem. In the past, the courts have construed the separation of powers rather strictly. A slight encroachment on the apparent powers of one branch by another branch has been held to violate the constitutional principle, and attempts to relinquish some power in cases where it would benefit the overall operation of government have been suspect. With this history of judicial interpretation in mind, the Commission has attempted to revise Section 1 to allow a less rigid interpretation of the separation of powers concept, but to retain it as a fundamental principle defining the major branches of state government and indicating their primary responsibilities.

Article III

The Legislature



Article III
The Legislature

Section 1. Legislative Power

The legislative power of the State of Texas shall be vested in two houses, a Senate and a House of Representatives, which together shall be styled "The Legislature of the State of Texas."

Origin

Rewords Article III, Section 1.

Commentary

No substantive change is made by this section which is a rewording of Article III, Section 1 of the Constitution of 1876. The power to enact laws has been left in the Legislature alone. This is a continuation of the sound policy that has been in effect since the state's first constitution.

In considering the legislative process, the Commission discussed the possible adoption of limited procedures for direct legislation by initiative and referendum. However, it is the feeling of the Commission that such procedures are mostly of historical significance and would be of little real value in the legislative process. Initiative and referendum procedures would logically belong in the first part of the Legislative Article if adopted.

Although the possibility of a unicameral legislature was considered, the retention of the bicameral system is recommended since it is deeply ingrained in the history of the state. In a bicameral legislature, a Senate and House of Representatives acting independently of each other will ensure careful enactment of legislation.

Section 2. Composition

As shall be provided by law, the Senate shall consist of not fewer than thirty-one nor more than fifty members, and the House of Representatives shall consist of not fewer than ninety-three nor more than one hundred fifty-five members. The number of members of the House of Representatives shall be a whole multiple of the number of members of the Senate.

Origin

Revises Article III, Section 2.

Commentary

The number of members of both houses could be changed under the revised section. The Constitution of 1876 has fixed the number of Senators at 31 and the number of Representatives has reached its maximum of 150. Under the revised section, the number of members can be adjusted somewhat to provide different ratios of Senators and Representatives.

With the rapid growth of the state, it is felt that a recommendation allowing the Legislature to take into account the geographic and demographic variances of Texas in setting the number of members for each house is necessary. This section requires that the number of members of the House of Representatives be a whole multiple of the number of members of the Senate. Each senatorial district can contain two, three, four, or five representative districts. Some possible membership ratios for the Senate and House are: 50-100 (1-2); 50-150 (1-3); 38-152 (1-4); 31-155 (1-5).

Today, there are situations in which a House district is divided among four senatorial districts. The proposed ratio plan should, along with the recommendations in Section 5 of this article, prevent gerrymandering because the Senator and Representatives within that senatorial district will have to work together in drafting an equitable and reasonable districting plan.

This approach, which does not set a definite membership for the Legislature in the constitution, is not novel. Article V, Section 2 of the recently adopted Montana Constitution allows the size of its two houses to be determined by the Legislature.

Section 3. Qualification of Members

(a) A person shall be eligible for election to the Senate if a citizen of the United States, a qualified voter, twenty-five years of age or older, and a resident of this State for five years and of the senatorial district for one year immediately preceding the election.

(b) A person shall be eligible for election to the House of Representatives if a citizen of the United States, a qualified voter, twenty-one years of age or older, and a resident of this State for two years and of the representative district for one year immediately preceding the election.

(c) In the general election following a redistricting, a person shall be eligible to be elected to the Legislature from any new district that contains a part of the district in which that person was eligible for election on the effective date of the redistricting, but only if within thirty days after the date of filing as a candidate in the primary election that person becomes a resident of the new district.

(d) A member of the Legislature may not hold any other office or position of profit or trust under this State, the United States, or any foreign government, except as a member of the National Guard, National Guard Reserve, or any of the armed forces reserves of the United States, as a retired member of the armed forces of the United States, or as a notary public.

Origin

(a) Revises Article III, Section 6.
(b) Rewords Article III, Section 7.
(c) New provision.
(d) Revises: Article III, Section 19;
Article XVI, Section 40.

Commentary

Several changes in the Constitution of 1876 have been made in this section. Subsection (a) lowers the age for the Senate from 26 to 25. Subsection (c) is new. Subsection (d) allows public officeholders to run for the Legislature and, if elected, to serve in the Legislature upon resignation from their previous office. Subsection (d) also narrows the existing dual office holding exceptions.

In dealing with the qualifications for the Senate, the Commission deems it advisable to lower the age from 26 to 25. This will provide an opportunity for a House member who has served two terms to seek a position in the Senate. The Constitution of 1876 is ambiguous as to whether a person must be 26 at the date of the election or whether a person must be 26 to assume office. Subsection (a) clarifies this matter by requiring that a person be 25 on the day of the election. A similar interpretation is intended in subsection (b).

Consideration was given to lowering the age for eligibility to the House of Representatives from 21 to 18. The age limit was retained at 21, however. The Commission feels that the age for representing others carries with it different responsibilities from those of voting. Although Texas law now recognizes 18 year olds as adults, the maturity and training required to serve in the Legislature may not be present.

Subsection (c) is a new provision. After redistricting, many legislators find themselves residing within new districts and separated from an area that they had previously represented. Knowledge of and allegiance to an area and its people may dictate that the legislator run in the newly created district. The recommended provision will allow a legislator or any other qualified person to run in the new district without meeting the constitutional requirement of residence for a certain period in the district. However, the Commission believes that a person running for the Senate or House in the new district should be required to move into that district within a reasonable time. For this reason it is required that such person move into the new district "within thirty days after the date of filing as a candidate in the primary election." Although this time limit may create some hardship, it would ensure that the person running for office would actually move into the district and, if not already acquainted, become acquainted with the local people and their interests.

Subsection (d) has made a substantial change in Article III, Section 19 of the Constitution of 1876. The 1876 document does not allow an officeholder to resign and to run for the Legislature during the term for which that officeholder was elected or appointed. This prevents many elected officials of state and local government from running for the Legislature. The revised section allows an officeholder to serve in the Legislature if elected and contains no requirement that the officeholder resign before running for the Legislature. However, in order to serve, the newly elected legislator would have to resign the other public office. The Commission feels that this change will be beneficial since it will allow many experienced state, county, and district officials to run for the Legislature if they desire. Subsection (d) also applies to legislators after they assume office and prevents dual office holding by a legislator except in certain instances in which it is expressly allowed by the revised constitution.

Section 4. Election and Terms of Members

(a) Senators and Representatives shall be elected at a general election.

(b) Each Senator shall serve a term of four years beginning on the date provided in this Constitution or by law for convening the Legislature in regular session. The qualified voters shall elect a new Senate after each statewide senatorial redistricting, and the Senators shall decide by lot which shall serve four-year terms and which shall serve two-year terms, so that one-half shall be chosen every two years thereafter.

(c) Each Representative shall serve a term of two years beginning on the date provided in this Constitution or by law for convening the Legislature in regular session.

(d) Vacancies in the Senate and House of Representatives shall be filled by special election as provided by law.

Origin

(a) Rewords Article III, Section 27.
(b) Revises Article III, Section 3.
(c) Revises Article III, Section 4.
(d) Revises Article III, Section 13.

Commentary

Section 4 makes only a slight change in existing law and that change is made in subsection (d). Subsections (b) and (c) provide for the same lengths of terms for Senators and Representatives as those in the Constitution of 1876. The possibility of four-year terms for House members was considered but rejected. Two-year terms for House members tend to make them more responsive to their constituents. If House members must run every two years, the electorate is given a frequent opportunity to make its views known on the issues of the day. Approximately 44 states have two-year terms for their legislative bodies comparable to the Texas House of Representatives.

The term of office for Senators is kept at four years in order to provide for continuity and experience in the Legislature. Moreover, four-year terms for Senators is in accord with the traditional theory of a bicameral legislature that the upper house, by virtue of longer terms, will be a more independent body less subject to the immediate demands of popular opinion. About two-thirds of the states have four-year terms for their senators.

The requirement in subsection (b) that a new Senate be elected after every senatorial redistricting is a continuation of the existing procedure. Article III, Section 3 of the Constitution of 1876 requires that the Senate be divided into two "classes" to determine who shall serve initial two-year terms or four-year terms. If the Senate is composed of 31 members, it cannot be divided into two equal parts. However, the present practice of dividing that body into groups of sixteen Senators and fifteen Senators would continue. If the Senate is composed of an even number of Senators, there will, of course, be two numerically equal groups after each redistricting.

Subsection (d) allows the Legislature to provide by law the method for calling special elections to fill vacancies in House and Senate seats. Under Article III, Section 13 of the Constitution of 1876, the Governor issues a writ for a special election.

Section 5. Redistricting

(a) Before August 15 following publication of each federal decennial census, the Legislature shall by law divide the State into single-member senatorial districts and each senatorial district into single-member representative districts.

(b) All senatorial districts shall contain as nearly as practicable an equal number of inhabitants. All representative districts within a senatorial district shall contain as nearly as practicable an equal number of inhabitants. All districts shall be composed of compact and contiguous territory.

(c) A county entitled to more than one Senator or Representative shall be divided into the required number of districts. Population in excess of that required for complete districts within the county, or the population of a county insufficient to comprise a district, shall be joined with population of another county or counties to form one district.

(d) Senatorial and representative districts shall not divide counties unless necessary to prevent a significant population variance between districts.

(e) A Legislative Redistricting Board shall be constituted within twenty days after August 15. The board shall consist of the Governor, Lieutenant Governor, Speaker of the House of Representatives, Attorney General, and five members appointed by the Governor. The appointed members shall be from different geographical regions of the State, and due regard shall be given to the division between urban and rural areas. No appointed member shall be a public officeholder, and not more than three shall be from the same political party. The Legislature shall provide funds for the board's clerical, technical, and other expenses.

(f) If the Legislature fails to redistrict by August 15 or if its redistricting plan is declared invalid, the State shall be redistricted by the board. In the event of failure to redistrict, the board shall convene as soon as practicable after it is constituted. In the event the legislative redistricting plan is declared invalid, the board shall convene as soon thereafter as is practicable. The board shall make and file its redistricting plan with the Secretary of State within twenty-five days after its first meeting.

(g) If the board fails to complete its redistricting in accordance with the requirements of this Section, the Supreme Court of Texas shall have original jurisdiction to compel the board to perform its duties and may provide such remedies and penalties as may be appropriate.

(h) The board shall be dissolved immediately following the first general election held in accordance with a valid redistricting plan.

Origin

(a) Revises Article III, Section 28.
(b) Revises Article III, Sections 25 and 26.
(c) Revises Article III, Sections 25 and 26.
(d) Revises Article III, Sections 25 and 26.
(e) Revises Article III, Section 28.
(f) Revises Article III, Section 28.
(g) Revises Article III, Section 28.
(h) New Provision.

Commentary

Section 5 retains some of the redistricting procedures of the Constitution of 1876, but there are also some significant changes. Changes are made in the composition and operation of the Legislative Redistricting

Board. Also, the requirements for redistricting contained in Section 5 should deter the gerrymandering of districts and require district lines to be consistent with local political subdivision boundaries whenever possible.

The Legislature retains the power to redistrict itself; however, it must act before the next August 15 following publication of the decennial census. The cutoff date in August was chosen in order to allow sufficient time for the Legislature to act. The complete census figures for counties and precincts are usually not available until February or March of the year following a census. For example, the 1980 census figures are expected to be made available to the Legislature about February or March of 1981. The Legislature has approximately six months in which to complete its redistricting task under Section 5. Section 7 of this article allows the Legislature to meet for such duration as provided by law, so the constitution would not prevent the Legislature from remaining in session until August 15.

Subsection (b) recognizes the one-man, one-vote principle as enunciated in the United States Supreme Court case of *Baker v. Carr*, 369 U.S. 186 (1962). The language "as nearly as practicable an equal number of inhabitants" is similar to that which appears in the redistricting case of *Reynolds v. Sims*, 377 U.S. 533 (1964). Two recent United States Supreme Court cases have approved the language in *Reynolds*. The cases are as follows: *Mahan v. Howell*, 93 S. Ct. 979 (1973); *White v. Regester*, 93 S. Ct. 2332 (1973). It is not intended for subsection (b) to require mathematical equality in the population of each legislative district. The word "practicable" expresses the Commission's desire to maintain the integrity of a political subdivision such as a county as long as the maintenance of subdivision lines does not result in significant population variances among districts.

There are two additional requirements in subsection (b). The requirement that districts be composed of compact territory is intended to prevent gerrymandering. Two recently adopted state constitutions use the word "compact" in their redistricting requirements. See Montana Constitution, Article V, Section 14, and Illinois Constitution, Article IV, Section 3. The requirement that representative districts be wholly within senatorial districts is intended to complement Section 2 of this article and lead to a uniform ratio of House to Senate districts.

Subsection (c) recognizes that United States Supreme Court decisions will not allow significant population variances, and, as a result, some counties may have to be divided to obtain districts which contain "as nearly as practicable an equal number of inhabitants." Subsection (d), however, emphasizes that the integrity of county lines should be preserved whenever possible.

Subsection (e) provides for the creation and the composition of a Legislative Redistricting Board. The Lieutenant Governor, Speaker of the House of Representatives, and Attorney General are retained as board members from the Constitution of 1876. The Commission retained the Lieutenant Governor and Speaker for the experience and knowledge in redistricting they might contribute to the board. If the board were activated, these two individuals would have already spent time—possibly five or six months—working on a redistricting plan. The Governor would serve in place of the Comptroller and the Commissioner of the General Land Office.

The board would also have five citizen members appointed by the Governor. This, of course, places the citizen members in a numerical majority on the board. The citizens would be chosen under guidelines that ensure representation of diverse interests and groups.

Subsection (f) provides for the operation of the board in the event of the Legislature's failure to redistrict or the judicial determination of invalidity of a redistricting plan. The subsection also imposes a time within which the board must file its plan.

Subsection (g) retains the present grant of authority to the Supreme Court to require that the board fulfill its duties, but it also is intended to grant new power. Article III, Section 28 of the Constitution of 1876 provides that the Supreme Court of Texas may compel the board to act by "writ of mandamus or other extraordinary writs." The Texas Supreme Court has held that these "other extraordinary writs" are as follows: procedendo, certiorari, prohibition, quo warranto, and other such common law writs. See *Mauzy v. Legislative Redistricting Board*, 471 S. W. 2d 570, 575 (Tex. 1971). Subsection (g) authorizes the Court to "provide such remedies and penalties as may be appropriate." This new language is intended to allow the Supreme Court to issue a declaratory judgment declaring a redistricting plan invalid. It would also allow the Court to issue an injunction. See *Mauzy*, supra, at page 575.

Section 6. Compensation

Each member of the Legislature shall receive compensation and allowances as provided by law, not to exceed the amount recommended by the salary commission. Any increase in com-

pensation shall become effective only at the first regular session following the next general election.

Origin

Revises Article III, Section 24.

Commentary

Section 6 reflects a basic change from the Constitution of 1876. Legislators' salaries would no longer be set in the constitution. Since 1968, the number of states with constitutional restrictions on salary has fallen from 22 to 11.

Under Section 6, Texas would join the ranks of those states that have recently done away with constitutional restrictions on salary. Removal of these restrictions does not mean, however, that there will be uncontrolled salary increases. Although this recommendation allows such compensation as may be provided by law, legislators might be reluctant to vote themselves an adequate level of compensation because of possible voter antipathy. Section 6 of this article should be considered in conjunction with Section 9 of the General Provisions Article (Article X), which provides for the creation of a salary commission to serve in an advisory capacity to the Legislature. The recommendations of the commission would not be final, as legislators would still have to enact a statute setting their own salaries. Any increase in salary could not exceed the recommendations made by the Salary Commission.

Section 6 also includes the stipulation that "any increase in compensation shall become effective only at the first regular session following the next general election." This recommendation, along with that of an advisory salary commission, is intended to mitigate the negative effects of public opinion which often accompany legislators' attempts to raise their own salaries.

There are many reasons for removing the level of legislators' compensation from the constitution. With the number and complexity of demands placed upon legislators today, an increasing portion of their time and attention is required. A more flexible approach is needed to set adequate salaries in order to encourage qualified citizens to give their time in service to the state. All eligible citizens should be able to hold office if elected, and low salaries would seem to exclude all those who cannot afford to leave a full-time occupation. A legislator who is paid an adequate salary will be able to devote full-time to his or her constituents and will be less susceptible to special interest influence.

Section 7. Sessions

(a) The Legislature shall meet at least once every two years and at such times and for such duration as provided by law.

(b) All legislative proceedings shall be open to the public.

(c) Neither house may adjourn or recess for more than three days without the consent of the other.

(d) The Legislature shall meet at the seat of government unless otherwise provided by law.

Origin

(a) Revises Article III, Section 5.
(b) Revises Article III, Section 16.
(c) Rewords Article III, Section 17.
(d) Rewords Article III, Section 58.

Commentary

Several significant changes from the 1876 Constitution are reflected in this provision. Section 7 contains no time limitation on regular sessions of the Legislature and requires only that the Legislature meet in regular session every biennium. Another change is to make all legislative proceedings open to the public.

The Constitution of 1876 provides for a regular session every biennium with a limit of 140 days on that ses-

sion. Subsection (a) will allow the Legislature to meet "at such times and for such duration as provided by law," and would therefore give the Legislature the authority to determine the time needed to complete its work.

Consideration was given to simply lengthening the time of legislative sessions contained in the 1876 Constitution. Sessions of 180 days in odd-numbered years and 60 days in even-numbered years were considered. One possible advantage of a time limit would be to prevent excessively long sessions without any assurance of increased quality of legislation. However, just as a 140 day session is insufficient time for the Legislature to transact its business at present, any other constitutionally-imposed time limit could become an insufficient time for carrying on the business of the state. The Commission believes that the Legislature will meet only for the time it needs to transact its business. Legislators need to maintain personal contact with their constituents and likely would oppose, unless needed, any year-round sessions.

Section 7 provides maximum flexibility because the Legislature could provide by law for a biennial session, annual sessions, or a biennial regular session with an interim budget session. None of these alternatives is dictated by the constitutional language, but all are possible. This flexible provision is not novel. About 33 states have annual legislative sessions, and, approximately one-half of these have no time limits on the length of the session.

Subsection (b) provides that "all legislative proceedings shall be open to the public." The Commission feels that the public has the right to know what its elected representatives are doing. The Constitution of 1876 allows the Senate to hold executive sessions, which are mostly used for the discussion of gubernatorial appointments. Prohibiting executive sessions of the Senate would necessitate nomination of those whose qualifications can successfully undergo public scrutiny.

Subsection (c) helps eliminate a conflict that might arise between the two houses as to the time of adjournment. If either house could adjourn at pleasure, it could completely block public business and practically destroy a session of the Legislature. This provision requires both houses to sit and work simultaneously.

Subsection (d) is not intended to change the seat of government although the capital is not specifically mentioned by name. The words "unless otherwise provided by law" would allow relocation of the seat of government if emergencies necessitated its removal from Austin. Emergencies causing removal might include floods, disease, or nuclear attack.

Section 8. Organization and Procedure

(a) Each house shall be the judge of the qualifications and election of its own members, but contested elections shall be determined as provided by law.

(b) Each house shall adopt its rules of procedure. The Legislature by majority vote of the membership of each house shall adopt joint rules. Rules, once adopted, shall remain in effect until amended, repealed, or otherwise changed by the same or succeeding Legislatures.

(c) At the beginning and end of each session the Senate shall elect from its members a president pro tempore who shall perform the duties of president when the Lieutenant Governor is absent or disabled, or when the office is vacant.

(d) When first assembled the House of Representatives shall organize and elect a speaker from its members.

(e) All elections held by either house of the Legislature shall be by individual voice votes to be recorded in the journal.

(f) Two-thirds of the membership of each house shall constitute a quorum for transacting business, but fewer members may recess or adjourn from day to day and compel the attendance of absent members.

(g) Each house shall prepare and publish a journal of its proceedings. At the request of any three members present, the votes on any question shall be recorded in the journal.

(h) Each house may punish a member for disorderly conduct or for cause deemed sufficient by that house and may expel a member by two-thirds vote of its membership, but not a second time for the same offense.

Origin

(a) Rewords Article III, Section 8.
(b) Revises Article III, Section 11.
(c) Rewords Article III, Section 9.
(d) Rewords Article III, Section 9.
(e) Revises Article III, Section 41.
(f) Rewords Article III, Section 10.
(g) Rewords Article III, Section 12.
(h) Revises Article III, Section 11.

Commentary

Section 8 reflects three basic changes from the Constitution of 1876: (1) the provision for adoption of joint rules in (b) is new; (2) as provided by (e) there would be no secret election of any legislative officers; (3) in (h), the requirement to expel a member of the Legislature was raised from two-thirds of a quorum to two-thirds of the membership of the house doing the expelling.

Subsection (b) requires that each house adopt its own rules. The adoption of rules results in more efficient transaction of legislative business and helps prevent confusion and interruption of legislative sessions. The provision requiring adoption of joint rules is new. In the past the Senate and House have at times been unable to agree on joint rules. This subsection provides that at the beginning of a legislative session there will be a carryover of the previous joint rules until they are amended, repealed, or otherwise changed. Continuing the joint rules results in the smooth and orderly flow of legislative business.

The Commission believes that joint rules should be used to limit effectively the authority of conference committees to modify appropriation bills and other legislation beyond the intent of either of the conflicting bills. The joint rules adopted by the 63rd Legislature attempt to deal with this problem.

Subsections (c) and (d) contain no change from Article III, Section 9 of the Constitution of 1876. Consideration was given to limiting election of a President pro tempore of the Senate to the beginning and end of each regular session, but this limitation was not adopted. Under this provision the Senate can continue to elect a President pro tempore at the beginning and end of both regular and special sessions of the Legislature.

Subsection (e) would require the election of all legislative officers to be open. The major effect of this recommendation is to require the open election of the Speaker of the House. Each member's vote would be recorded in the journal. The words "individual voice votes" are intended to preclude all members from voting by machine at the same time. It is the Commission's belief that public voting will make it more difficult for behind the scenes maneuvering in the election of a Speaker. A Speaker elected by open vote might, in making committee assignments, be less likely to express ill will toward the opposition since the votes for opposing candidates are public. The public would be aware if those members were discriminated against because of their vote for Speaker.

Subsection (f) retains the requirement that two-thirds of each house constitute a quorum. Although some thought was given to lowering the quorum requirement to a majority, it was retained at two-thirds. The quorum requirement of two-thirds is a precaution against a small group of legislators passing laws without sufficient deliberation by the whole legislative body.

Subsection (g) contains the requirement that a journal be kept in each house. The requirement of a journal is considered important to inform the public of the proceedings. Since the journal of each house is the official record of the actions taken by that body, reference may be made to the legislative journal to ascertain the history of the passage of an act, to clarify it, or to disclose the intention of the Legislature.

The provision which allows three members to request a record vote is retained from the Constitution of 1876 in order to permit the public to know the action taken by their Representatives and Senators with respect to certain measures. The requirement that three persons be necessary to request a record vote is to prevent record votes being requested too frequently by one individual. A record vote consumes time and thus can delay the transaction of other legislative work.

Subsection (h) revises Article III, Section 11 of the Constitution of 1876. The 1876 provision does not expressly state that two-thirds of a quorum is needed to expel a member. This has been held to be the case, however. See Texas Att'y Gen. Op. (To Honorable R. L. Bobbitt, February 8, 1927), 1926-1928 Tex. Att'y Gen. Bien. Rep. 387. Section 8 increases the requirement for expulsion to two-thirds of the membership of each house. Although not expressly stated, a

vacancy is created upon expulsion of a member and a special election is called to fill the vacant seat. In the *Journal of the House of Representatives of the Regular Session of the Fortieth Legislature* (1927) on pages 442 and 443, resolutions can be found which provide for the expulsion of certain members and declare their seats vacant. An expelled member can be elected to fill the vacant seat and cannot be expelled a second time for the same offense.

Section 9. Legislative Immunity

No member shall be questioned in any other place for speech or debate during a legislative proceeding.

Origin

Rewords Article III, Section 21.

Commentary

In Section 9 the words "legislative proceeding" are substituted for "either house" which appear in Article III, Section 21 of the Constitution of 1876. The change in wording was made in order to coincide with the judicially interpreted scope of that language. See *Tenny v. Brandhove*, 341 U.S. 367 (1951); cf. *Canfield v. Gresham*, 17 S.W. 390 (Tex. 1891). Freedom of legislative speech and debate is a great and vital privilege to assure the proper functioning of the legislative process. This provision gives absolute immunity to a speech made by a member on the floor of either house, before committees, or in any other proceedings directly connected with the Legislature.

Section 10. Conflict of Interest

(a) No member may vote for the appointment of another member to any office filled by the Legislature.

(b) During the term for which elected a member shall be ineligible for (1) any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased, during such term, or (2) any office or position the appointment to which may be made, in whole or in part, by either house of the Legislature. The ineligibility shall terminate on the last day in December of the last full calendar year of the term for which the member was elected.

(c) A member privately interested in a bill, resolution, or other matter before the Legislature shall disclose the interest and shall not vote on the bill, resolution, or other matter.

(d) No member may have a pecuniary interest in any contract with the State.

(e) No member shall for compensation other than the emoluments of office appear before or have dealings with an executive or administrative unit of State government; and no member shall directly or indirectly share in any fee paid to any other person for such appearance or dealings.

(f) A continuance shall not be granted in any judicial proceeding solely because a party or attorney is a member of the Legislature.

Origin

(a) Rewords Article III, Section 18.
(b) Rewords Article III, Section 18.
(c) Rewords Article III, Section 22.
(d) Revises Article III, Section 18.
(e) New provision.
(f) New provision.

Commentary

Section 10 contains provisions thought essential to prevent conflict of interest situations that work to the detriment of the public interest. Subsections (a), (b), and (c) are intended to make no changes in their counterparts found in the Constitution of 1876. Subsections (e) and (f) contain new provisions.

Subsection (a) provides for a continuation of existing law. As defined in Section 1 of this article, the "Legislature" is composed of both the House and the Senate. In any election by the Legislature (joint action of the two houses) a member cannot vote for another member to fill an office. This provision, of course, is not intended to preclude a Representative from voting for a Speaker or a Senator from voting for a President pro tempore. Both of these offices are filled by a single house and not by the joint houses.

Subsection (b) is designed to prevent legislators from resigning to take state offices which they may have created or offices for which they may have increased the emoluments. This provision is intended to prevent any improper bias on the part of a legislator when that legislator votes to create a new office or increase the salary of an existing office.

Subsection (c) retains the requirement that a member of the Legislature abstain from voting on matters in which he or she may have a personal, private interest. This provision is difficult to enforce, and therefore becomes basically a matter for each legislator's individual conscience. The type of private interest envisioned in a bill is an interest which is personal to a legislator. It is not intended that lawyer-legislators, for example, not vote on bills concerning the judiciary in general. An interest which is general to a class and remote to a legislator is not intended to disqualify the legislator from casting his or her vote.

Subsection (d) changes the provisions of the 1876 Constitution which prohibit a legislator from having an interest in a contract with the state, or any county thereof, when the contract has been authorized by any law during a term when the legislator has served. Subsection (d) prohibits a legislator from having a pecuniary interest in any contract with the state, regardless of when the contract was authorized. Realizing that such a proposal might disrupt some existing and legal contracts, a provision has been placed in the Transition Schedule to allow such contracts to continue until expiration. As with other provisions of this section, subsection (d) is intended to prevent a legislator from receiving any special favors or treatment by virtue of the office held.

Subsection (e) pertains to another possible conflict of interest situation. Since the Legislature acts on the budgets of state agencies, boards, and commissions, it is possible that a legislator might receive special treatment from these groups—favorable treatment that the legislator would not have received except for the office held. In order to prevent a legislator from possibly exerting undue influence on state agencies or from receiving special treatment unwittingly given by an agency's personnel, subsection (e) would limit the appearance of legislators before these agencies and also prevent the legislator from sharing in any fee paid to another for such an appearance.

This proposal is not intended to prohibit a legislator from appearing before a budget board, for example, to ask that a college in that legislator's district be given adequate funding. This is part of a legislator's duty. However, any appearance before or dealings with an agency in which the legislator would be representing clients for a fee would be prohibited. The word "dealings" is also used because a legislator could attempt to influence the actions of a state agency, board, or commission through correspondence as well as by personal appearance. The fact to bear in mind is that the office alone can exert influence. Consequently, any use of the legislator's position is discouraged.

This proposal extends to all legislators and is not just limited to one occupation or profession. As a result, legislators, whether engineers, lawyers, doctors, pharmacists, farmers, or members of other professions, would be unable for a fee to appear before or have dealings with an executive or administrative unit of state government.

Section 10(e) also states, "No member shall directly or indirectly share in any fee paid to any other person for such appearance or dealings." Cognizant that many legislators are members of firms and partnerships, a legislator could not share, directly or indirectly, in any fee paid to a partner or other such person. This would prohibit any fee sharing arrangement which might be used to circumvent the proposal.

In 1973, the 63rd Legislature amended the statute, TEX. REV. CIV. STAT. ANN. art. 2168a (1964), which grants members of the Legislature a mandatory continuance if the legislator is a party or attorney in a suit. This amended statute appears in Vernon's Texas Session Law Service: Tex. Laws 1973, ch. 428 at 1130. The amendment was an attempt to prevent some of the abuses of continuance. Subsection (f) is intended to provide a stronger method to prevent any further abuses of the continuance procedure. The bill that amended the mandatory continuance statute had language recognizing the abuses. It reads,

> The fact that mandatory continuance of suits for Members of the Legislature has been the subject of

some abuse, and the fact that on occasions it has appeared that such mandatory continuances have been used solely for the purpose of delay. . . .

See Tex. Laws 1973, ch. 428 at 1130, 1131. Under subsection (f), it would still be possible for a legislator to obtain a continuance if a party or attorney in a case. However, there must be a good reason, other than legislative membership, for such a continuance. The decision to grant a continuance would be discretionary with the judge and not mandatory.

Section 11. Bills

(a) The Legislature shall enact no law except by bill.

(b) A bill may originate in either house. After a bill passes either house, the other may amend or reject it, but neither house may so amend a bill as to change its original purpose.

(c) Every bill shall be limited to a single subject, which shall be expressed in its title. A general appropriation bill shall be limited to the subject of appropriations. A statutory revision bill shall be limited to that subject.

(d) A bill, amendatory in form, shall set out the complete section, as amended, of the statute it amends.

(e) Before a house considers a bill it must have been referred to a committee of that house and reported at least five days before adjournment of the session.

(f) Before a bill becomes law it must be read on three separate days in each house. Either house by four-fifths record vote of the members present and voting may suspend this requirement.

(g) If a bill or resolution is defeated by a vote of either house, no bill or resolution containing the same substance shall be passed during the same session.

(h) The presiding officer of each house shall, in the presence of that house, certify the final passage of each bill or resolution requiring the concurrence of both houses. The fact of certification shall be recorded in the journal.

(i) No law except the general appropriation act and redistricting acts shall take effect until ninety days after it becomes a law or ninety days after adjournment of the session at which it was enacted, whichever is earlier. The Legislature, by three-fourths record vote of the membership of each house, may authorize an earlier effective date.

Origin

(a) Rewords Article III, Section 30.
(b) Rewords: Article III, Section 30;
Article III, Section 31.
Revises Article III, Section 33.
(c) Revises Article III, Section 35.
(d) Rewords Article III, Section 36.
(e) Revises Article III, Section 37.
(f) Rewords Article III, Section 32.
(g) Rewords Article III, Section 34.
(h) Rewords Article III, Section 38.
(i) Revises Article III, Section 39.

Commentary

Section 11 provides for a continuation of the basic provisions of the Constitution of 1876 concerning the enactment of bills. However, Section 11 contains some changes in existing law. Subsection (b) would allow revenue bills to originate in the Senate; (e) establishes the requirement that a bill be reported from

committee at least five days before adjournment instead of three days; (i) changes the effective date for bills.

Subsection (a) retains the mandatory requirement that the Legislature enact no law except by bill. This subsection is not applicable to joint resolutions of the Legislature. Resolutions, although they express the will of the Legislature, cannot be given the effect of law because subsection (a) provides that no law shall be enacted except by bill.

Subsection (b) allows any bill, including a revenue bill, to originate in either house. The Senate of the Texas Legislature and the upper houses of many other representative bodies have traditionally been prevented by constitutional provisions from initiating revenue bills. The tradition stems from the fact that the House of Lords in England has been composed of an hereditary class. United States Senators were originally selected by state legislatures, rather than being popularly elected. Therefore, the general public had an aversion to allowing individuals selected only by a few to introduce revenue bills. Although State Senators in Texas have always been selected by popular election, a prohibition on the framing of new taxes by the upper body was retained in the 1876 Constitution. Today State Senators are elected by the people according to the one-man, one-vote principle, and there is no longer a sound reason why Senators, as elected representatives of the people, should not be allowed to initiate revenue bills. More than one-half the states now allow revenue bills to originate in the upper house.

Subsection (b) also allows a bill passed by one house to be amended or rejected by the other house; however, neither house may change the bill's original purpose. The provision that a bill not be amended on its passage through either house so as to change the bill's original purpose prevents confusion in the statutes. Furthermore, it helps keep legislators from unintentionally passing a bill that might otherwise be entirely different from one which was first introduced.

Some consideration was given to making the title-subject rule in subsection (c) a matter for legislative compliance only and not subject to judicial review. This approach was rejected although the title-subject provision can be used as a tactic to void legislation years after its passage. The title-subject rule has some basic advantages, and retaining judicial review would ensure that the rule would continue to be strictly followed. The title gives the legislators an indication of the content of a bill and can therefore prevent the careless or unintentional adoption of legislation. The title-subject rule also gives persons outside the Legislature a better opportunity to be fairly apprised of the subjects of legislation under consideration.

The purpose of subsection (d) is to prohibit "blind" amendments or amendments by reference. This subsection is intended to carry forward the intent of Article III, Section 36 concerning bills that are amendatory in form. In *Thompson v. United Gas Corporation*, 190 S.W. 2d 504 (Tex. Civ. App.—Austin 1945, writ ref'd), a statute expressly repealing part of another law by merely citing it was held to be excluded from the ban of Article III, Section 36 of the Constitution of 1876. This case is illustrative of a bill that amends but is not amendatory in form.

Subsection (e) provides that a bill be referred to a committee and that a bill cannot be passed unless reported at least five days before adjournment. This is an extension of the three day requirement contained in Article III, Section 37 of the Constitution of 1876. This added time should help prevent hasty legislation. Referring a bill to committee allows for in-depth deliberation of the proposed measure by a few who then can pass their deliberations on to the whole legislative body.

Subsection (f) rewords Article III, Section 32 of the Constitution of 1876. The purpose of this provision is to prevent hasty and improvident legislation by allowing sufficient time for adequate information and orderly discussion.

Subsection (g) rewords Article III, Section 34 of the Constitution of 1876. This provision is intended to avoid contradictory actions by the Legislature during the same session by prohibiting reconsideration or reintroduction of any bill defeated during the same session. This prohibition is solely a matter for legislative compliance. The enrolled bill rule prevents the courts from ruling on a violation of this subsection by the Legislature. See *Jackson v. Walker*, 49 S.W. 2d 693 (Tex. 1932); *King v. Terrell*, 218 S.W. 42 (Tex. Civ. App.—Austin 1920, writ ref'd).

The requirement for certification of an approved bill by the presiding officer is retained in subsection (h). Certification is a proper step in the passage of a bill and is used to supply evidence that a bill has duly passed and is ready for approval or rejection by the Governor. Added precaution is taken in requiring the fact of signing to be entered in the journals, for this creates a record and proof of the authenticity of a bill. This procedure has allowed the adoption of the "enrolled bill rule," under which the courts accept the certification of the presiding officer that procedural rules have been properly followed in the passage of a bill.

In subsection (i) the effective date for bills can be earlier than the 90 days after adjournment of the Legislature provided by Article III, Section 39 of the Con-

stitution of 1876. Because Section 7 of this article allows flexibility in setting the duration of sessions, the continuation of the existing provision could delay acts from taking effect much longer than is needed. A delay of 90 days after a bill is signed by the Governor or filed with the Secretary of State should provide adequate time for the publication and implementation of a new law. Since the Commission feels that 90 days is needed to adequately inform the public of a new law, only an extraordinary majority should be allowed to permit an earlier effective date. Consequently, the vote to authorize an earlier effective date is raised from two-thirds to three-fourths of the membership of each house.

Section 12. Local or Special Legislation

The Legislature may not enact a local or special law if a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

Origin

Revises Article III, Section 56.

Commentary

Section 12 revises Article III, Section 56 of the Constitution of 1876, which contains a long list of items upon which the Legislature is prohibited from enacting local or special laws. The long list of prohibitions is eliminated by Section 12, but its removal does not mean that local or special laws can now be passed on these subjects. The basic prohibition is carried forward by the proposed shorter section.

The prohibition against local or special laws was originally intended to prevent special interests from obtaining a benefit through state law and to prevent discrimination among localities of the state. The Commission feels that the Legislature's attention should be focused on bills of statewide interest and it should not try to deal with individual localities any more than is necessary. A constitutional prohibition of the enactment of local or special laws should contribute greatly to the uniformity of legislation affecting local governments throughout the state. Many laws have been enacted which affect only counties and cities in a narrow population "bracket." Such laws are inconsistent with the intent of this section.

It should be pointed out, however, that occasionally some special or local law may need to be enacted. If so, such laws may be enacted if a general law cannot be made applicable. This approach, for example, would allow the passage of local laws for the preservation of the game and fish of this state in certain localities or for the enactment of fence laws affecting certain counties.

Consideration was given to placing a time limit of one year after enactment for judicial review of a law on the ground that it is a local or special law in violation of this section. Statutes have been declared unconstitutional years after enactment because they violated the prohibition against local or special laws. However, the facts and other attendant circumstances which might give rise to an attack on a statute on this basis may not occur until years after enactment. In view of this, no constitutional time limit on judicial review was adopted. The judiciary's function under this section is not just to review the Legislature's action but is to determine whether the statute under attack is indeed a local or special law.

Section 13. Impeachment

(a) The House of Representatives shall have the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the record vote of two-thirds of its membership, to impeach executive officers and justices of the Supreme Court.

(b) Any officer against whom articles of impeachment have been preferred shall be suspended from the exercise of the duties of the office during the pendency of the impeachment. The Governor may make a temporary appointment to fill the vacancy occasioned by the suspension of the officer until the decision on the impeachment.

(c) Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall affirm or take an oath to try impartially the party impeached. If the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. A per-

son may be convicted of impeachment charges only by record vote of two-thirds of the membership of the Senate.

(d) A judgment of conviction by the Senate shall not extend beyond removal from office and disqualification to hold any office of honor, trust, or profit of this State. An impeached person, whether convicted or acquitted, shall be amenable to prosecution, trial, judgment, and punishment according to law.

Origin

(a) Revises: Article XV, Section 1;
Article XV, Section 2.
(b) Rewords Article XV, Section 5.
(c) Revises Article XV, Section 3.
(d) Rewords Article XV, Section 4.

Commentary

This section carries forward the impeachment provisions of the Constitution of 1876 with some changes. Article XV, Section 1 of the 1876 document does not specifically state that only a majority vote is needed for the House to impeach, but this has been the case in practice. Since a majority might be too easy to obtain, and since articles of impeachment against a person may seriously damage that person's reputation, an extraordinary majority of two-thirds of the House to impeach is recommended in subsection (a).

Those subject to impeachment are executive officers and justices of the Supreme Court. This new approach in subsection (a) eliminates the present listing by title of all those officers subject to impeachment. The Judiciary Article contains several methods of removing judges and thus it was thought that the impeachment process should be reserved only for the statewide officers at the highest level of the judiciary.

Subsection (b) is a slight rewording from Article XV, Section 5 of the Constitution of 1876. A temporary suspension during the impeachment process can be justified. An accusation of misconduct in office is of such a serious nature that the public should be protected against a chance of continuing misconduct which might take place if the accusation proved to be true. Furthermore, such a provision works for the benefit of the accused. It gives the accused an opportunity to prepare a defense without being encumbered with the responsibilities and daily burdens which go hand-in-hand with the holding of public office.

The provision in subsection (c) that the Chief Justice of the Supreme Court preside in case of the trial of the Governor or Lieutenant Governor is new. The Commission believes that the Chief Justice should preside as one who is an impartial observer and who is experienced in the law. Also, a conviction by the Senate would require two-thirds of its membership instead of two-thirds of those present as is now the case. Again, it is felt that such serious consequences flow from an impeachment conviction that an extraordinary majority should be required.

The entire impeachment process is a method of removing an official from office. The impeachment process is not used for the purpose of inflicting the punishment applicable to any crime that may have been committed. In other words, a court of impeachment does not pronounce a full and complete sentence. Therefore, subsection (d) allows the courts through their processes to deal with the accused and any alleged crimes. The intent of this section is to allow an indictment by grand jury if warranted either before, during, or after the impeachment proceedings.

Section 14. Advice and Consent of the Senate

Two-thirds of the members present and voting shall constitute consent to any appointment which this Constitution requires to be with the advice and consent of the Senate. The Legislature may provide by law for interim appointments made when the Senate is not in session.

Origin

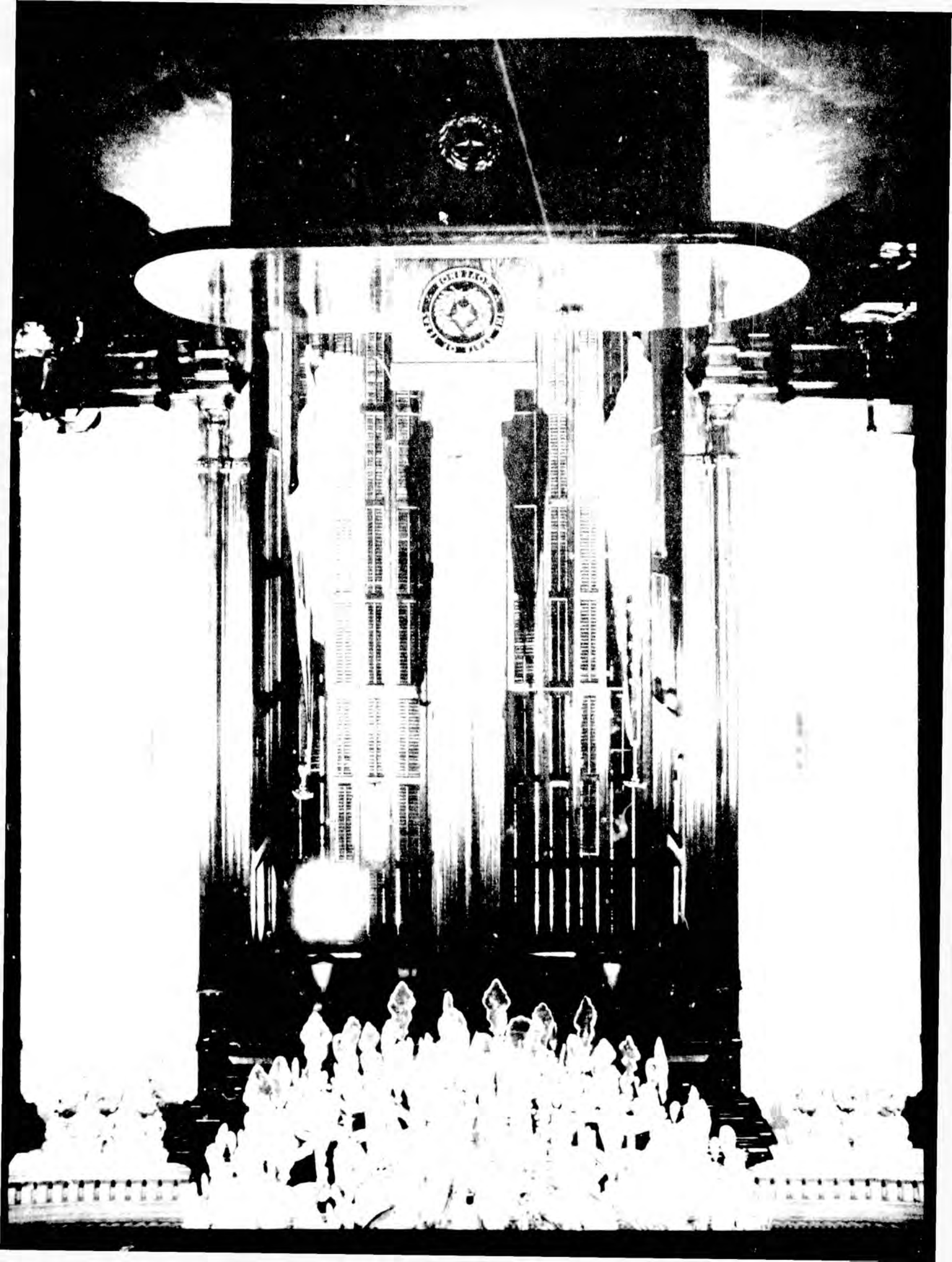
New provision.

Commentary

The words "with the advice and consent of the Senate" appear throughout the new constitution. They are explained to avoid misunderstanding as to the voting requirements for Senate confirmation.

Article IV

The Executive



Article IV
The Executive

Section 1. Officers Constituting the Executive Department

The Governor shall be the Chief Executive Officer of the State. The Executive Department shall consist of a Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, Commissioner of the General Land Office, and such other officers as may be provided by law.

Origin

Revises: Article IV, Section 1;
Article IV, Section 23.

Commentary

The importance of the Governor as Chief Executive of the State is reflected in the first sentence. The Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, and Commissioner of the General Land Office are traditional Executive Department officers, and each of them performs constitutionally mandated duties. Flexibility in the structure of the Executive Department is achieved by adding the phrase, "and such other officers as may be provided by law." This wording would allow the Legislature to provide by law for the inclusion of the Treasurer, Commissioner of Agriculture, and any other officers which the Legislature might stipulate, within the Executive Department.

Many recent state constitutions have provided for consolidating administrative agencies into a specific number of departments. Although this was not considered a viable approach by the Commission, the language of Section 1 would permit the heads of the departments to be incorporated into the Executive Department, if such a reorganization is undertaken in the future.

Section 2. Selection, Terms, and Residence of Officers of Executive Department

The Governor, Lieutenant Governor, Attorney General, and Comptroller of Public Accounts shall be elected by the qualified voters of the State at general elections beginning with 1978. The Secretary of State shall be appointed by the Governor. The Commissioner of the General Land Office shall be elected or appointed as provided by law. Appointive officers of the Executive Department shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor. Elective officers of the Executive Department shall serve four-year terms. All officers of the Executive Department shall reside at the seat of government.

Origin

Revises: Article IV, Section 2;
Article IV, Section 13;
Article IV, Section 16;
Article IV, Section 21;
Article IV, Section 22;
Article IV, Section 23.

Commentary

The election process constitutes the traditional method of selecting the Governor and Lieutenant Governor and this section preserves that democratic principle. The election process is also the most commonly accepted method of ensuring the independence of officers of government. The necessity of an independent check on the governmental actions of both executive and legislative officers was the rationale for the continued

constitutional mandate for the election of the Attorney General and Comptroller of Public Accounts. The Commissioner of the General Land Office has a different type of responsibility and therefore might logically be selected by appointment. However, broad powers of management of the state's public lands entrusted in the Land Office, including mineral rights and related responsibilities, raise the issue of whether the officer entrusted with the public lands should remain elected by the public. Since there are strong reasons for both election and appointment of the Commissioner of the General Land Office, and since there is difficulty in determining what evolution the office might undergo, the option of flexibility was exercised by permitting the Legislature to provide by law the method of selection of that officer. The Secretary of State was retained as an appointive officer of the Executive Department.

The four-year term for elected Executive Department officers, with no limitation on the number of terms to which an officer might be reelected, was retained. The appointive officers of the Executive Department, presently only the Secretary of State, are to be appointed by the Governor with the advice and consent of the Senate and will serve at the pleasure of the Governor. The concept of the term of office for appointed members of the Executive Department being the pleasure of the Governor was implemented to permit the Governor to be held accountable for the actions of an appointed member of the Executive Department.

Section 3. Returns of Election; Declaration of Election; Tie Votes; Contests

Election returns for executive officers shall, until otherwise provided by law, be sealed and transmitted to the Secretary of State, who shall open the returns and promptly certify the winner but shall do so no later than the first Monday in January. The person receiving the highest number of votes for an office shall be declared elected. If two or more persons shall have the highest and an equal number of votes for an office, one of them shall be chosen immediately by joint vote of both houses of the Legislature. Contested elections for executive offices specifically named in Section 1 of this Article shall be determined by both houses of the Legislature in joint session.

Origin

Revises Article IV, Section 3.

Commentary

This section provides that the Secretary of State, not the Legislature, shall certify the election returns of the executive officers. This will allow the winner of the Governor's race to be certified as Governor-elect prior to the convening of the Legislature. The certification of election prior to the convening of the Legislature is necessary to allow an incoming Governor the lead time which Section 4(b) of this article provides.

The Secretary of State was chosen because this office has traditionally been responsible for conducting elections and processing returns for all statewide and district elections except that of Governor and Lieutenant Governor. In order to establish uniformity, this provision includes the other elected officers of the Executive Department.

Under this language the Legislature could continue the role of the present State Canvassing Board, create a new canvassing or certifying board or boards of different membership, or allow the Secretary of State or another officer to certify the winners.

Section 4. Governor's Eligibility and Installation

(a) The Governor shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a resident of this State at least five years immediately preceding election.

(b) The Legislature shall provide appropriations for a staff and office space for a new Governor-elect prior to inauguration. A new Governor-elect shall be entitled to receive from governmental agencies those reports to which an incumbent Governor is entitled.

(c) The Governor shall be inaugurated on the second Tuesday in January or as soon thereafter as practicable. In those years when a new Governor is inaugurated, the Legislature shall convene in regular session one day prior to inauguration and shall organize but shall not act as a deliberative body for the consideration and passage of bills and resolutions until forty-five days thereafter, except on matters called for by the Governor.

Origin

Revises Article IV, Section 4.

Commentary

Subsection (a) retains the same qualifications for Governor as in the Constitution of 1876. Subsections (b) and (c) attempt to deal with the problems encountered when a new Governor takes office. In order to provide a newly elected Governor with the opportunity to organize a staff and become familiar with the responsibilities of the office, a provision allowing the Governor lead time before the convening of the Legislature is included in subsection (b). Under the new provision a newly elected Governor, once certified, is able to hire a staff and rent office space from money appropriated by the preceding Legislature. If an incumbent wins reelection, the funds would revert to the Treasury. Also, the new Governor is entitled to receive all reports to which the incumbent Governor is entitled. This will allow a new Governor to begin work on the budget bill, to consider the appointments which need to be made shortly after inauguration, and to begin work prior to inauguration on the programs the new Governor was elected to carry out. The Governor's budget preparation authority is discussed in the *Commentary* for Article IV, Section 15.

This section sets a definite date for the inauguration of a Governor. If the elected Governor is not an incumbent, the Legislature will convene one day prior to the inauguration but is precluded from acting as a deliberative body for 45 days, except on matters which the Governor calls. However, during this time legislative committees may meet and consider pending legislation. The provision prohibiting deliberative action during the first 45 days of the legislative session revises the Constitution of 1876, which prohibits the Legislature from acting as a deliberative body for 60 days except on four-fifths vote of the membership.

Section 5. Gubernatorial Succession

(a) If before inauguration the person elected Governor fails to qualify, is disabled, or dies, the person elected Lieutenant Governor shall be inaugurated and shall serve as Governor until the person elected Governor at the next general election assumes office for the remainder of the term.

(b) If after inauguration the Governor dies, resigns, becomes disabled, or is removed from office, the Lieutenant Governor shall become Governor and shall serve for the remainder of the term unless the vacancy occurs within sixteen months after inauguration in which event the Lieutenant Governor shall serve only until the person elected Governor at the next general election assumes office for the remainder of the term.

(c) If after a vacancy occurs in the office of Governor and the Lieutenant Governor becomes Governor and thereafter dies, resigns, becomes disabled, or is removed from office, the Speaker of the House of Representatives, if qualified, shall become Governor under the same conditions and for the same term as provided for the Lieutenant Governor.

(d) If the Governor is absent from the State, the Lieutenant Governor shall act as Governor until the Governor returns. If both the Governor and Lieutenant Governor are absent from the State, the Speaker of the House of Representatives shall act as Governor during such absences.

(e) While serving or acting as Governor, the Lieutenant Governor or Speaker of the House of Representatives shall receive only the compensation payable to a Governor.

(f) The Legislature may provide by law for further succession to the office of Governor. No person shall serve as Governor unless qualified for that office.

Origin

Revises: Article IV, Section 3a;
Article IV, Section 16;
Article IV, Section 17.

Commentary

The major changes made in this section relate to succession to the governorship and filling vacancies in that office. Subsection (c) provides that the Speaker of the House, instead of the President pro tempore of the Senate, succeeds to the governorship if the Lieutenant Governor cannot serve. The Speaker, as presiding officer of the House of Representatives, holds a position analogous to the Lieutenant Governor, in that both are permanent presiding officers. In addition, the Speaker is the elected leader of the house of the Legislature which is more subject to popular control. The President pro tempore of the Senate serves only temporarily when the Lieutenant Governor is not present to preside over the Senate.

The second change, reflected in subsections (a) and (b), provides that if a vacancy occurs in the office of Governor before the inauguration of the Governor-elect or within sixteen months after the inauguration of the Governor, the person succeeding to the office of Governor shall serve only until a candidate elected at the next general election assumes office for the remainder of the unexpired term. The Lieutenant Governor, elected as a separate officer with a defined role, is not regarded by the electorate as the Governor's permanent replacement. Therefore, the Commission believes that the voters should have a voice in the selection of a Governor to serve the remainder of the unexpired term. Since a general election occurs every two years, it would require little additional expense or effort to allow the citizens of the state the opportunity to select the permanent replacement for a Governor if the vacancy occurs within sixteen months after inauguration. The sixteen-month limitation was stipulated to permit adequate time to conduct a campaign.

Section 6. Disability of Elective Officers of Executive Department

The disability of any elected officer of the Executive Department to perform the duties of the office during the term for which elected shall be determined in a proceeding in the Supreme Court of the State under such rules of procedure as may be prescribed by that court. A majority vote of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, Speaker of the House of Representatives, and President pro tempore of the Senate shall initiate such proceedings.

Origin

New provision.

Commentary

Section 5, preceding, deals with the disability of the Governor and Lieutenant Governor, and it is conceivable that the problem might also arise with regard to the other elected Executive Department officers. This section is designed to provide a method for resolving the issue of disability. The question of who can initiate disability proceedings presents a problem, and the various state constitutions have suggested a number of possibilities. Recognizing the danger which indiscriminate or punitive action in raising the question of disability might have on the officer, this section requires that a majority of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Commissioner of the General Land Office, Speaker of the House, and President pro tempore of the Senate vote to initiate the question before the Supreme Court of the state.

Section 7. Compensation of Officers of Executive Department

The compensation of the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Secretary of State, and Commissioner of the General Land Office shall

be as provided by law, not to exceed the amount recommended by the salary commission. The compensation of officers of the Executive Department shall not be diminished during their term of office. The Governor shall have the use of the Governor's Mansion

Origin

Revises: Article III, Section 61 (1954);
Article IV, Section 5;
Article IV, Section 16;
Article IV, Section 17;
Article IV, Section 21;
Article IV, Section 22;
Article IV, Section 23.

Commentary

This section retains the compensation provisions of the 1876 Constitution but allows a salary commission to be implemented. Article X, Section 9 of the new constitution provides for the establishment of a salary commission. The Lieutenant Governor would receive compensation as a member of the Executive Department and not as a member of the Senate. The Salary Commission recommends rates of compensation which may be approved by the Legislature. In setting the salaries the Legislature may not exceed the recommendations of the commission. The change in the salary provisions concerning the Lieutenant Governor was necessary due to the increased responsibility and time involved in performing the duties of the office.

Section 8. Dual Office Holding; Other Compensation

No officer of the Executive Department shall hold any other civil or corporate office or practice any profession; nor shall any such officer receive any salary, reward, or compensation from non-governmental sources.

Origin

Revises Article IV, Section 6.

Commentary

Section 8 was revised to include all officers of the Executive Department. A prohibition in the 1876 Constitution against holding military office was removed in consideration of the number of citizens who are members of the reserve corps of the armed services.

Section 9. Commander-in-Chief; Calling Forth Militia

The Governor shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States, and shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

Origin

Revises Article IV, Section 7.

Commentary

The only change in this section from the 1876 Constitution was the deletion of the phrase "and protect the frontier from hostile incursions by Indians or other predatory bands."

Section 10. Execution of Laws; Conduct of Business With Other States, The United States, and Foreign Nations

The Governor shall cause the laws to be faithfully executed and shall conduct, in person or in such manner as shall be provided by law, all intercourse and business of the State with other states, the United States, and foreign nations.

Origin

Revises Article IV, Section 10.

Commentary

This section includes the authority of the Governor to conduct the state's relations and business with foreign nations. The revised Section 10 gives constitutional status to actions which Governors have taken in recent years to encourage social and economic ties with other countries. There is no other change from the predecessor section.

Section 11. Convening the Legislature in Special Session

The Governor may, on extraordinary occasions, convene the Legislature in special session, stating specifically the purpose and duration of the session.

Origin

Revises: Article III, Section 40;
Article IV, Section 8.

Commentary

Section 11 retains the Governor's authority to call the Legislature into special session when necessary and provides that the Governor shall determine the subjects to be considered and the length of the session.

Section 12. Governor's Message

At the beginning of each legislative session the Governor shall, and at other times may, give the Legislature information on the condition of the State, and may recommend legislative action.

Origin

Rewords Article IV, Section 9, first sentence.

Commentary

Section 12 was reworded for clarity. The fiscal provisions of Article IV, Section 9 of the Constitution of 1876 have been relocated in Section 15 of this article.

Section 13. Action on Bills and Resolutions

(a) Every bill that passes both houses of the Legislature shall be presented to the Governor. The Governor may approve the bill by signing it in which event it shall become law and shall be filed with the Secretary of State. The Governor may veto the bill by returning it with objections to the house in which it originated. That house shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill passes that house by a two-thirds record vote of the membership, it shall be sent with the Governor's objections to the other house which shall enter the objections in its journal and reconsider the bill for passage over the veto. If the bill likewise passes that house by a two-thirds record vote of the membership, the bill shall become a law and shall be filed with the Secretary of State. If the Governor fails to veto a bill within ten days (Sundays excepted) after it is presented, the bill shall become a law and shall be filed with the Secretary of State. If the Legislature by its adjournment prevents a veto, the bill shall become a law and shall be filed with the

Secretary of State unless within twenty days after adjournment the Governor files the bill and objections with the Secretary of State and gives public notice thereof by proclamation. If the same Legislature meets again, the Secretary of State shall return the bill with the Governor's objections to the house in which the bill originated for reconsideration in the manner provided above.

(b) The Governor may veto or reduce any item of appropriation in a bill, except that no item consisting of an appropriation for the salary for a single office or position may be reduced. Portions of a bill not vetoed and the reduced amount of items shall become law. Items vetoed and the amount by which items are reduced together with the Governor's objections shall be returned to the house in which the bill originated for reconsideration in the manner provided in Subsection (a).

(c) All orders and resolutions requiring the concurrence of both houses of the Legislature, except those concerning adjournment and legislative rules and those proposing amendments to the Constitution or a referendum on incurring State debt, shall be presented to the Governor. If the Governor disapproves an order or resolution, it shall not become effective unless repassed in the manner provided for in Subsection (a).

Origin

Revises: Article IV, Section 14;
Article IV, Section 15.

Commentary

Section 13 retains the veto provision of the 1876 Constitution, including the line-item veto on appropriations. The requirement for the Legislature to override a veto has been standardized in both houses to a two-thirds record vote of the membership. This change was in response to the provision in Article IV, Section 14 of the Constitution of 1876 which required a record vote of two-thirds of members present and voting in the originating house while requiring a record vote of two-thirds of the membership in the second house.

This section also authorizes a reduction line-item veto except for a specific line-item appropriation for an individual salary. Recent appropriation practices, through the use of lump-sum appropriations, have rendered the existing line-item veto ineffective. The Governor must now decide either to veto a total aggregate appropriation because some portion is unacceptable or to retain the whole.

An example of the problem which has confronted the Governor in recent years is evident from a comparison between the Department of Agriculture appropriations for 1947 and 1971. In 1947 the amount appropriated to the Department of Agriculture for the fiscal year 1947-1948 was $784,658. This appropriation contained 88 line items, any or all of which the Governor could veto. In 1971, the Legislature passed an appropriation for the Department of Agriculture for fiscal year 1971-1972 of $7,926,528. There were only fourteen line items. Item number 11 of the appropriation encompassed all the Department's major programs and was for the amount of $2,837,925. The Governor's options were either to retain all the programs or to veto all of them.

Section 13 would allow post-adjournment veto of a bill or line-item veto or reduction of an appropriation bill to be reconsidered by the same Legislature in regular or special session without having to be reintroduced as a new bill. By eliminating the necessity of the procedural formalities of a new bill, this provision would provide a speedier method of dealing with post-adjournment vetoes. Under the Constitution of 1876, there have been 740 post-adjournment vetoes. With the increased chances of the Legislature to reconsider a vetoed bill, or a line-item or reduction veto, it is envisioned that the Legislature will be able to assert its will to a greater extent. However, this is not likely to occur often since the last veto to be overridden was in 1941.

Although the Governor's veto authority could possibly be used as a punitive measure, the Legislature will have received previous notice of the Governor's estimates through the budget bill. The Legislature also can pass appropriations with line items divided in sufficient detail to lessen the threat of a reduction veto to a lump sum appropriation.

Section 14. Chief Planning Officer

The Governor shall be the chief planning officer of the State and may require information in writing and reports from all State agencies and officers upon any subject relating to their duties, conditions, management, and expenditures.

Origin

Revises Article IV, Section 24.

Commentary

Section 14 recognizes the role of the Governor in planning for the coordinated operation of state government. The Governor now chairs several interagency planning councils in such diverse fields as health, transportation, and natural resources. He is also increasingly responsible for planning the state implementation of new federal programs, such as revenue sharing, which affect both state and local agencies. As a related matter, this section retains the provisions of Article IV, Section 24 of the Constitution of 1876 with regard to the Governor's authority to request and receive reports from governmental agencies.

Section 15. Budget Preparation

At the beginning of each session at which appropriations are to be made for the general operation of the government the Governor shall submit to the Legislature a budget for all proposed State expenditures for the applicable fiscal period, accompanied by an appropriation bill covering the proposed expenditures. This bill, to be known as the Budget Bill, shall be introduced immediately in each house by the respective chairmen of the committees on appropriations for consideration and passage as in the case of any other bill. Until the Budget Bill has been enacted, neither house shall finally pass any other appropriation bill, except emergency bills recommended by the Governor and appropriations for the operation of the Legislature.

Origin

New provision.

Commentary

Section 15 provides that budget preparation and submission of a budget bill are the duty of the Governor and that the Governor's recommended budget shall be introduced in each house of the Legislature for consideration. Texas is one of only four states where budget preparation is not conferred exclusively upon the Governor or an appointee of the Governor. In recent years, the budget preparation process has been divided between the Legislature and the Governor. Two different budgets are now submitted and considered. Since the Governor has the final decision on appropriations as passed by the Legislature, submission of a single budget by the Governor seems appropriate. Also, this procedure will supply a common initial budget bill to both houses of the Legislature as a single fiscal document from which each house can begin review, hearings, committee amendment, and floor action.

This section does not eliminate the Legislative Budget Board and does not prevent either house from changing any portion of the budget bill. It will, however, ensure that the Legislature receives an indication of the Governor's budgetary wishes and require that the Governor's proposals be introduced and specifically considered.

This section also includes provisions against the passage of any special appropriations until the budget bill has been acted upon. The only exceptions are emergency appropriations requested by the Governor and appropriations for the operating expenses of the Legislature.

Section 16. Budget Execution

The Governor shall be responsible as provided by law for the proper execution and administration of the total State budget and shall require of all State governmental agencies such

expenditure plans, fiscal reports, and accounts as deemed necessary to supervise the expenditure of previously appropriated funds.

Origin

New provision.

Commentary

Section 16 is intended to settle any question of whether the Legislature can grant budget execution power to the Governor under the separation of powers doctrine. This is not a grant of authority to the Governor, but it allows the Legislature to grant such authority to the Governor. Although a direct grant of authority was discussed as a possibility, the inability to determine what budget execution power might be necessary in the future was decisive in providing a flexible system.

Section 17. Administrative Reorganization

The Governor may from time to time submit to the Legislature written reorganization plans reassigning functions among or consolidating or abolishing any State governmental agencies. Within sixty days after submission or within sixty days after the Legislature can act as a deliberative body, whichever comes later, either house may reject a plan by resolution. Unless rejected the plan shall become effective by its terms.

Origin

New provision.

Commentary

The state's governmental operations are presently being administered by approximately 200 agencies, boards, and commissions. Many of these governmental agencies have overlapping or conflicting responsibilities. As a result of fragmentation, there are also areas where no agency seems to have a definitive jurisdiction. A major impediment to reorganization by the Legislature has been the lack of adequate time to study the problem in detail and the need to consider more pressing business of the state while in session.

The effect of this section would be to place a responsibility with the Governor to review the structure of administrative agencies of government, determine a more effective division of responsibilities, and formulate specific reorganization plans for submission to the Legislature. Either house of the Legislature would retain the right to veto any plan within 60 days after submission or 60 days after the Legislature could act as a deliberative body, whichever came later. This legislative veto would ensure that the traditional checks and balances safeguard still exists.

Section 18. Reprieves, Commutations, and Pardons; Remission of Fines and Forfeitures

The Governor shall have power as provided by law to grant reprieves relating to the execution of death sentences, and to grant commutations, pardons, and the remission of fines and forfeitures.

Origin

Revises Article IV, Section 11

Commentary

Under Section 18 the Governor retains the authority to grant death sentence execution reprieves, and to grant commutation of sentences, pardons, and the remission of fines and forfeitures, subject to relevant laws enacted by the Legislature. The Board of Pardons and Paroles is included in the Constitution of 1876 but is restricted

both as to membership and functions. In an effort to gain flexibility for an important function, the Board of Pardons and Paroles was not included in the revised section. The modifying clause, "as provided by law," would allow the Legislature to provide for a Board of Pardons and Paroles of the same or changed membership, and with similar or different duties.

There is no modification of the authority provided in the 1876 Constitution with regard to reprieves from execution of death sentences. This section does, however, leave the issue of administrative reprieves for illness, holiday, or emergency leaves flexible so that the Legislature can provide for these as it deems necessary, rather than requiring in the constitution that a board and the Governor act on these questions.

If this provision is adopted, the Commission recommends to the Legislature that the membership of the Board of Pardons and Paroles be increased in number.

Section 19. Lieutenant Governor

The Lieutenant Governor shall possess the same qualifications as provided for the Governor. The qualified voters shall cast separate votes for the candidates for Governor and Lieutenant Governor. The Lieutenant Governor shall, by virtue of the office, be President of the Senate and when the Senate is equally divided may cast a deciding vote.

Origin

Revises Article IV, Section 16.

Commentary

Section 19 provides for the election of the Lieutenant Governor and stipulates that the Lieutenant Governor is to serve as President of the Senate. The gubernatorial succession provision for the Lieutenant Governor is contained in Section 5 of this article.

Section 20. Secretary of State

The Secretary of State shall perform the duties required by this Constitution and such other duties as may be provided by law.

Origin

Revises Article IV, Section 21.

Commentary

Section 20 provides for a continuation of the constitutional office of Secretary of State. Provisions concerning the method of selection, compensation, and duty to receive all bills passed by the Legislature are included, respectively, in Sections 2, 7, and 13 of this article.

Section 21. Attorney General

The Attorney General, except as expressly provided by law to the contrary, shall represent the State in all suits in which the State may be a party in all the courts of the State and of the United States, shall have all the powers of the office as at common law, and shall have such other duties as may be provided by law. The Attorney General must be qualified to practice before the Supreme Court of this State.

Origin

Revises Article IV, Section 22.

Commentary

Much of the language in Article IV, Section 22 of the Constitution of 1876 is statutory, especially the Attorney General's detailed authority over corporations and charters. These provisions were not included in the re-

vised constitution, although they will be retained through existing statutes. The concept of the Attorney General having common law authority, that is, the inherent authority to protect the public interest through the courts, is a basic principle which should be included in the constitution. Common law powers have been recognized in various states to include among others: challenging the constitutionality of legislative or administrative actions; enforcing anti-trust laws; preventing air and water pollution; instituting quo warranto actions against public officers; and abating offenses against morality. The attorneys general in most states have some form of common law authority, and the Texas courts have peripherally indicated that the Texas Attorney General is no exception. The provision that the Legislature can remove or modify common law power would check any abuses which might arise.

The authority of the Attorney General to represent the state in both state and federal courts is derived from the 1876 Constitution, state law, and actual practice. This authority could be modified by the Legislature. The requirement that the Attorney General be an attorney licensed to practice in the state was included to ensure that the person holding the office be qualified to appear in court and have a knowledge of the law.

Section 22. Comptroller of Public Accounts

The Comptroller of Public Accounts shall perform the duties required by this Constitution and such other duties as may be provided by law.

Origin

Revises Article IV, Section 23.

Commentary

The only constitutional duty of the Comptroller of Public Accounts in the new constitution is the certification of appropriation bills as within the revenue available for the fiscal period. This appears in Article VIII, Section 6(c). Several alternatives were discussed in relation to this important function. The alternative considered most seriously was the creation of an office of Auditor which would be filled by a certified public accountant appointed by a committee of the Governor, Speaker of the House, and Chief Justice of the Supreme Court for an eight-year term. This officer would certify the availability of funds and perform additional constitutional duties of post audits and performance audits.

Provision for a constitutional officer who performs post audits and performance audits has found increasing favor as the business of government becomes of major financial proportions. As more money is collected and disbursed, the need to ensure careful and prudent spending of these funds increases. Many believe that the constitution should provide for management of the fiscal affairs of the state, especially in the areas of post and performance audits. By this reasoning, constitutional status for the Auditor would provide guidance for fiscal responsibility in government.

After consideration, the Auditor concept was rejected. Several reasons were important, among them being the thought that an appointed officer would be less independent than an elected officer. Further, this provision would have replaced one constitutional office with another while retaining the first as a statutory office. Also, the constitutional definition of duties would have denied flexibility to that office.

Because of the problems enumerated, the Commission decided to retain the Comptroller as a constitutional elected officer and allow maximum flexibility by requiring that the only constitutional duty be the certification of appropriation bills. This would allow the Legislature to place the fiscal management of the government in such office or offices as deemed necessary to secure the best fiscal policies for the state and to change these as needs evolve.

Section 23. General Land Office

There shall be one General Land Office in the State at the seat of government, where all land titles emanating from the State shall be registered. The Commissioner of the General Land Office shall perform the duties required by this Constitution and such other duties as may be provided by law.

Origin

Revises: Article IV, Section 23;
Article XIV, Section 1.

Commentary

The provision for a General Land Office in the constitution reflects the importance of that office due to its responsibility for public lands and the potential for environmental work. The Commissioner of the General Land Office is designated as an officer of the Executive Department by Section 1 of this article.

Section 24. Vacancies in Statewide Offices

Unless otherwise provided by this Constitution, all vacancies in elective statewide offices shall be filled by appointment of the Governor with the advice and consent of the Senate. An appointee shall serve for the remainder of the term unless the vacancy occurs within sixteen months after the elected officer assumed office, in which event the appointee shall serve only until a successor elected at the next general election assumes office for the remainder of the unexpired term.

Origin

Revises Article IV, Section 12.

Commentary

Section 24 provides for the filling of vacancies in statewide elective offices through appointment by the Governor with the advice and consent of the Senate. The vacancy provision for elective district offices has been dealt with in the Local Government and Judiciary Articles of the new constitution. The only district offices not covered by either the Local Government or Judiciary Articles are those of the State Board of Education, which are provided for by statute.

This section brings the filling of vacancies in elective statewide offices into conformity with the succession provisions to the governorship, as found in Section 5 of this article. An appointee to a vacancy within sixteen months after an elected officer assumes office serves only until another officer, elected at the following general election, assumes office for the remainder of the unexpired term. The rationale for this decision was that the people should retain their right to elect a replacement as soon as possible, consistent with the schedule of the election process and the requirements for a campaign. The provision is sufficiently flexible to provide for filling vacancies in elected offices for terms which are neither four nor six years.

Procedures for filling vacancies in appointive offices, other than those with constitutional status such as the Secretary of State, are now provided by statute.

Section 25. State Agencies

(a) The length of the term of members appointed by the Governor to State governmental agencies created by statute and with a life of not less than six years shall be two years, unless the number of appointed members is three or a whole multiple thereof in which case the length of the term shall be six years. Two-year terms shall expire between February 1 and April 1 of odd-numbered years. In the case of agencies with members who serve six-year terms, the terms of the members appointed by the Governor shall be staggered. The terms of one-third of such members shall expire between February 1 and April 1 of odd-numbered years.

(b) At the time of appointing members of multi-member agencies with six-year terms, the Governor may designate the chairman. If the Governor fails to designate a chairman prior to April 1, the members of an agency shall choose the chairman from among its membership.

Origin

Revises Article XVI, Section 30a.

Commentary

The term "state governmental agencies" as used in this constitution means all agencies, boards, commissions, departments and any other executive or administrative agency of government. The governing boards of state governmental agencies of Texas consist primarily of citizen members appointed by the Governor or some other officer of the state. Most of these agencies have a membership of a multiple of three who serve staggered six-year terms. The six-year staggered terms have created a continuity and stability which many consider very desirable. However, a difficulty has developed with the evolution of this system due to the relative independence of agency members from the Governor and the Legislature. In some cases, a new Governor is unable to appoint any member to a state agency until long after assuming office. As a result, the Governor can experience difficulty in implementing campaign promises to the electorate.

In an attempt to provide a Governor more capability in directing the affairs of state government, this section standardizes the terms of office in such a manner that the terms of one-third of the appointed members of any state governmental agency appointed by the Governor and composed of a multiple of three would expire within three months after a Governor takes office. This section also provides that the Governor can designate a chairman of the agency within the same period. If the Governor fails to designate the chairman, the agency members could select one.

Further, Section 25 provides that the terms of all members of state governmental agencies appointed by the Governor and not composed of a multiple of three shall be for two years and shall expire within the same two month period. This provision would ensure that a Governor's views are represented on all agencies including those whose membership are not composed of a multiple of three. None of these provisions would apply to any temporary agency which is in existence less than six years.

Several alternatives were considered in relation to constitutional provisions concerning state agencies. A suggestion that the Governor be allowed to appoint all the members of governing boards of state agencies was considered but rejected as it might adversely affect the continuity and stability of the operations. Another alternative considered was to allow the Governor to name the executive directors. This was viewed as an invasion of the prerogatives of the board members of the agency and as a threat to the job security of the staff. Granting the Governor greater removal power over board members was discussed and was rejected as leading to uncertainty throughout the agency.

Section 26. Seal of State and Commissions

There shall be a Seal of the State which shall be kept by the Secretary of State and used by that officer officially under the direction of the Governor. The Seal of the State shall be a star of five points encircled by olive and live oak branches and the words "The State of Texas." All commissions shall be in the name and by the authority of the State of Texas, sealed with the Seal of the State, signed by the Governor, and attested by the Secretary of State.

Origin

Rewords: Article IV, Section 19;
Article IV, Section 20.

Commentary

Section 26 was reworded only for clarity.

Article V

The Judiciary



Article V
The Judiciary

Section 1. Unified Judicial System

The judicial power of the State is vested in the Judicial Branch. The State unified judicial system shall be composed of a Supreme Court, courts of appeals, district courts, and county courts. No other courts shall be created except municipal courts, as provided by law or charter, and justice courts. All courts shall have jurisdiction as provided by law, but jurisdiction of courts of the same level shall be uniform throughout the State.

Origin

Revises Article V, Section 1.

Commentary

Section 1 describes the composition of the state unified judicial system, eliminates the Legislature's prerogative in Section 1 of the Constitution of 1876 to create other courts, and authorizes the Legislature to establish the jurisdiction of all courts.

Several courts are merged into the unified judicial system under this provision. On the appellate level, the Court of Criminal Appeals is merged with the Supreme Court and the courts of civil appeals are merged into the courts of appeals. On the trial level, criminal district courts, domestic relations courts, juvenile courts, county courts at law, county criminal courts at law, county criminal courts of appeal, county civil courts at law, and probate courts are merged into the district and county courts. Under this provision all courts shall have jurisdiction as provided by law.

Merging the Court of Criminal Appeals and the Supreme Court and designating the intermediate appellate courts the courts of appeals is designed to help alleviate the congested docket of criminal cases. Under this provision, appeals of criminal cases can be made to the intermediate level where there are more judges available to expedite appeals of criminal cases. It now takes approximately two years before a conviction is upheld or reversed because there is an absolute right to appeal guilty verdicts to the court of final resort in criminal cases. The Court of Criminal Appeals consists of only five judges and two commissioners.

Texas is one of only two states which has a special court of final resort for civil cases and another for criminal cases. This provision eliminates that specialization and moves Texas in line with the other forty-eight states.

Vesting criminal jurisdiction in the intermediate courts will increase their caseload beyond its present level, but some of the intermediate courts which have light caseloads will welcome the increased workload. Moreover, subsequent sections of this article provide means of assisting any overburdened court. Proposed Section 2(b) permits the Supreme Court to transfer cases from one court of appeals to another, and proposed Sections 3 and 12(c) permit assignment of additional judges to the intermediate courts on either a permanent or temporary basis.

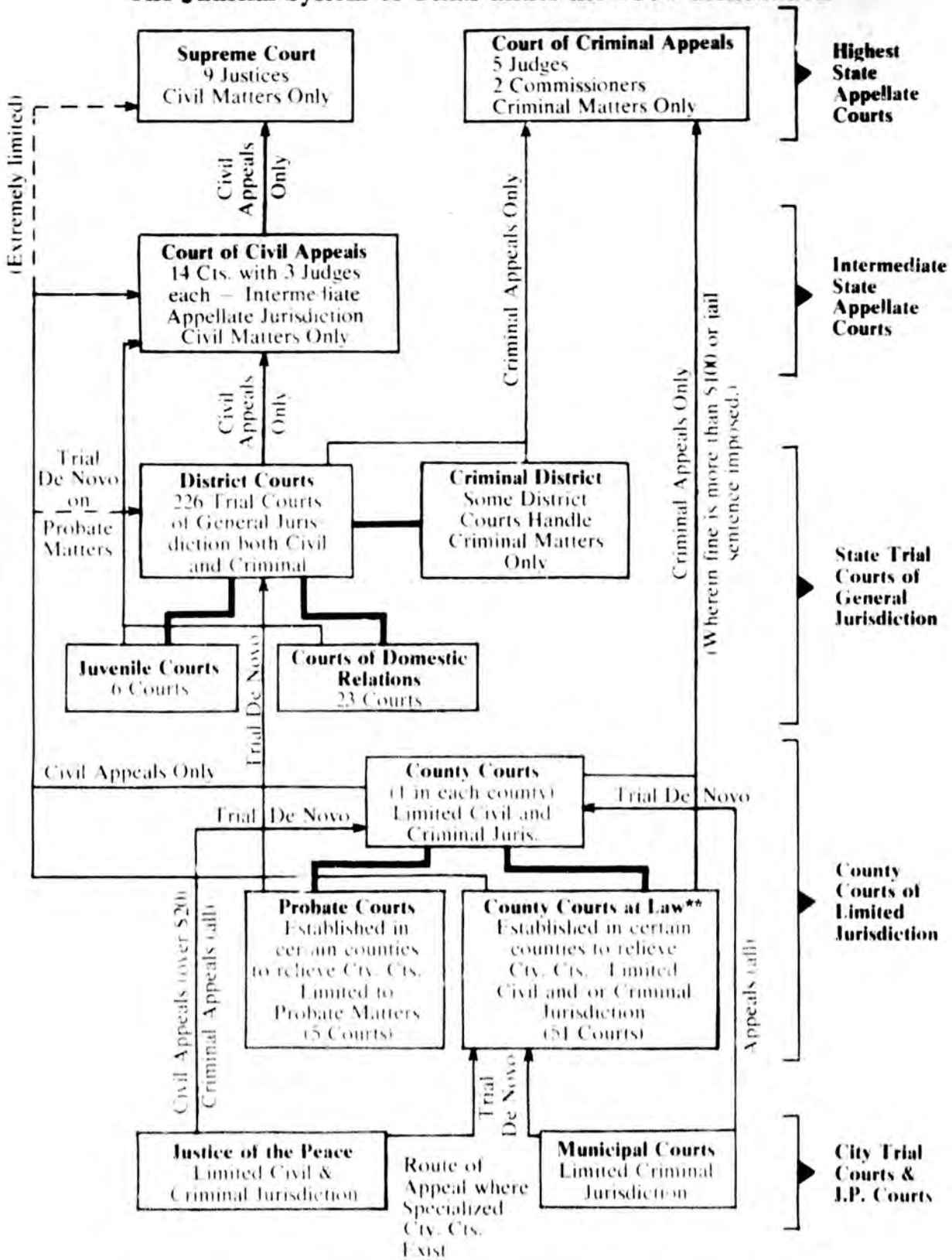
As part of the plan to unify the judicial system, proposed Section 1 removes the Legislature's prerogative to create courts other than those listed in the constitution. Under the power granted to the Legislature in Article V, Section 1 of the Constitution of 1876, the Legislature has created many courts, each having jurisdiction over a specialized area, and each having overlapping jurisdiction with the constitutional courts. As a result, Texas court system has burgeoned into an inefficient and cumbersome arrangement. The objective of this proposed revision is to streamline the court system and make greater efficiency possible.

The justice and municipal courts are not included in the unified judicial system, although this provision does retain their identities. The county commissions will provide for the justice courts, and the governing bodies of towns and cities will provide for municipal courts.

Section 2. Supreme Court

(a) The Supreme Court shall be the highest court of the State and shall consist of the Chief Justice of Texas and at least eight other justices. The court may sit in sections as designated

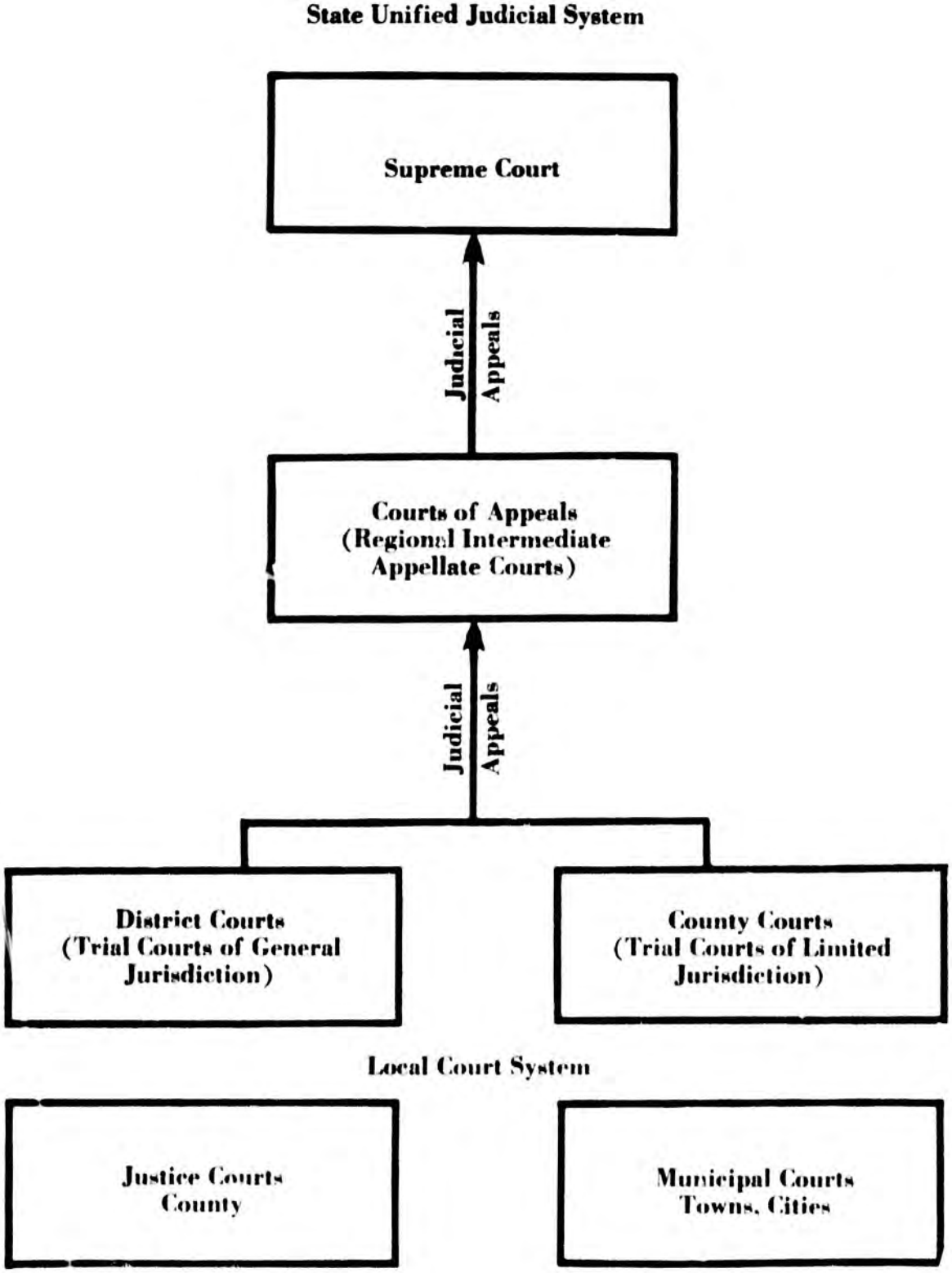
Figure 4.1
The Judicial System of Texas under the 1876 Constitution



**Some Counties have separate civil & criminal County Courts at Law. (34 County Courts at Law, 10 County Criminal Courts at Law, 3 County Civil Courts at Law, 1 County Criminal Court of Appeal, 2 "County Courts")

Figure 4.2

Proposed Judicial System of Texas



by the court to hear argument of cases and to consider applications for writs of error or other preliminary matters, bu' a majority of the court shall be necessary to decide a case.

(b) The Supreme Court shall have the duty and authority to provide for the efficient and just operation of the judicial system. It may transfer cases from a trial court to a court of appeals or to the Supreme Court, and from one court of appeals to another or to the Supreme Court.

(c) The Supreme Court shall have authority to prescribe rules of civil and criminal procedure, but any rule of procedure expressly disapproved by the Legislature shall have no effect thereafter. The Supreme Court may prescribe other rules as provided by law.

Origin

(a) Revises Article V, Section 2.
(b) New provision.
(c) Revises Article V, Section 25.

Commentary

Subsection (a) carries forward the basic provisions of Article V, Section 2 of the Constitution of 1876. The Supreme Court should be the highest court of the state, and it should be able to sit in sections when the business of the Court requires it to do so. Under this provision, the number of justices is no longer set at nine. It can be enlarged to any number necessary to conduct its business. With the added criminal jurisdiction, the business of the Court may require more than nine justices. Under proposed Section 8 of this article, Supreme Court justices will serve six-year terms and will be selected under the merit plan.

Subsection (b) requires the Supreme Court to provide for the just and efficient operation of the judicial system. This is a new provision. Its purpose is to enable the Supreme Court to promulgate uniform rules and procedures and establish clear lines of administrative authority.

Subsection (b) also gives the Supreme Court the authority to transfer cases horizontally between courts of appeals and vertically from a trial or appellate court to a superior court. Horizontal transfer of cases between courts of appeals is presently done by the Supreme Court to equalize the dockets of the intermediate appellate courts. Vertical transfer of cases from a trial or appellate court to a superior court is a new provision added to expedite appeal of a case affected with such public interest that it should be given immediate attention by an appellate court.

Subsection (c) gives the Supreme Court authority to prescribe rules of civil and criminal procedure, but any rule of procedure expressly disapproved by the Legislature shall have no effect thereafter. This provision revises Article V, Section 25 of the 1876 Constitution by placing the principal responsibility for establishing rules of procedure in the Supreme Court. Under the present constitution, the Legislature and the Supreme Court share that responsibility, although the Legislature ceded its rule-making power in *civil* procedure to the Supreme Court in 1939. See TEX. REV. CIV. STAT. ANN. art. 1731a.

The Commission feels that vesting the rule-making authority principally in the Supreme Court promotes the concept of the unified court system; that is, it allows the Supreme Court to provide for the efficient operation of the judicial system. The Legislature has already acquiesced in the area of civil procedure, and, with the merger of the two highest courts, the Supreme Court ought to have the same responsibility for establishing rules of criminal procedure. See TEX. CODE CRIM. PROC. ANN. sections 1, et seq.

Section 2(c) also gives the Supreme Court authority to prescribe other rules such as rules pertaining to the right to practice law in this state.

Section 3. Courts of Appeals

The Legislature shall provide by law for one or more courts of appeals, each consisting of a chief judge and two other judges, and such additional judges as may be provided by law. Not fewer than three judges shall sit in any case.

Origin

Revises Article V, Section 6.

Commentary

This provision deletes the specialization inherent in the name "courts of *civil* appeals" and makes it possible for the intermediate appellate court to review appeals of both civil and criminal cases. It also permits the Legislature to increase the membership of the intermediate courts to handle the increased workload such courts may have. Under Section 8 of this article, judges of the courts of appeals will serve six-year terms and will be selected under the merit plan.

Section 4. District Courts

The State shall be divided by law, or by an agency acting under authority of law, into geographical judicial districts. In each district there shall be one district court with one or more district judges and such other officials as provided in this Article or by law.

Origin

Revises Article V, Section 7.

Commentary

Article V, Section 7 of the Constitution of 1876 does not permit more than one person to sit as a judge of a district court. This revision allows the Legislature to assign as many judges to a district court as the workload warrants so that a district court need not be created every time another judge is needed in a certain area of the state.

Under Section 8 of this article, district judges will serve six-year terms and will be elected on a nonpartisan ballot. Section 4 authorizes the Legislature to staff district courts with "such other officials as provided in this article or by law." This provision allows the Legislature to provide for such court support personnel as associate judges, marriage counselors, or other professional personnel.

Section 5. County Courts

The Legislature shall provide by law for county courts. A county court may serve one or more counties, but no county shall have more than one county court. Each county court shall have one or more judges and such other officials as provided by law.

Origin

Revises Article V, Section 15.

Commentary

There are now 254 county courts and 254 county judges. Under Article V, Section 15 of the Constitution of 1876, each county is entitled to a county court, but only one judge may sit on the court. Section 5 provides some flexibility in the structure and composition of the county courts by allowing one county court to serve more than one county. This is particularly important in view of Section 7 of this article which requires judges of county courts to be licensed to practice law. In some sparsely populated counties lawyers are not available to serve as judges and neither is there sufficient judicial business to warrant having a court in those counties. This provision allows more than one judge to sit on a county court so that a county court serving a county or several counties will have the judicial personnel needed to transact any judicial business.

Under Section 8 of this article, judges of county courts serve four-year terms and are elected on a nonpartisan ballot. Article IX, Section 3 of the new constitution also provides for a separate county judge who serves as presiding officer of the county commission.

Section 5 provides that each county court shall have "such other officials as provided by law." The Legislature can provide such court personnel as associate judges or magistrates, probation officers, marriage counselors, or other professional personnel.

Section 6. Justice Courts

The governing body of each county shall establish and maintain one or more justice courts and, if more than one, shall divide the county into justice precincts and provide a justice court for each precinct.

Origin

Revises Article V, Section 18.

Commentary

It was mentioned in the commentary to Section 1 of this article that the justice courts are not included in the unified judicial system but that they are retained as part of the court system.

The Commission feels that it is important to retain the justice courts because they are a place where neighborhood problems can be resolved without formal legal procedure or the intervention of a lawyer. This provision maintains the concept of the "people's court" but allows the county commission or the governing body of each county to provide for as many justice courts as are needed in the county.

The justice court dates back to the early history of the state. Although consideration was given to including such courts in the unified judicial system, it seemed desirable to maintain their separate status because of their unique function. In Article IX of the new constitution, Section 4 entitles counties to enact ordinances under certain conditions. The justice courts may be given criminal jurisdiction over violations of county ordinances and such other jurisdiction as the Legislature may provide.

Justices of the peace will be elected according to general law. Under present law, justices are elected on a partisan ballot for four-year terms.

Section 7. Qualifications of Judges

Each justice or judge shall be a citizen of this State and shall have such other qualifications as provided by law. Each justice and judge in the unified judicial system must be licensed to practice law in this State.

Origin

Revises: Article V, Section 2;
Article V, Section 6;
Article V, Section 7;
Article V, Section 15.

Commentary

The requirements in Section 7 are very general compared to the specific provisions of the 1876 Constitution. This provision permits the Legislature to prescribe qualifications consonant with changes in society. Both the 1876 Constitution and proposed Section 7 are silent on the qualifications of justices of the peace and judges of municipal courts.

Article V, Section 15 of the 1876 Constitution does not require that judges of county courts be licensed to practice law; they need only be "well informed in the law." Section 7 requires that each justice and judge be a licensed attorney; therefore, non-lawyer county judges now elected pursuant to Article V, Section 15 of the 1876 Constitution are ineligible to perform judicial duties under Section 7. However, there is no intention to eliminate the executive function of the county judge, for this provision does not prevent the non-lawyer county judge from performing administrative tasks as presiding judge of the county commission.

Section 8. Merit Selection and Nonpartisan Election

(a) There is hereby created a Judicial Nominating Commission of eleven members, a majority of whom shall be non-lawyers. The Governor, Lieutenant Governor, and Speaker of

the House of Representatives acting together shall select the members of the Judicial Nominating Commission and designate the chairman. The selection of the members shall be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the State.

(b) Members of the commission shall serve six-year terms, and no person shall serve more than one full term. Vacancies shall be filled by the selection committee for the remainder of the term.

(c) No member of the commission shall hold an elective or salaried public office or office in a political party, or shall be eligible for appointment to a State judicial office during the term for which appointed.

(d) When a vacancy occurs in the office of the Chief Justice of Texas, a supreme court justice, or a court of appeals judge, the vacancy shall be filled by the Governor from a list of three nominees submitted by the commission within forty-five days after the vacancy occurs. In selecting nominees, the commission shall consider only those who are well qualified from experience and knowledge of the law, but, among those so qualified, shall give fair consideration to the sexes, ethnic groups, and geographical regions of the State. If the Governor fails to make the appointment within sixty days after receiving the list of nominees, the Lieutenant Governor shall make the appointment from the list. A justice or judge appointed pursuant to this Subsection shall be subject, in the manner provided by law, to approval or rejection on a nonpartisan ballot at the first general election held more than ten months after the appointment is made, and every sixth year thereafter.

(e) If the Supreme Court determines that the Chief Justice is temporarily disabled, it shall designate another justice of the Supreme Court to serve temporarily as acting Chief Justice until the disability ends.

(f) District and county judges shall be elected on a nonpartisan ballot by the qualified voters as provided by law. Judges of the district courts shall serve six-year terms, and judges of the county courts shall serve four-year terms. Vacancies in the office of judge of the district and county courts shall be filled until the next succeeding general election by the Governor with the advice and consent of the Senate

(g) Justices of the peace shall be elected every four years by the qualified voters of the county or precinct. Vacancies in the office shall be filled by the County Commission for the remainder of the term.

(h) No active justice or judge in the unified judicial system may engage in the practice of law. If any justice or judge files as a candidate for any elective nonjudicial office, the judicial office shall immediately become vacant.

Origin

(a) New provision.
(b) New provision.
(c) New provision.
(d) Revises: Article V, Section 2;
Article V, Section 6;
Article V, Section 28.
(e) New provision.
(f) Revises: Article V, Section 7;
Article V, Section 15;
Article V, Section 28.

(g) **Revises: Article V, Section 18;**
Article V, Section 28.

(h) New provision.

Commentary

Subsections (a), (b), and (c) are new provisions. They provide for the creation of an eleven member Judicial Nominating Commission the members of which serve six-year terms. A majority of the members must be non-lawyers, and no member may hold any other public office while a member of the commission. The commission is created to submit lists of nominees to the Governor when a vacancy occurs on the Supreme Court or the courts of appeals. The Governor, Lieutenant Governor, and Speaker of the House, acting together, are responsible for appointing the members of the commission and designating the chairman thereof. Selection of the members is to be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the state.

Subsection (d) revises the method of filling vacancies on the appellate courts. When a vacancy occurs on the Supreme Court or on the courts of appeals, the Governor fills the vacancy from a list of three nominees submitted by the Judicial Nominating Commission. In selecting nominees to be submitted to the Governor, the commission considers only those well qualified from experience and knowledge of the law, with due consideration to representation of the sexes, different ethnic groups, and different geographical regions of the state. A justice or judge appointed in this manner is subject to approval or rejection on a nonpartisan ballot at the first general election held more than ten months after the appointment is made and every sixth year thereafter. The question on the ballot is usually phrased: "Shall Justice (Judge) ..... of the Supreme Court (Court of Appeals) be retained in office? Yes/...../No...../."

The nominative-appointive method for filling vacancies and voter approval or rejection of the appointee's judicial record in succeeding elections, as described in the preceding paragraph, constitute the merit plan for the selection of judges. The Commission regards the merit plan of selecting judges as preferable to the present partisan election method because of the shortcomings inherent in partisan elections, namely: (1) judges must neglect their judicial duties and demean their judicial office by actively soliciting support, both financial and political, for election and re-election; (2) many of the persons best qualified to serve as judges are unwilling to undergo the pressures, expense, and uncertainties of election campaigns and, thus, the public is sometimes deprived of the best judicial personnel available; (3) the danger exists that judges may be elected, not on the basis of their qualifications, but on the basis of unrelated issues or popular political name; (4) political obligations may dissipate judicial independence and influence decisions in particular cases; and (5) the general public is rarely well informed of a judicial candidate's qualifications and many citizens find it undesirable to vote under such conditions.

The objectives of any method of selection should be to obtain judges possessed of qualities that will lead to the highest performance of their judicial duties. Merit selection comes closer to achieving that objective than any other method.

Subsection (e) is a new provision. It permits the Supreme Court to designate another of its members to serve temporarily as Chief Justice if the Court determines that the Chief Justice is temporarily disabled. In that way the duties of the office of the Chief Justice will continue to be carried out until an appointment is made to fill the vacancy.

Subsection (f) revises Article V, Sections 7, 15, and 28 of the Constitution of 1876. It increases the term of district judges from four to six years to give that office more independence. The term of county judges remains at four years, but the judges of district and county courts are elected on a nonpartisan ballot. This provision does not apply to county judges who preside over the county commission. Subsection (f) also retains the method of filling vacancies which occur on the district and county courts. The Governor fills the vacancy with the advice and consent of the Senate until the next succeeding general election.

Subsection (g) carries forward the same provisions of Article V, Sections 18 and 28 of the 1876 Constitution. It provides a four-year term for justices of the peace and directs the county commission to fill any vacancy on the justice court for the remainder of the unexpired term. The present provisions for election and for the qualifications of justices of the peace are not altered by this section. The terms of municipal court judges and their method of selection are left to general law and the governing bodies of cities and towns.

Subsection (h) is a new provision. It prohibits any active justice or judge in the unified judicial system from engaging in the practice of law. It also declares an automatic vacancy in the office of any justice or judge who files as a candidate for an elective nonjudicial office. The purpose of this new provision is to prevent possible conflict of interest and diminution of judicial performance.

Alternative Submission

Section 8. Nonpartisan Election of Appellate Judges

(a) The Chief Justice and justices of the Supreme Court shall be elected by the qualified voters of this State every six years on a nonpartisan ballot in the manner provided by law. Judges of the courts of appeals shall be elected by the qualified voters of their respective districts every six years on a nonpartisan ballot in the manner provided by law.

(b) Vacancies in the offices of justices and judges of the Supreme Court and the courts of appeals shall be filled until the next succeeding nonpartisan election by the Governor with the advice and consent of the Senate.

Origin

(a) Revises: Article V, Section 2;
Article V, Section 6.
(b) Revises: Article V, Section 28.

Commentary

The Commission voted its preference for the merit plan for selecting appellate judges but believes this alternative for nonpartisan election should be submitted to the voters separately. The Commission considered partisan election as a third method for selecting judges. However, that suggestion was rejected because the Commission feels that the qualifications of the candidate, rather than partisanship, should determine the success or failure of a judicial candidate.

Section 9. Compensation

The State shall pay the basic salaries of all justices and judges of the unified judicial system, subject to any supplementation by counties, and shall pay such other expenses of the system as provided by law. The salaries of such justices and judges shall not exceed the amount recommended by the salary commission. Funds collected by the courts may not be used to support the unified judicial system except to the extent of reimbursement of salaries and other expenses.

Origin

Revises: Article V, Section 2;
Article V, Section 6;
Article V, Section 7;
Article V, Section 15.

Commentary

Section 9 requires the state to pay the salaries and expenses of the unified judicial system including the salaries and expenses attributable to the county court. The salaries of judges, as well as the salaries of the clerks, reporters, and other supporting personnel assigned to the courts in the unified judicial system, are to be paid by the state. Expenses attributable to the justice and municipal courts are excluded from this provision.

Some of the urban counties supplement the salaries of local judges. This provision permits the continuation of that practice. There is no intention to discourage supplementation of the basic salary paid by the state.

The last sentence in Section 9 limits the Legislature's right to use fines collected in the district and county courts. The Legislature may use the funds only to reimburse the state for the costs of maintaining the district and county courts. It is intended that any funds remaining after the state has been reimbursed will be appropriated to the county.

Section 10. Mandatory Retirement of Judges

The office of each justice and judge in the unified judicial system shall become vacant on the first day of January of the year following the date on which the incumbent reaches the age of seventy-five years or an earlier age, not less than seventy years, as provided by law.

Origin

Revises Article V, Section 1a.

Commentary

Section 10 carries forward the mandatory retirement provisions for justices and judges contained in Article V, Section 1a of the Constitution of 1876. This section applies only to justices and judges in the unified court system and does not affect county judges who preside over the county commission, justices of the peace, or municipal court judges. Retired judges may be temporarily assigned to various courts as provided by Section 12(c) of this article.

Section 11. Removal of Judges

(a) Any justice of the Supreme Court shall be removed by the Governor, after a hearing by the Legislature and a vote by two-thirds of the membership of each house, for willful neglect of duty, incompetency, oppression in office, or other reasonable cause not a sufficient ground for impeachment.

(b) Any justice, judge, or other judicial officer may be removed from office, suspended, or censured by the Supreme Court for willful or persistent conduct which is clearly inconsistent with the proper performance of duties of the office, or which casts public discredit upon the judiciary or the administration of justice, and may be involun arily retired or removed by the Supreme Court for disability seriously interfering with the performance of duties of the office if the disability is, or is likely to become, permanent.

(c) The Legislature shall establish by law a Judicial Qualifications Commission which shall operate under rules promulgated by the Supreme Court. The commission shall have authority to issue an order of public censure and to recommend to the Supreme Court suspension, removal, or retirement of any justice, judge, or other judicial officer.

Origin

(a) Revises Article XV, Section 8.
(b) Revises: Article V, Section 1a;
Article XV, Section 6.
(c) Revises Article V, Section 1a.

Commentary

Subsection (a) carries forward the provision of Article XV, Section 8 of the 1876 Constitution which authorizes the removal of judges for causes that are not sufficient grounds for impeachment. The process has been historically referred to as "address." It takes an affirmative vote of two-thirds of the membership of the Legislature to remove a justice or judge before the Governor is obligated to remove that justice or judge. Subsection (a) requires the Legislature to conduct a hearing on the charges to guarantee the accused due process of law.

Subsection (b) combines the removal provisions of Article V, Section 1a and Article XV, Section 6 of the 1876 Constitution. The Supreme Court may remove from office any justice or judge for willful or persistent conduct which is clearly inconsistent with proper performance of the duties of the office or which casts public discredit upon the judiciary or the administration of justice. The Supreme Court's authority is not dependent on the oath of ten lawyers as provided in Article XV, Section 6 of the 1876 Constitution.

The Supreme Court may also involuntarily retire or remove a justice for disability seriously interfering with the performance of the office. This authority is presently vested in the Supreme Court by Article V, Section 1a of the 1876 Constitution.

Subsection (c) commands the Legislature to establish a Judicial Qualifications Commission with the authority to issue an order of public censure and to recommend to the Supreme Court suspension, removal, or retirement of any justice, judge, or other judicial officer. This provision revises Article V, Section 1a of the 1876 Constitution in the sense that much of the detail concerning the composition and operation of the Judicial Qualifications Commission is omitted.

The Constitution of 1876 provides for two additional methods for removing justices and judges. Article XV, Section 2 provides that judges of the Supreme Court, courts of appeals, and district courts are subject to removal by impeachment proceedings. This method of removal is incorporated in the new Legislative Article; however, only justices of the Supreme Court are subject to removal by impeachment proceedings in the new article. The other method is provided in Article V, Section 24 of the 1876 Constitution. It provides for removal of county judges by district judges upon a jury verdict based on charges of incompetency, official misconduct, habitual drunkenness, or other causes defined by law. This method was not adopted since judges of county courts are subject to removal by the Governor and the Supreme Court pursuant to Section 11(a) and (b).

Section 12. Judicial Council

(a) There is hereby created a Judicial Council which shall consist of the Chief Justice of Texas as chairman and the following members, each of whom shall serve a two-year term: two judges of the courts of appeals, three trial judges, one district clerk, and one county clerk, each appointed by the Supreme Court of Texas; four members of the State Bar appointed by its board of directors; and two members of each house of the Legislature appointed by each house. Vacancies shall be filled by the appointing authority for the remainder of the term.

(b) The council shall prescribe rules of administration for the unified judicial system and shall perform other duties as provided by law. Rules of administration shall not become effective until approved by the Supreme Court.

(c) Pursuant to rules of administration prescribed by the council, the Chief Justice may delegate administrative powers to active or retired judges, and temporarily assign a judge to any court of the same level and from a court of appeals to the Supreme Court. By such assignments, the membership of any court may be temporarily increased. The council shall also prescribe rules for filling vacancies temporarily for the purposes of trying cases and hearing appeals. If for any reason a judge feels aggrieved by any administrative action of the Chief Justice, the judge may petition the Supreme Court for review of such action.

Origin

New provision.

Commentary

Section 12 is a new provision designed to provide central management in the judicial system. This management authority is different from the rule-making power of the Supreme Court pertaining to procedural and substantive rules which affect the handling of cases.

Responsibilities of the Judicial Council pertain to administrative rules or guidelines such as assignment of judges, description of the duties of court support personnel, and preparation of a budget for the judicial system. These are the housekeeping items which an independent branch of the government should have the inherent right to provide.

The chief administrator is the Chief Justice of Texas. Pursuant to rules of administration prescribed by the Judicial Council and approved by the Supreme Court, the Chief Justice may delegate administrative powers

to active or retired judges and temporarily assign a judge to any court of the same level and from a court of appeals to the Supreme Court.

This provisior does not interfere with the independence of a judge to make judicial decisions. Judicial decisions must be independent and unbiased. On the other hand, judicial independence should not be confused with administrative independence. Any organization of substantial size should have central administration.

Section 13. Clerks

(a) The Supreme Court and each court of appeals shall appoint a clerk who shall serve for a term of four years unless sooner removed by the court for good cause entered on the minutes of the court. These clerks shall give bond as required by law.

(b) District courts may remove their district clerks from office upon a jury finding of incompetence, official misconduct, or other causes defined by law.

Origin

(a) Rewords: Article V, Section 3;
Article V, Section 6.
(b) Rewords Article V, Section 24.

Commentary

Section 13 carries forward the provisions of the 1876 Constitution concerning the appointment and removal of clerks of the appellate courts and removal of clerks of the district courts without change. Provisions for the district and county clerks are contained in Article IX, Section 3 of the new constitution.

Section 14. Juries

(a) Grand juries in the district courts shall consist of twelve persons, nine of whom shall constitute a quorum.

(b) Trial juries in the district courts shall consist of twelve persons and verdicts shall be unanimous, except that the Legislature or the Supreme Court pursuant to its rule-making power may provide that a verdict may be rendered in civil and misdemeanor cases in the district courts by fewer than twelve but not fewer than nine who shall concur in and sign the verdict.

(c) Trial juries in county courts shall consist of six persons and verdicts shall be unanimous, except that the Legislature or the Supreme Court pursuant to its rule-making power may provide that in civil cases a verdict may be rendered by fewer than six jurors.

(d) The qualifications of grand jurors and trial jurors shall be as provided by law.

(e) Any party shall have a right of trial by jury in civil causes in the district and county courts upon demand as provided by law or rule of the Supreme Court. A jury shall not be empaneled in any cause until a jury fee is paid if required by law or by rule of the Supreme Court.

Origin

(a) Rewords Article V, Section 13.
(b) Revises Article V, Section 13.
(c) Revises Article V, Section 17.
(d) Rewords Article XVI, Section 19.
(e) Revises Article V, Section 10.

Commentary

Subsection (a) carries forward the provisions of the 1876 Constitution concerning the grand jury since Article 1, Section 10 of the 1876 Constitution guarantees a person accused of a felony the right of a grand jury indictment.

Subsection (b) changes the name "petit juries" to "trial juries." It also revises Article V, Section 13 of the 1876 Constitution to make it clear that in civil and misdemeanor cases neither the Legislature nor the Supreme Court pursuant to its rule-making power may provide for jury verdicts of fewer than nine concurring jurors.

Subsection (c) is written to conform to the provisions of subsection (b). Article V, Section 17 of the 1876 Constitution merely states that "A jury in the County Court shall consist of six men. . . ." Subsection (c) allows the Legislature or the Supreme Court pursuant to its rule-making power to provide for less than unanimous verdicts in civil cases.

Subsection (d) rewords Article XVI, Section 19. No change is intended even though the proviso in Article XVI, Section 19 that "neither the right nor the duty to serve on grand or petit juries shall be denied or abridged by reason of sex" is not included in this revision because the same protection is provided in Section 3a of the Bill of Rights.

Subsection (e) revises Article V, Section 10 of the 1876 Constitution. It guarantees any party a right of trial by jury in civil causes in the district and county courts. The right exists in Article V, Section 10 of the 1876 Constitution as to causes in the district courts, but not to causes in the county courts.

Ostensibly, the right to trial by jury guaranteed in subsection (e) is the same right of trial by jury guaranteed in Article I, Section 15 of the 1876 Constitution. However, the cases of *White v. White*, 196 S.W. 508 (Tex. 1917) and *Hickman v. Smith*, 238 S.W.2d 838 (Tex. Civ. App.—Austin 1951, writ ref'd) have held that the right of trial by jury guaranteed in the Bill of Rights is limited to the right as it existed at common law or as provided for by statutes when the Constitution was adopted in 1876. On the other hand, the cases of *Tolle v. Tolle*, 104 S.W. 1049 (Tex. 1907) and *Hatten v. Houston*, 373 S.W.2d 525 (Tex. Civ. App.—Houston 1963, writ ref'd n.r.e.) have held that the right of trial by jury guaranteed in Article V, Section 10 of the 1876 Constitution is not dependent on the existence of the right at the time the Constitution was adopted in 1876. The guarantee extends to any "cause" instituted in the district court. A "cause" is defined as a suit or action concerning any question, civil or criminal, contested before a court of justice.

Section 15. Suspension of Sentence and Probation

Courts having original jurisdiction of criminal cases shall have power to suspend sentence, place a defendant on probation, and reimpose sentence, subject to regulation by law.

Origin

Rewords Article IV, Section 11a.

Commentary

Section 15 rewords Article IV, Section 11a of the Constitution of 1876. The Commission believes that the courts of this state should have the power, after conviction, to suspend the imposition or execution of sentence. Otherwise, the courts may revert to earlier judicial decisions which held legislation giving the courts that power an unconstitutional infringement of the executive pardon.

Section 16. Appeal by State

The State shall have no right of appeal in criminal cases.

Origin

Retained unchanged from Article V, Section 26.

Commentary

Section 16 retains intact Article V, Section 26 of the 1876 Constitution. The prohibition of a state appeal in criminal cases recognizes that such an appeal may cause economic hardship upon the defendant and that state appeal may be used as an instrument of oppression.

Section 17. Appeal by Accused

The right of appeal granted to an accused by Article I, Section 11a of this Constitution shall be direct to the Supreme Court of Texas.

Origin

New provision.

Commentary

This provision was added to protect the right of an accused whose bail has been denied pursuant to Article I, Section 11a of the 1876 Constitution to appeal directly to the Supreme Court. Article I, Section 11a authorizes a judge of any court of record or a magistrate to deny bail to any person accused of a felony less than capital but who has been convicted twice before of a felony. It also expressly accords the accused the right to appeal an order denying bail direct to the "Court of Criminal Appeals." The direct appeal shall be made to the Supreme Court as a result of the merger provided by Section 1 of this article.

Article VI

Suffrage

Article VI
Suffrage

Section 1. Qualified Voter

Any citizen of the United States eighteen years of age or older who meets the registration and residence requirements provided by law, who is not serving a sentence for a felony, whether incarcerated, on parole, or on probation, and who is not of unsound mind as determined by a court, shall be a qualified voter.

Origin

Revises: Article VI, Section 1;
Article VI, Section 2;
Article VI, Section 2a;
Article VI, Section 3;
Article VI, Section 4.

Commentary

The provisions on suffrage and elections were substantially revised and simplified. Changes in voter qualifications were made in order to conform with recent United States Supreme Court decisions, especially those concerning residence requirements. There was also a change in the age for voting from 21 to 18 to conform with the Twenty-Sixth Amendment to the United States Constitution.

The residence requirements for voting in state and local elections have been in a state of flux because of recent United States Supreme Court decisions. Therefore, a flexible approach was adopted which would allow the Legislature to set the residence requirements in conformity with any federal laws or decisions. For further discussion of recent federal decisions, see the *Commentary* for Article VI, Section 2.

Section 1 does not continue the disenfranchisement of convicted felons contained in the 1876 Constitution. In the new provision, persons who have served their terms for felonies would regain the right to vote. This is consistent with the idea of returning individuals who have served sentences to a useful role in society. However, if a felon is serving a sentence which would include actual incarceration, or parole or probation supervision, that person would be unable to vote.

There have been a few recent cases throughout the country which have dealt with a felon's right to vote. The attack on the prohibition on voting has been based on the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. There is no definitive ruling in this area at present.

Section 2. Elections

All elections by the qualified voters shall be by secret ballot. The Legislature by law shall provide the requirements for residence, registration, absentee voting, and administration of elections, and shall ensure the purity of elections and guard against abuses of the electoral process.

Origin

Revises: Article VI, Section 2;
Article VI, Section 2a;
Article VI, Section 3;
Article VI, Section 4.

Commentary

The proposed Section 2 would allow the Legislature to set voter registration and residence requirements, rather than list such details in the constitution.

Recent United States Supreme Court decisions have cast considerable doubt on the residence requirements of one year in the state and six months in the county

now contained in the 1876 Constitution. In *Dunn v. Blumstein*, 92 S. Ct. 995 (1972), the Supreme Court struck down Tennessee's residence requirements of one year in the state and three months in the county. The Court held that residence requirements of such duration impinge on the right to vote and the right to travel. In a more recent United States Supreme Court case, *Marston v. Lewis*, 93 S. Ct. 1211 (1973), the Court held that a cutoff date for registration 50 days prior to the elections approached the outer constitutional limits. In the light of these cases, it appears appropriate to allow for flexibility by leaving residence and registration requirements as a statutory matter.

Section 3. General Elections

General elections shall be held in even-numbered years on a date provided by law.

Origin

New provision.

Commentary

Section 3 provides a single definition for the term "general election" as it appears throughout this constitution. The section continues the current practice of holding general elections every two years. See TEX. ELECTION CODE ANN. art. 2.01 (1967). The Commission feels that the dates for a general election should be provided by law to insure that there is always a definite time for a general election; and, as a result, a definite time for the operation of certain constitutional provisons. Article III, Section 6 of the recently adopted Illinois Constitution has a provision similar to the one proposed here.

Article VII

Education



Article VII
Education

Section 1. Equitable Support of Free Public Schools

(a) A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable provision for the equitable support and maintenance of an efficient system of free public schools and to provide equal educational opportunity for each person in this State.

(b) In distributing State resources in support of the free public schools, the Legislature shall ensure that the quality of education made available shall not be based on wealth other than the wealth of the State as a whole and that State supported educational programs shall recognize variations in the backgrounds, needs, and abilities of all students. In distributing State resources, the Legislature may take into account the variations in local tax burden to support other local government services.

Origin

Subsection (a) of Section 1 incorporates all of Article VII, Section 1 of the 1876 Constitution, with addition of the words "equitable" and "and to provide equal educational opportunity for each person in this State."

Subsection (b) is a new provision.

Commentary

Proposed Section 1 requires the Legislature to support the free public schools equitably, guarantee each person an equal educational opportunity, and ensure that the quality of education available to each person, insofar as the quality of education is a function of financial resources, shall depend only on the wealth of the state as a whole. It imposes a requirement that variations in the backgrounds, needs, and abilities of students be taken into account by the Legislature in providing resources for the free public schools. Also, it recognizes that taxpayers in urban areas are burdened with taxes to support a wide range of municipal services and it allows the Legislature to take that fact into account in distributing state resources. The Commission decided not to prescribe or suggest a specific formula to accomplish the requirements of Section 1. Such a provision would be statutory in nature and would unnecessarily limit the options available to the Legislature. The Commission intends Section 1 to be a strong statement of the educational policy of this state and a mandate to the Legislature to support the free public schools equitably.

The Commission focused its attention on the inequities in public school financing and decided to emphasize the Legislature's responsibility for equitable support of the free public schools. Currently there are two elements which contribute greatly to the inequities in public school financing: disparities in local spending per pupil caused by the differences in taxable wealth of school districts and the failure of the Minimum School Foundation Program to compensate for the differences in the taxable wealth of school districts. For example, the Texas Education Agency reports that in the fiscal year 1970-71, Deer Park Independent School District (Harris County) expended $1,552 per student from state and local resources while North Forest Independent School District (Harris County) expended only $491 per student from state and local resources. *Annual Audit Report of School Districts* (Texas Education Agency, 1972). *Superintendents Annual Report for Average Daily Attendance, Part 1* (Texas Education Agency, 1972).

Texas plaintiffs complained about these inequities in *San Antonio Independent School District v. Rodriguez*, 93 S. Ct. 1278 (1973). Although the Court reversed the lower court opinion which had held public school finance in Texas a violation of the Fourteenth Amendment Equal Protection Clause, the United States Supreme Court made specific reference to the inequities of the system and cited the state's responsibility for correcting these inequities.

Indeed, as a result of widespread litigation over the issue of public school finance, many states, notably Minnesota, Michigan, Utah, New Jersey, California and Florida, have reformed their public school financing systems. No doubt Texas will soon follow suit. The

Commission feels that Section 1 is responsive to the needs of the public school system and has incorporated general constitutional principles as guides to the Legislature in correcting the inequities in Texas public school finance. The Commission believes that adherence to these principles will effect substantial improvement in the quality of education provided to all Texans in our free public schools.

Section 2. Permanent and Available School Fund

(a) The Permanent School Fund consists of all property set apart for support of the free public schools. The Permanent Fund shall not be expended but shall be preserved and invested at the direction of the State Board of Education in the manner prescribed by law.

(b) The Available School Fund consists of income from the Permanent Fund together with all State taxes dedicated to support the free public schools.

(c) The Available Fund shall be appropriated by the Legislature to support the free public schools, including the provision of free textbooks and such other instructional materials as may be required in academic programs.

Origin

(a) Rewords: Article VII, Section 2;
Article VII, Section 4;
Article VII, Section 5.
(b) Rewords Article VII, Section 5.
(c) Revises: Article VII, Section 3;
Article VII, Section 5.

Commentary

The requirements in the 1876 Constitution that the Available School Fund be distributed according to each county's scholastic population and that the State Board of Education be responsible for providing free textbooks have been revised. The requirement of support for free "instructional materials as may be required in academic programs" is a new provision.

The value of the Permanent School Fund now exceeds $1 billion. Good management over the years has preserved this fund for the benefit of school children for generations to come. Distribution of the money available in this fund might be a short-term solution to the financial crisis confronting the school system, but if the Legislature is permitted to appropriate the fund to finance current operations, the fund will quickly dissipate and the school children of this generation and future generations will suffer as a result of that action.

Section 2 simplifies the provisions of the 1876 Constitution. However, subsection (c) contains a significant change. Rather than follow the existing inflexible requirement that the Available School Fund be distributed according to each county's scholastic population, this provision allows the Legislature to appropriate the Available School Fund in a manner consistent with the requirements of proposed Section 1. Solution of the financial crises confronting the state's school system dictates flexibility. Also, Section 2(c) retains the provision for free textbooks and adds a new provision for free instructional materials. This addition was deemed necessary to emphasize the Legislature's responsibility to provide a free public school system.

Section 3. Prohibition of Aid to Non-Public Schools

Public funds shall not be used for support of religious, church-affiliated, or proprietary schools that provide education below the college level; nor shall public funds be provided to any students for payment of expenses incurred by attending such schools.

Origin

Revises Article VII, Section 5.

Commentary

Section 3 prohibits public aid to any non-public school or aid to any student to defray the cost of attending such school. It combines the prohibitions contained in Article I, Section 7 and Article VII, Section 5 of the 1876 Constitution against expending public money for the support of religious or church-affiliated schools, with the requirement in Article VII, Section 5, that the Permanent and Available School Funds be used only for support of the free public schools. This provision is also consistent with recent United States Supreme Court decisions invalidating legislative enactments which provided public aid to sectarian schools. The Supreme Court has ruled that any legislative act which advances or inhibits religion or invites administrative entanglement by the state in the affairs of the church violates the Establishment Clause of the First Amendment to the United States Constitution. *Committee for Public Education v. Nyquist*, 93 S. Ct. 2903 (1973); *Hunt v. McNair*, 93 S. Ct. 2868 (1973).

Section 4. Dedicated School Tax

One-fourth of the revenue from State occupation taxes and one-fourth of the net revenue from the State motor fuel tax are dedicated to the Available School Fund.

Origin

Rewords: Article VII, Section 3;
Article VIII, Section 7a.

Commentary

Rather than require the Legislature to levy and collect a new tax to replace the taxes levied in the 1876 Constitution, the provisions of Article VII, Section 3 and Article VIII, Section 7a, which dedicate one-fourth of the revenue from occupation and motor fuel taxes to the Available School Fund, were left unchanged. This reworded provision does not carry forward the one dollar poll tax dedicated to the Available School Fund in Article VII, Section 3 because it has been inoperative for several years.

Section 5. State Board of Education

There shall be a State Board of Education which shall have the duties provided in this Article and by law. The Legislature may provide either for appointed or elected members whose terms shall not exceed six years. If the board is elective, the Governor shall appoint four additional members to the board. In making appointments the Governor shall give consideration to fair and equitable representation of the sexes, ethnic groups, social groups, and economic groups.

Origin

Revises Article VII, Section 8.

Commentary

Provision for the State Board of Education was retained in the new constitution because of the amount of interest focused on education as a result of the *Rodriguez* case. However, under the present elective system members of the State Board of Education may not adequately represent the population of the state. For that reason, this provision leaves the Legislature with the option of providing for either an appointive or elective board, but if the Legislature provides for an elective board, this provision requires the Governor to appoint four members to the board in such a manner as to improve the representative character of the board.

Section 6. School and Community College Districts

The Legislature shall define by general law the duties and functions of school and community college districts and shall provide for establishing, financing, altering, consolidating, and abolishing such districts.

Origin

Rewords Article VII, Section 3.

Commentary

The Legislature has delegated much of the fiscal and administrative responsibility for the everyday operation of the public schools below the college level to the various independent school districts. As a reminder to the Legislature of its ultimate responsibility to equitably support a free public school system, this provision makes it mandatory for the Legislature to define the duties of the school districts and to provide for their formation and alteration.

Community college districts are not mentioned in Article VII, Section 3 of the 1876 Constitution, but the Texas Supreme Court has interpreted that section to include such districts. See *Shepherd v. San Jacinto Junior College District*, 362 S. W. 2d 742 (Tex. 1962). Therefore, specific mention of community college districts in this reworded provision conforms with existing law.

Section 7. First Class Colleges and Universities

The Legislature shall provide for a system of higher education of the first class which shall include The University of Texas System, the Texas A&M University System, universities, colleges, community colleges, and other first class institutions or systems as may be provided by law.

Origin

Revises: Article VII, Section 10;
Article VII, Section 13.

Commentary

Article VII, Section 10 of the 1876 Constitution directs the Legislature to provide for the maintenance of a university of the first class to be located by a vote of the people of this state. The people voted to locate the university at Austin. Section 10 also states that the Legislature shall provide for the maintenance of an Agricultural and Mechanical Department of the first class. Section 13 of Article VII located that Department in Brazos County, which is now known as Texas A&M University at College Station, and made it a branch of The University of Texas.

Subsequent to the formation of The University of Texas at Austin and Texas A&M University at College Station, the Legislature created community colleges and institutions of higher education throughout the state. Rather than leave the impression that the Legislature may maintain these institutions at a level less than first class, this provision requires the Legislature to maintain all colleges and universities on a first class basis.

The University of Texas System and the Texas A&M University System are specifically mentioned in proposed Section 7 for the historical reason mentioned in the first paragraph and also because of the succeeding sections which provide for the investment and use of the Permanent University Fund. Although the framers of the Constitution of 1876 did not envision The University of Texas at Austin and Texas A&M University at College Station expanding into systems, the constitution has since been amended to allow certain named institutions in The University of Texas and Texas A&M Systems to share in the Permanent University Fund. Proposed Section 7 reflects that change.

Section 8. Permanent University Fund, Its Administration, Its Investments; Available University Fund and Its Expenditure

(a) The Permanent University Fund consists of the two million acres of land set apart and appropriated for the establishment and maintenance of The University of Texas by the Constitution of 1876 and the Legislative Act of April 10, 1883, together with the proceeds of the sale of such land, including the sale of oil, gas, and other minerals from such land, and the securities and other assets purchased with the proceeds. All proceeds shall be invested, and only the income from the Permanent University Fund may be appropriated and expended.

(b) The Permanent University Fund shall be held in trust for the people of Texas and for the use and benefit of the Texas A&M University System and The University of Texas System. The land set apart to the Permanent University Fund, if sold, shall be sold under such regulations, at such times, and on such terms as may be provided by law.

(c) The Board of Regents of The University of Texas System may invest the Permanent University Fund in securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government, or any of its agencies, in bonds issued by the State of Texas or any political subdivision thereof, and in such bonds, debentures, obligations, preferred stocks, or common stocks issued by corporations, associations, or other institutions as the Board of Regents of The University of Texas System may deem to be proper investments for the Permanent University Fund. However, not more than one percent of the Fund shall be invested in the securities of any one corporation nor shall more than five percent of the voting stock of any one corporation be owned by the Fund. In making each and all investments, the Board of Regents shall exercise the judgment and care under the circumstances then prevailing that men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The Board of Regents shall make full disclosure of all investments as provided by law.

(d) The net income (that is, dividends, interest, and other income less administrative expense) of the Permanent University Fund, exclusive of net income attributable to grazing leases of Permanent University Fund land, shall constitute the Available University Fund. Out of one-third of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Directors of the Texas A&M University System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such one-third of the Available University Fund shall be appropriated by the Legislature for the support and maintenance of Texas A&M University at College Station. Out of the other two-thirds of the Available University Fund, the Legislature shall appropriate an annual sum sufficient to pay the principal and interest due on Permanent University Fund bonds or notes issued by the Board of Regents of The University of Texas System pursuant to the next section or its predecessor sections of prior constitutions, and the remainder of such two-thirds of the Available University Fund, plus the net income (that is, income less administrative expense) from grazing leases of Permanent University Fund land, shall be appropriated by the Legislature for the support and maintenance of The University of Texas at Austin.

Origin

(a) Rewords: Article VII, Section 11,
Article VII, Section 15.
(b) Rewords Article VII, Section 12.
(c) Revises: Article VII, Section 11;
Article VII, Section 11a.
(d) Revises Article VII, Section 11a.

Commentary

Section 8 considerably shortens and simplifies the corresponding sections of the Constitution of 1876. The Permanent University Fund, which currently exceeds $600 million, cannot be expended, but the income from

the fund, known as the Available University Fund, can be appropriated to service bonds sold to finance construction of permanent improvements at specified institutions within The University of Texas and Texas A&M Systems and to achieve academic excellence at The University of Texas at Austin and Texas A&M University at College Station. The Permanent and Available University Funds have made it possible for this state to have two outstanding universities which rank prominently among the institutions of higher education in the United States.

The proposed Section 8 defines the Permanent and Available University Funds, provides for the investment of the Permanent University Fund, and provides for the distribution of the Available University Fund. It also requires the Board of Regents to make full disclosure of its investments, as is now the case, so that interested citizens may be kept well informed of the disposition of the property which is held in trust for the benefit of the people of this state. The applicable sections of the 1876 Constitution restrict the investment authority of the Board of Regents of The University of Texas in the type and amount of investments that can be made. This provision includes the same restrictions except the limitation in Article VII, Section 11a of the 1876 Constitution which prohibits the Board of Regents from purchasing stock in a corporation which has not paid dividends for the past five consecutive years and which is not listed upon an exchange registered with the Securities and Exchange Commission.

Subsection (d) revises Article VII, Section 11a of the 1876 Constitution. This revision reflects the statutory division of the Available University Fund after payment of the principal and interest due on Permanent University Fund bonds or notes. One-third of the remainder is appropriated to Texas A&M University at College Station, and two-thirds of the remainder is appropriated to The University of Texas at Austin.

Except for the specific changes listed above, it was the Commission's intent not to increase or decrease the constitutional authority of The University of Texas System Board of Regents to invest the Permanent University Fund.

Section 9. Texas A&M University System; The University of Texas System; Permanent University Fund Bonds or Notes

(a) The Board of Directors of the Texas A&M University System and the Board of Regents of The University of Texas System for the benefit of all the institutions now included in their respective systems are each hereby authorized to issue in amounts not to exceed for the Texas A&M System ten percent, and for The University of Texas System twenty percent, of the value of the Permanent University Fund exclusive of real estate at the time of any issuance, negotiable bonds and notes for the following purposes: (1) acquiring land either with or without permanent improvements; (2) constructing new buildings or other permanent improvements; (3) repairing and rehabilitating existing buildings or other permanent improvements; (4) acquiring library books and materials; (5) acquiring capital equipment; and (6) refunding any bonds heretofore or hereafter issued.

(b) Any bonds or notes issued pursuant to this Section shall be payable solely out of the Available University Fund. Bonds or notes so issued shall mature serially or otherwise not more than thirty years from their respective dates.

(c) Institutions now included in the Texas A&M University System and The University of Texas System, and entitled to participate in the Permanent University Fund, shall not receive any general revenue funds for acquiring land either with or without permanent improvements, or for constructing and equipping new buildings or other permanent improvements except in case of fire, flood, storm, or earthquake occurring at any such institution. In such an event an appropriation in an amount sufficient to replace the uninsured loss may be made by the Legislature from general revenue funds.

(d) For the purpose of securing the payment of the principal and interest of these bonds or notes, the Boards are severally authorized to pledge the whole or any part of the respective interests of the Texas A&M University System and The University of Texas System in the

Available University Fund. The Permanent University Fund may be invested in these bonds or notes. All bonds or notes issued pursuant to this Section shall be approved by the Attorney General of Texas and when so approved shall be incontestable.

Origin

Revises: Article VII, Section 14;
Article VII, Section 18.

Commentary

Section 9 provides that: (1) the Permanent University Fund bond proceeds may be used for acquiring land with or without permanent improvements, constructing and equipping new buildings or other permanent improvements, repairing and rehabilitating existing buildings and other improvements, and acquiring capital equipment; and (2) the constitutional limit on bond sales is raised from 20 percent to 30 percent of the value of the Permanent University Fund.

Article VII, Section 14 of the 1876 Constitution specifically prohibits the Legislature from appropriating any money from general revenue for the purpose of erecting buildings at The University of Texas. Until 1947, the Board of Regents of The University of Texas and the Board of Directors of Texas A&M University relied solely on income from the Permanent University Fund to finance capital improvements at their respective institutions. In 1947, Article VII, Section 18 was added to the constitution to permit the Board of Regents and the Board of Directors to issue negotiable bonds and notes to finance a much needed building program at their respective institutions.

Article VII, Section 18 was amended again in 1966 to liberalize the amount of the Permanent University Fund which could be pledged to secure the bonds and notes issued for capital improvements. Also, the number of institutions entitled to share in the Permanent University Fund building program was increased to include those institutions which were made a part of the Texas A&M University System and The University of Texas System.

Section 9 continues the basic provisions of the 1876 Constitution but authorizes additional uses of the bond proceeds. For example, proceeds can now be used for the repair and rehabilitation of existing buildings, for the acquisition of capital equipment, and for the acquisition of library materials. There is no longer the emergency for additional buildings which existed in 1947, and the emphasis has now shifted to enrichment of the academic programs. Only those institutions now included in the two systems are entitled to share in bond proceeds under this proposal.

Section 10. State Higher Education Tax Fund for the Benefit of Certain Institutions of Higher Education

(a) The Legislature shall levy a State ad valorem tax on property at a rate not less than ten cents on the one hundred dollars valuation sufficient to provide a level of support necessary to promote the attainment of first class status for all State institutions of higher education except those institutions included in the Texas A&M University System and The University of Texas System, all public community colleges, and all State technical institutes.

(b) The proceeds of this tax shall comprise the Higher Education Tax Fund.

(c) The Higher Education Tax Fund may be pledged to secure or refund bonds issued heretofore or hereafter for acquiring land, either with or without permanent improvements thereon, constructing, equipping, repairing, rehabilitating buildings or other permanent improvements, and for acquiring capital equipment and library books and materials at the institutions for which the Fund is created. After appropriating an annual sum sufficient to pay the principal and interest due on such bonds, the Legislature shall appropriate the remainder of the Fund for the support and maintenance of State institutions of higher education other than The University of Texas at Austin, Texas A&M University at College Station, the public community colleges, and the State technical institutes.

(d) The Legislature shall provide by law for each issue of bonds authorized by this S.. tion and for equitable distribution of the proceeds on the basis of statewide needs. Responsibility for issuance of bonds and allocation of proceeds shall be vested as provided by law.

(e) From the date on which they became eligible to participate in the special tax fund established in this Section, the institutions participating in this fund shall not receive any general revenue funds for acquiring land or permanent improvements, or for constructing and equipping new buildings o other permanent improvements, except that in the case of fire or natural disaster the L gislature may appropriate from general revenue an amount sufficient to replace the uninsured loss.

(f) If for any reason the tax authorized by this Section is held invalid, the Legislature shall provide an equal amount of revenue from other sources.

Origin

Revises Article VII, Section 17.

Commentary

Subsection (a) authorizes the Legislature to increase the tax rate for institutions of higher education beyond the ten cent per $100 valuation level of taxation provided in the 1876 Constitution. The Legislature is required to establish a tax rate which will enable the participating institutions to acquire first class status. The institutions are not listed individually in this revised section but would include all institutions designated by the new constitution or by law.

Subsection (c) provides greater flexibility in the use of the tax fund. The participating institutions may use the tax fund to secure or refund bonds issued for acquisition of land, construction and rehabilitation of buildings, acquisition of capital equipment, and purchase of library books and materials. A new provision authorizes the Legislature to appropriate any tax revenue remaining after payment of the principal and interest due on outstanding bonds among all the institutions of higher education except The University of Texas at Austin and Texas A&M University at College Station. The University of Texas at Austin and Texas A&M University at College Station are ineligible to receive any of the excess money, since they receive additional income from the Permanent University Fund under Section 8. The amount of such tax funds, if any, will be dependent on the tax rate set by the Legislature.

Under Article VII, Section 17 of the 1876 Constitution the Comptroller of Public Accounts is responsible for allocating the tax fund among the participating institutions, and the individual institutions are responsible for issuing the bonds. Under Section 10(e) responsibility for the allocation of the fund and the responsibility for the issuance of the bonds is to be vested in an agency designated by the Legislature. However, the Legislature is responsible for determining the amount of the bond issue and it is also responsible for devising distribution formulas based on statewide needs.

Subsection (e) carries forward the prohibition in Article VII, Section 17 of the 1876 Constitution against the use of general revenue funds to finance capital improvements at the institutions of higher education which share in this special tax fund. Subsection (f) is a new provision. It commands the Legislature to find a substitute in the event this tax fund becomes inoperative.

All of the institutions of higher learning experienced an acute building shortage near the end of World War II. The University of Texas and Texas A&M University could use the income from the Permanent University Fund to finance their building programs, even though that fund was found inadequate to finance the immediate need for more buildings. The other institutions had nothing to draw on except annual appropriations from the general revenue fund which were certainly inadequate. As a result, the constitution was amended in 1947 to authorize the Board of Regents of The University of Texas and the Board of Directors of Texas A&M University to issue bonds to finance their building programs. That same year a special tax fund was created in the constitution for the benefit of those institutions which did not share in the Permanent University Fund (Article VII, Section 17).

The proposed Section 10 continues the tradition of treating all the institutions of higher education in the same manner. The Higher Education Tax Fund may be pledged to secure bonds issued for the same purposes that the Permanent University Fund bonds are issued. Section 10 also authorizes the Legislature to increase the rate of tax to a level sufficient for the operation of a first class college or university.

Although bonds issued pursuant to Article VII, Section 17 of the 1876 Constitution will mature in 1978, there is no requirement in proposed Section 10 to defer its implementation until that time. Rather, Section 10 should be immediately implemented so that those institutions eligible to participate in this special tax fund may initiate long-term planning to take advantage of the provisions of this section.

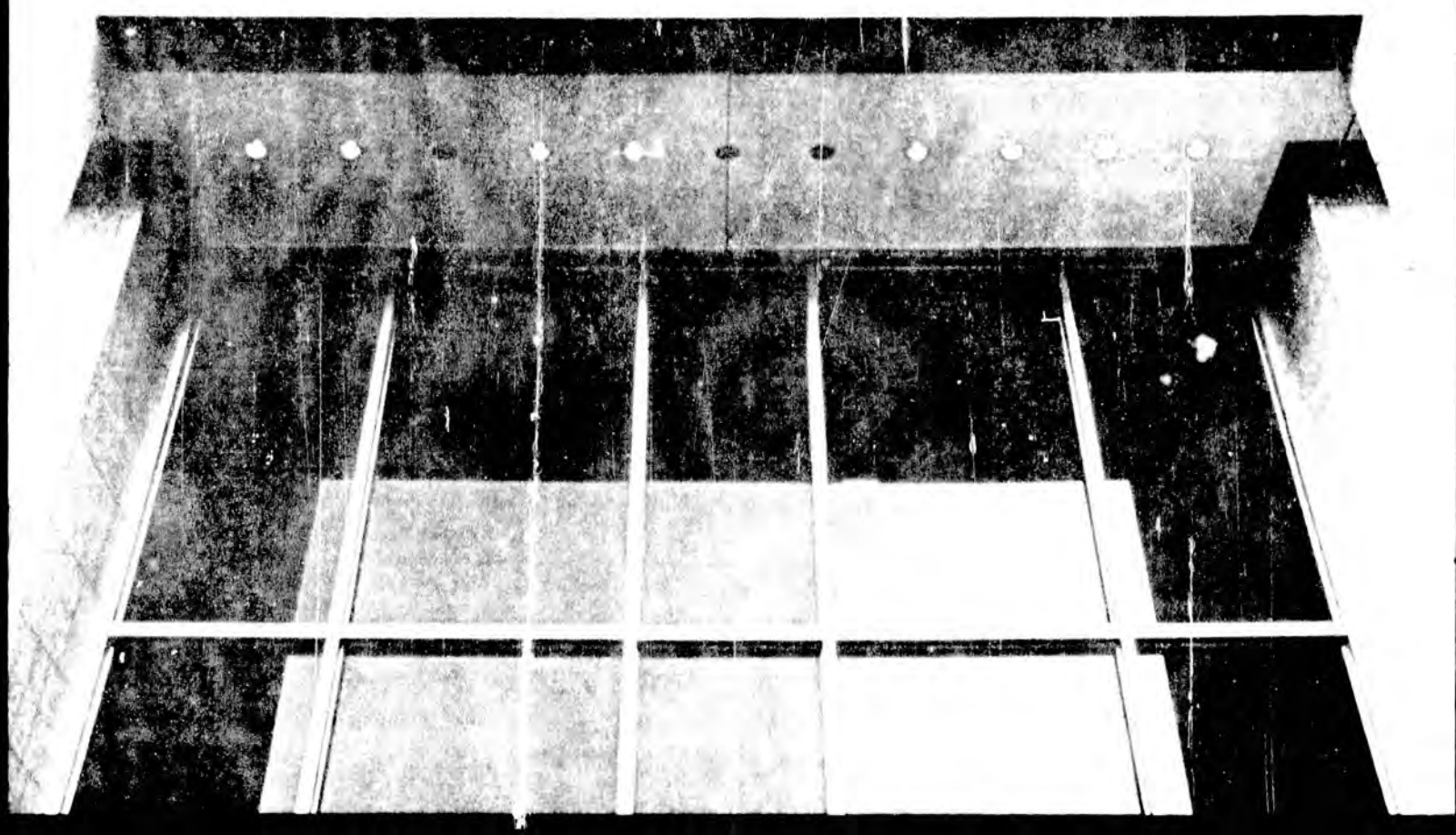
In 1971, a federal district court in Alabama declared that state's tax on property unconstitutional, *Weissinger v. Boswell*, 330 F. Supp. 615 (M.D.N.D. Alabama 1971), because of inequities in its application. The State of Alabama did not appeal that judgment, nor has it replaced the ad valorem tax with another tax. Theoretically, a Texas court could declare this state's ad valorem tax unconstitutional, although that possibility does not appear to be imminent. Out of caution, a new provision was added to require the Legislature to appropriate an equal amount of revenue from other sources in the event a court invalidates the Higher Education Tax Fund.

Article VIII

Finance



STATE FINANCE BUILDING



Article VIII
Finance

Section 1. Taxation

Taxes shall be levied and collected by general law.

Origin

Revises: Article VIII, Section 1;
Article VIII, Section 1e;
Article VIII, Section 2;
Article VIII, Section 3;
Article VIII, Section 4.

Commentary

The state's power to tax is plenary. Unless some limitation is placed on that taxing power by the state or federal constitution, no constitutional authorization to levy taxes or to exempt from taxation is necessary. The Taxation Article of the 1876 Constitution is a rambling, disorganized, and occasionally inconsistent collection of authorizations directing or allowing taxation and contains a series of restrictions on the power of government to tax or to exempt from tax. Virtually all of these authorizations and restrictions have been deleted in the new constitution. The only specific limitations are contained in Article VIII, Sections 1 and 2 and in Article I, Section 3 of the new constitution as well as those general restrictions on the power of government contained in the Fourteenth Amendment to the United States Constitution.

The new constitution provides greater flexibility in the subject of property taxation than did the 1876 Constitution. The provisions of the new constitution permit the Legislature to prescribe for the taxation of certain classes of property and not of others, to value one class of property in a different method than used in valuing another class of property, and to provide different tax rates for different classes of property. This was not possible under the 1876 Constitution.

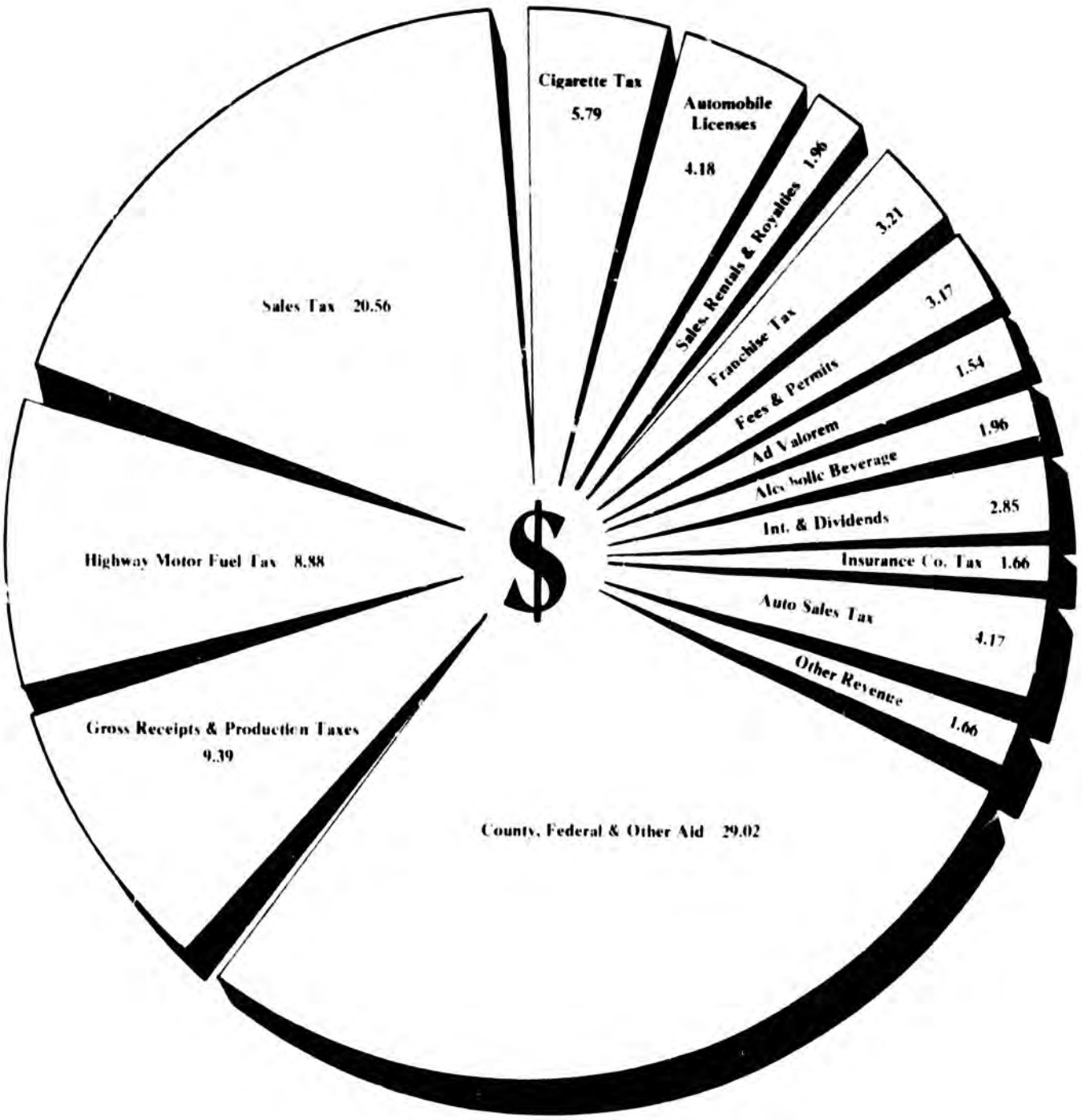
Neither is there any inflexible restriction in the new constitution on the levy and collection of taxes other than property taxes. This is a continuation of the same policy expressed in the 1876 Constitution which provided only that: (1) taxes be levied and collected by general law for public purposes only; (2) the power to tax corporations not be surrendered; (3) occupation taxes be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; (4) occupation taxes not be levied on mechanical or agricultural pursuits; and (5) occupation taxes be levied by political subdivisions in an amount not to exceed one-half of those taxes levied by the state. Otherwise, the 1876 Constitution places no restraint upon the mode and method of taxation other than those restraints imposed on the property tax. This is reflected by the fact that 97 percent of state revenue is now obtained from sources other than ad valorem taxes on property.

Some general restrictions on taxation are retained in the new constitution. The requirement that taxes be levied and collected by general law is retained in this section. The requirement that taxes be collected "for public purposes only" has been interpreted to control the use rather than the collection of taxes. The requirement is retained in Section 7 of this article. The prohibition against surrendering the power to tax corporations, now present in Article VIII, Section 4 of the Constitution of 1876, dates from 1876 and has had virtually no judicial interpretation. The Commission considered expanding the prohibition to forbid the surrender of the taxing power under any circumstances, but decided that the guarantee of equal rights and the prohibition against special laws offer better protections against taxing favoritism. It is also possible that the prohibition might interfere with the state's taxing ability by preventing the use of federal tax standards. For these reasons the prohibition was not retained in this constitution.

Requirements concerning occupation taxes were not included in the new constitution. Exemptions from occupation taxes for agricultural and mechanical pursuits contained in the 1876 Constitution have not been of historical importance.

Most of the Taxation Article of the Constitution of 1876 is devoted to the subject of property taxation. It imposes several important limitations: (1) all property in the state shall be taxed; (2) property shall be taxed in proportion to value; (3) taxation shall be equal and uniform; and (4) the state may not provide for a state ad valorem tax after 1978. None of these limitations is re-

Figure 4.3
Sources of State Net Receipts for Fiscal Year 1972



Source: **Texas Comptroller of Public Accounts, Report to the Governor**, pt. 1a, Receipts and Disbursements of State Funds 5 (1972).

tained in the new constitution. The changes made by the Commission in regard to property taxation are substantive and were influenced by the nature of existing property tax problems and the need for legislative flexibility to provide solutions for these problems.

The relative importance of the property tax as a source of government revenue in Texas has declined, particularly at the state level. It continues, however, to provide approximately 87 percent of local tax revenue and 40 percent of the total of state and local tax revenue. In 1971, revenues from the property tax in Texas totaled $1.5 billion. It is likely that the property tax will continue to be the single greatest source of local government revenue.

Despite its great importance, the local property tax has been characterized as resulting in widespread inequities. Interjurisdictional and intrajurisdictional inequalities are the rule rather than the exception in Texas. Possible solutions to all or part of the problem are being studied by a variety of state and private authorities.

Some reforms of the property tax are precluded by the Constitution of 1876. To a large extent, constitutional limitations on property taxation, rather than assuring an equitable tax system as they were intended to do in 1876, have contributed to the present problems in Texas. By preventing the Legislature from legally classifying property, they create a tax scheme which, for practical and political reasons, cannot be administered. Because changes in the scheme itself have been impossible except by constitutional amendment, the net effect has been to discourage true reform and to encourage solution through the extra-legal classification of property by local tax assessors. Recent studies indicate that because of the gap between constitutional principles and taxing practice, inconsistencies in legal doctrine are commonplace, and the individual taxpayer suffers in his inability to identify and to challenge effectively even flagrant violations of the property tax laws.

The experience in this state and elsewhere has been that it is impossible to tax all property equally and uniformly by means of a general property tax. Not all property is alike; nor can it be located or taxed in the same manner. In recognition of this fact, an increasing number of states have acted to exclude certain classes of property from the general ad valorem tax base—the latest being Illinois where all personalty will be removed by 1979 by constitutional fiat. Virtually all states have taken steps to exclude all or the greater part of intangible personalty such as stocks, bonds, and bank deposits. In Texas, however, such property is supposed to be taxed, along with all other property, in proportion to its value. In actual practice, Texas assessors do *not* assess and tax intangibles with the single exception of the capital stock of banks because the property is, as a rule, highly mobile, easily concealed, and can be manipulated to avoid taxation. This indicates that the Legislature should either make a real effort to make intangibles taxable on an ad valorem basis as the Constitution of 1876 dictates, or it should act to recognize the impossibility of doing so and exclude intangibles from the property tax base and tax them by some other method. Under the Constitution of 1876, this alternative, along with many others, is not available.

There are many arguments for and against the institution of a classified property tax. Theoretically, the Constitution of 1876 prevents property classification. It does prevent the state or a political subdivision from officially prescribing a system of taxation which excludes certain classes of property or provides for varying effective rates of taxation on different classes of property. But even the best respected taxing jurisdictions of the state have developed extra-legal classifications to accomplish the same purposes. The classifications have been prompted by a variety of social and political considerations. Clearly, if such classifications are desirable, they should come through the political process and be created by law rather than by the operation of local tax offices. This revised section would allow the Legislature to decide whether the classification of property is desirable and to prescribe rules and guidelines for any classification scheme which is established.

Considerable debate occurred over whether the new constitution should continue a requirement that taxation be equal and uniform. Several alternatives were considered. The Finance Study Committee of the Commission recommended that the new constitution read that "taxation shall be equal and uniform within the jurisdiction of the taxing authority." This version, intended as a restatement of present law, was included as part of a recommendation which would have continued many of the limitations on taxation which were present in the 1876 Constitution. The Commission rejected the recommendation in favor of this section for the reasons discussed previously. Subsequent efforts to include a provision that "taxation shall be equal and uniform" or that "taxation shall be equal and uniform on similarly situated taxpayers" were rejected. "Equal and uniform," if interpreted consistently with the weight of opinion in previous Texas cases, provides essentially the same protection for the taxpayer that is already available under Article I, Section 3 of the Texas Constitution and the Fourteenth Amendment to the United States Constitution. See *Hurt v. Cooper*, 110 S. W. 2d 896 (Tex. 1937).

On the other hand, there is the possibility that the

phrase could be interpreted to reinstate the inflexible scheme of property taxation which exists under the Constitution of 1876 on the rationale that "equal and uniform," as applied to property taxation, has an historical meaning which restricts classification, even when the constitution no longer requires that all property must be taxed in proportion to its value. See generally W. J. NEWHOUSE, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION (1959). To avoid the possibility that including "equal and uniform" could have this effect, and in reliance on the protection against unreasonable discrimination that is available under Article I, Section 3 of this constitution, the Commission decided not to include any uniformity requirement.

Recently revised or enacted constitutions have been divided on the subject of including or retaining a requirement for taxing uniformity. Illinois and Pennsylvania retained uniformity provisions, although Illinois took steps to allow its General Assembly to treat personal property separately from real property. Montana, Hawaii, and Alaska did not include a uniformity provision in their new constitution.

The present prohibitions against a state property tax were not continued in the new constitution. In 1968, an amendment to the Constitution of 1876 called for the end of the tax by 1978, except for the ten cent per $100 valuation dedicated to institutions of higher education. As the state ad valorem tax on property now operates, it is even more inequitable than the local property tax because, though levied statewide, it is based on local assessments. Some authorities believe that the tax may be in violation of the United States Constitution. Why allow the tax to continue? First, the constitution should not foreclose any source of revenue for the future. Increasingly, the state is encountering funding difficulties, particularly in regard to financing public education on an equitable basis. A state administered property tax may be the best method for accomplishing such financing. Second, although in recent years many states have moved out of the property tax field, some authorities expect that that trend may soon be reversed. Third, perhaps the surest method for assuring that property tax reform will take place is to continue the participation of the state in the tax. If reform is to come, it must almost certainly be initiated at the state level.

The new constitution does not levy a state ad valorem tax. Section 5 of the Transition Schedule continues the levy of the ten cent per $100 valuation tax for institutions of higher learning until the Legislature acts to levy a tax for that purpose pursuant to Section 10 of Article VII of the new constitution. With the exception of a tax of two cents per $100 valuation for confederate pensions and the State Building Fund, all other state ad valorem taxes levied by the Constitution of 1876 will have been phased out by 1975. Under Article VIII, Section 1e of the 1876 Constitution, the two cent tax is to end in 1976. Unless the Legislature acts by law to levy the tax, it will end with the adoption of this constitution, if such adoption occurs before 1976.

Section 2. Property Tax Exemptions

(a) There shall be exempt from all ad valorem taxation:

(1) The property of the State except as provided by law and all other public property used for public purposes;

(2) All household goods and personal effects not used for the production of income; and

(3) All farm products in the hands of the producer and family supplies for home and farm use.

(b) There shall be exempt from State ad valorem taxation:

(1) Three thousand dollars of the assessed value of all residence homesteads; and

(2) The property of political subdivisions of the State.

(c) The Legislature by general law may exempt from ad valorem taxation:

(1) Property used exclusively for educational or charitable purposes or places of burial not held for profit;

(2) Up to three thousand dollars of the assessed value of property owned by a disabled veteran of the armed services of the United States or by the surviving spouse and surviving minor children of a disabled veteran of the armed services of the United States;

(3) Up to three thousand dollars of the assessed value of property owned by the surviving spouse or surviving minor children of any member of the armed services of the United States whose life was lost while on active duty;

(4) Actual places of religious worship;

(5) Any property owned by a church or by a strictly religious society for the exclusive use as a dwelling place for the ministry of such church or religious society if the property yields no revenue to the church or religious society, but such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; and

(6) Any other property validly exempt at the time of adoption of this Constitution.

(d) The governing body of any political subdivision may exempt from ad valorem taxes not less than three thousand dollars of the assessed value of a residence owned and occupied by persons sixty-five years of age or over. If no exemption has been granted, the governing body, upon a petition signed by qualified voters equal in number to at least twenty percent of those voting in the last preceding election held by the political subdivision, shall call an election to determine by majority vote whether to grant such an exemption in the amount, not less than three thousand dollars, specified in the petition.

(e) The Legislature by general law may provide relief from residential ad valorem taxes for persons determined to be in need of such relief because of age, disability, or economic circumstances. Any such law shall provide for the reimbursement of political subdivisions for revenue losses caused by such relief.

(f) No exemptions from ad valorem taxation shall be granted except as authorized under this Section.

Origin

(a) (1) Revises: Article VII, Section 16;
Article XI, Section 9.
(2) Revises Article VIII, Section 1, Sentence 6.
(3) Revises Article VIII, Section 19.
(b) (1) Revises Article VIII, Section 1b.
(2) Revises Article VIII, Section 1, Sentence 2.
(c) (1) Revises Article VIII, Subsection 2(a).
(2) Revises Article VIII, Subsection 2(b).
(3) Rewords Article VIII, Subsection 2(b).
(4) Rewords Article VIII, Subsection 2(a).
(5) Rewords Article VIII, Subsection 2(a).
(6) New provision.
(d) Rewords Article VIII, Section 1b.
(e) New provision.
(f) Rewords Article VIII, Subsection 2(a).

Commentary

In general, this section provides for continuation of those exemptions from property taxation which were allowed under the Constitution of 1876 and prohibits the Legislature from granting new exemptions except as authorized by the constitution. Read in conjunction with the revised Section 1 of this article, the prohibition against exemptions does not prevent the Legislature from providing classifications of property for purposes of taxation or assessment and does not prevent the Legislature from providing reasonable laws for the release of delinquent taxes and for discounts for the prompt payment of taxes.

Subsection (a) continues, with minor revisions, exemptions which are present in the Constitution of 1876. In subsection (a) (1) the exemption of all public property used for public purposes is continued, except that the Legislature may provide for the taxation of state land. This provision is intended to permit certain exceptions, such as the taxation of University of Texas Permanent School Fund lands by counties, which exist under the Constitution of 1876. The exemption of household goods in subsection (a)(2) is enlarged from the $250 amount which was present in the original Constitution of 1876. The taxing of household goods and personal effects, when they are not used for the production of income, is administratively unfeasible. This exemption is not applicable to the furniture and fixtures of hotels, restaurants and other commercial operations or to the property of individuals that is used to produce income. In subsection (a)(3) the exemption of farm products is continued from the Constitution of 1876, but the right of the Legislature to remove the exemption by two-thirds vote is not continued in the belief that if the right has not been exercised since the exemption was granted in 1879, it is unlikely to be exercised in the future.

Subsection (b) provides exemptions from *state* property taxation for all resident homesteads and the property of political subdivisions. The exemption of resident homesteads is virtually unchanged from the Constitution of 1876. Only the phrase "as now defined by law" has been deleted to allow all persons that qualify for a homestead, as that term may be prospectively defined by law, to also quality for the tax exemption. The exemption in subsection (b)(2) for the property of all political subdivisions is new, but is limited to state taxation and is consistent with the argument that taxing government property is an inefficient method for moving public money from one pocket to another.

It is important to note that subsection (c) does not grant exemptions as is the case with (a) and (b), but rather merely grants authority to the Legislature to exempt, if it chooses, certain property. One change from the Constitution of 1876 is made concerning the exemption of property used exclusively for education and charitable purposes. Under the provisions of subsection (c)(1) it is no longer necessary that such property be owned by institutions of purely public charity in order to qualify for exemption.

The exemptions for disabled veterans, their families, and the families of veterans whose lives were lost on active duty have not yet been granted by statute. The exemptions were approved by amendment in 1972, however, and the Legislature should have the opportunity to choose whether to grant the exemptions.

To assure that exemptions presently granted by statute will not become unconstitutional under this revised constitution, subsection (c)(6) was added. Subsection (c)(6) applies only to exemptions which are now validly granted and does not mean that the Legislature may continue to grant new exemptions under authority which it had under the Constitution of 1876 but which it no longer possesses under this revised section. For an indication of exemptions which may be continued see TEX. REV. CIV. STAT. ANN. art. 7048a (1960); TEX. REV. CIV. STAT. ANN. art. 7150 (1960), as amended, (Supp. 1972).

Subsection (d) continues, without substantive change, the provision of the Constitution of 1876 which directly allows political subdivisions to exempt, from their own taxes, the property of those sixty-five years of age or older. There was some debate over the wisdom of this exemption because it provides for an exemption of "at least" $3,000 rather than the customary "up to" $3,000. The difference is considerable. It means that there is no ceiling on the exemption and this, combined with the local public initiative aspect, allows for the sudden removal of considerable property from the local tax base. This is particularly true in small cities and towns where the number of qualified property owners is relatively high. A sudden depletion of the tax base could upset the security for outstanding bonds and place a disproportionate tax burden on meligible taxpayers. On the other hand, an exemption of this nature, without a ceiling, is more realistic in a time of increasing land values.

Subsection (e) is a new provision. In anticipation of possible future exemptions for social reasons, subsection (e) authorizes the Legislature to provide tax relief for those found to be in need of relief because of age, disability, or economic circumstance. The national trend appears to be toward the granting of more social exemptions and the assumption of the financial burden by the state rather than local government. By July 1, 1973, every state had enacted some form of property tax relief program, and only thirteen of these required their localities to provide relief but did not provide at least some money. Increasingly, these social exemptions have been keyed to the need of the individual applicant rather than a blanket application to a particular class of property owners. Subsection (e) allows the Legislature to enact tax relief, without constitutional amendment, if it is found to be desirable. If the Legislature provides for such social exemptions, it must simultaneously provide for reimbursement of local jurisdictions for lost revenue.

Under subsection (f), the Legislature may not exempt property from taxation except as specifically allowed by the constitution. Amendment is necessary to authorize new exemptions.

Section 3. Highway-User Revenues

Subject to legislative appropriation, allocation, and direction, all net revenues from motor vehicle registration fees and three-fourths of net revenues from all taxes on fuels and lubricants used to propel motor vehicles over public roadways, except gross production and ad valorem taxes, shall be deposited in the State Highway Fund. Such revenues shall be used solely for acquiring rights-of-way, constructing and maintaining a State highway system; for policing public roadways; and for administering laws pertaining to the supervision of traffic and safety on public roadways. One-fourth of net revenues from these taxes shall be allocated to the Available School Fund. The net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each county, or less than the percentage allowed to be retained, under the laws in effect at the time of adoption of this Constitution.

Origin

Revises Article VIII, Section 7a.

Commentary

Section 3 is a simplified version of Article VIII, Section 7a of the 1876 Constitution which dedicates highway-user revenues. It continues the dedication of the net revenue of motor vehicle registration fees and 75 percent of motor fuel taxes for the state highway system and 25 percent of the net revenues of the motor fuel tax to the Available School Fund. It also preserves the county share of motor vehicle registration fees. Section 3 introduces the new term "State Highway System" as a substitute for "public roadways." This reflects the present use of the revenues which is limited to streets or roadways that are part of the state-maintained highway network.

Much has been written about the general undesirability of earmarking or dedicating governmental revenues for specific uses. But most state constitutions do dedicate revenues. In fact, some 28 states have constitutional provisions which dedicate state motor vehicle and gasoline taxes for highway purposes. Even recently revised constitutions, such as that of Montana, have retained such dedications. Highway-user taxes are defended as an exception to the rule against earmarked revenues because such taxes are directly related to the use of the facilities which are built and maintained by the funds. The dedication of a portion of these taxes to the Available School Fund provides a secure source of revenue for public education.

Constitutional dedication of highway-user revenues is even more appropriate in Texas than in other states. Texas has the largest state highway system of any state (70,000 miles). The system constitutes the most extensive network of transportation in the state and affords considerable benefits through increased citizen mobility and through lower costs for food and other essential commodities. This system has been built at a relatively low cost and without the incurrence of long-term state debt. The presence of constitutionally dedicated funds has contributed to the success of the Texas highway system because it has allowed thoughtful advance planning with the assurance of revenue and without the political pressures and uncertainties of legislative appropriation.

Although there is a recognized need for support for all types of transportation systems, the need for highway funds in the future is likely to remain high. One disadvantage of having the largest highway system in the nation is that costly upkeep, maintenance, and revamping are required. It is important to public safety that roads and bridges be constantly improved and updated to accommodate increased traffic and different types of vehicles. The Commission believes that Texas should continue to have a high quality system of highways.

Several alternatives to the provision of Section 3 were discussed, including: (1) eliminating the constitutional earmarking; (2) allowing the future use of the revenues for other purposes, such as mass transit; or (3) allowing a change in the ratio of the revenue allotted to the highway system and the Available Fund. Although these alternatives received serious consideration, the majority of the Commission favored retention of the dedicated tax fund in the form of this section.

Section 4. State Taxes on Income

If a law is enacted levying an income tax, the tax may be on personal or corporate income, or both, and may be graduated or otherwise. The law may define income by reference to the laws of the United States as they then exist or may thereafter be changed.

Origin

Revises Article VIII, Section 1, Sentence 5.

Commentary

Article VIII, Section 1 of the Constitution of 1876 specifically authorizes the Legislature to "tax incomes of both natural persons and corporations other than municipal." Such constitutional authorizations to tax are unnecessary, and there is no question that the Legislature could enact an income tax today, even if no constitutional authorization were present. But concern has been expressed that under the Constitution of 1876: (1) an income tax could not be enacted unless it taxed *both* corporate and personal incomes; (2) a graduated income tax would be violative of the constitutional requirement for uniformity in taxation; and (3) a state tax on income could not be based on the federal income tax without unconstitutionally delegating the legislative power of the state. This section is intended to overcome these objections and to allow the Legislature the freedom to select the most effective structure for an income tax if one is found to be desirable.

Whether Texas should enact an income tax or how such a tax should be patterned are questions which arouse considerable debate. These are questions which should be considered carefully, but which should be considered in the legislative process. An increasing number of states have found a tax on income to be a valuable and legitimate source of revenue. If the day arrives when such a tax is found to be desirable for Texas, the constitution should not prevent its enactment or dictate its form.

It is possible that this section may not grant the Legislature any power which it does not now possess. For example, there is no question that the Legislature may enact a tax on income without constitutional authorization. During past legislative sessions, however, it has been argued that Article VIII, Section 1, sentence 5 of the Constitution of 1876 requires that if an income tax is enacted, it must be upon the income of both persons and corporations. Even if this construction of the 1876 provision is correct, the specific language was deleted from the new constitution, and the authorization contained in this section for a tax on "either" personal or corporate income may be unnecessary.

Similarly, a graduated income tax may be possible under the 1876 Constitution. Many states have enacted graduated income taxes without constitutional amendment. Challenge to the constitutionality of a graduated income tax has come on the grounds that a graduated tax is not "equal and uniform" as required under Article VIII, Section 1 of the 1876 Constitution. Repeatedly, the pivotal issue for courts in other states has been the identification of the income tax as an excise tax rather than a property tax on the theory that the uniformity required of nonproperty taxes is different from that required of property taxes. See *Thorpe v. Mahin*, 250 N.E. 2d 633 (Ill. 1969); *Tax Commission v. Fine*, 247 N.E. 2d 701 (Mass. 1969). But see *Amidon v. Kane*, 279 A. 2d 53 (Penn. 1971). In Texas, there is reason to believe that an income tax would be found to be a nonproperty tax, *Community Public Service Co. v. James*, 167 S. W. 2d 588 (Tex. Civ. App.-Austin 1943, writ ref'd w.o.m.), and could be graduated. See *State v. Hogg*, 72 S.W. 2d 593 (Tex. Comm'n App. 1934, opinion adopted), *Hurt v. Cooper*, 110 S.W. 2d 896 (Tex. 1937). In fact, in the 1931 *Report of the Tax Survey Committee of the 42nd Legislature*, the Attorney General of Texas considered in some depth the question of the constitutionality of a graduated income tax and concluded that one was permissible under the Constitution of 1876. See also TEXAS ATT'Y GEN. OP. No. 2902 (1932). The need for the constitutional authorization of a graduated income tax is further diminished by the omission of the equal and uniform provision from Section 1 of this article.

The third objection which this section is intended to overcome is that a statute which incorporates the definitions of the federal income tax may be an unconstitutional delegation of the legislative power of the state, particularly when such definitions may be subsequently changed by the federal government. Several states have recently amended their constitutions to include language similar to that contained in this section to enable the Legislature to incorporate the federal standards. One authority has suggested a method, presently in use in Michigan, which could make constitutional authorization unnecessary. In general, the approach is to incorporate the federal definitions at a point in time and then to allow the use of prospec-

tive federal changes at the option of the state taxpayer. Whether this method would be desirable or could be successfully utilized in Texas is unknown.

It is recognized that specifically mentioning the income tax in a proposed constitutional revision could create opposition from voters even though an authorization for the tax is now present in the Constitution of 1876. This section is the surest method, however, for allowing the Legislature to enact such a tax in the future without constitutional amendment.

Section 5. State Debt

(a) State debt shall mean bonds or other evidences of indebtedness which are secured by the general credit of the State or are to be repaid, directly or indirectly, from tax revenue and are incurred for the State or for an agency of the State.

(b) No State debt shall be authorized or incurred except as provided in this Constitution.

(c) State debt may be authorized by general law to refund outstanding State debt.

(d) State debt may be incurred if approved by two-thirds vote of the membership of each house of the Legislature and submitted to and approved by a majority of the qualified electors voting on the question.

Origin

Revises Article III, Section 49.

Commentary

Article III, Section 49 of the Constitution of 1876 states that "no debt shall be created by or on behalf of the State." The prohibition has not prevented state borrowing. For example, between 1961 and 1970 the public debt of the State of Texas and its agencies increased 300 percent from $330 million to $1 billion. Since 1970, the figure has climbed to approximately $1.6 billion in 1973. This revised section is intended to modernize the constitutional debt limit to provide a more effective control over state borrowing.

Through the years, "debt" as used in the 1876 Constitution has come to have a limited rather than inclusive meaning. Courts have held that obligations which run current with revenues, *Charles Scribner's Sons* v. *Marrs*, 262 S.W. 722 (Tex. 1924), and obligations which are incurred by state agencies to be paid from revenues of the agency, *Texas Turnpike Authority* v. *Shepperd*, 279 S.W. 2d 302 (Tex. 1955), are not "debts" within the prohibition of Article III, Section 49. Debts are created when the general credit of the state is obligated, when future revenues are obligated by expenditures in excess of appropriations, or when contracts are made which run for longer than the term of the appropriation.

Section 5 is intended to change the definition of debt to include bonds or evidences of indebtedness which are to be paid directly or indirectly from tax revenue. Otherwise, obligations which are now prohibited under Article III, Section 49 are still prohibited. Likewise, obligations which run current with revenues are not "debt" under the new Section 5. The change in the meaning of debt is made to require a statewide referendum for the approval of state borrowing which now occurs without any election.

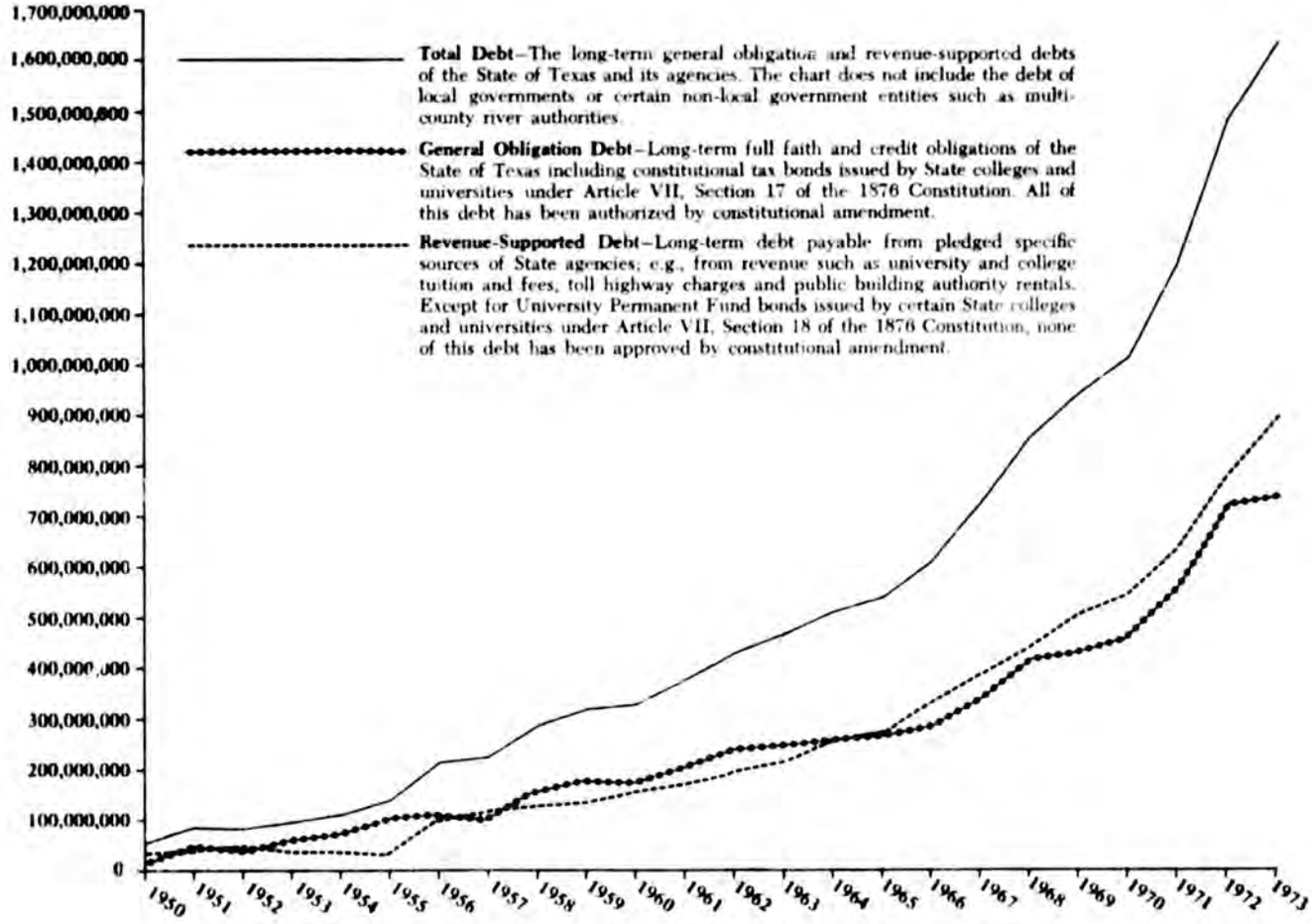
State borrowing has come about through three methods. First, the 1876 Constitution has been amended to authorize $1.2 billion ($750 million having been issued) in debt for particular purposes, including Veteran Land Bonds, Student Loan Bonds, Water Development Bonds and Texas Park Development Bonds. Sections 17 and 18 in Article VII of the 1876 Constitution authorize certain senior colleges to issue bonds which are backed by tax revenue or by revenue from the University Permanent Fund. These obligations, by virtue of their inclusion in the constitution, have been authorized by election.

A second method of borrowing has been through bonds issued by state agencies and senior colleges without constitutional authorization. These bonds are revenue-supported obligations which are designed to be self-liquidating from non-tax revenue of the issuing agency or enterprise. Examples include bonds backed by revenue from college dormitory housing rentals and traffic facility tolls. Traditionally, such bonds have not been prohibited by the constitution because they do not obligate the general credit or tax revenue of the state. These obligations do not lend themselves to an election and constitute a logical and long-standing exception to the requirement for a referendum.

During recent years, borrowing without constitutional

Figure 4.4

The Growth of the Debt of the State of Texas and Its Agencies 1950 - 1973



Source: All figures for the years of 1950-1971 are derived from the appropriate annual issue of U.S. **Bureau of the Census, State Government Finances**. Figures for 1972 and 1973 are compiled from data provided by the Texas Municipal Advisory Council.

authorization has come in the guise of bonds designated as revenue bonds, but which depend on state taxes for retirement. Examples include state building authorities which pledge rentals paid by the state and senior colleges which pledge revenues which otherwise would go to the operation of the school and which must be replaced by money from general tax sources. In either case, the ultimate source of the money is state tax revenue. Indebtedness which is repaid indirectly from tax revenues is recognized by authorities as a subterfuge for circumventing the constitutional debt limitation. It is an expensive subterfuge since the bonds are sold by the state agency or college at a higher rate of interest than state full faith and credit obligations. Moreover, the borrowing is accomplished with a minimum of legislative control, even though some courts have recognized that retirement of the indebtedness is at least a "moral obligation" of the state. Such borrowing has only recently reached major proportions in Texas. But because the legal precedent is established, see *Texas National Guard Armory Board* v. *McCraw*, 126 S.W. 2d 627 (Tex. 1939), Texas may be vulnerable to the gross abuses that can be identified in other states.

The precise meaning of "indirectly from tax revenue" is left to judicial interpretation. Clearly it applies to a situation in which the state or an agency of the state creates an authority to float bonds to acquire structures which are leased back to the state for rentals adequate to retire the bonds. Similarly, pledging state revenues, such as senior college tuition, which, if pledged for bond retirement must be replaced with state tax revenue, creates a debt which is payable "indirectly from tax revenues." This same principle applies to the pledging of other revenue which is not customarily set aside for bond retirement.

There are many alternatives for incurring state debt, ranging from the continuation of Article III, Section 49 of the 1876 Constitution to the deletion of all constitutional limitations. A variety of possibilities may be found in the constitutions of other states. Several states have recently adopted provisions which permit the Legislature to incur debt without public referendum under particular circumstances or up to specific ceilings; e.g., Illinois, Pennsylvania and Hawaii. Illinois also allows unlimited debt to be incurred by either a vote of three-fifths of the General Assembly or by referendum. On the other hand, many states continue to require constitutional amendment.

It has been argued by many authorities that imposing a constitutional limit on state indebtedness is undesirable. Such limits often prove ineffective and expensive because almost invariably the government finds a method for circumventing the limit with the result that the cost of borrowing is increased by higher interest rates and higher administrative costs. This has occurred in Texas with the creation of building authorities and the issuance of quasi-revenue bonds.

Other authorities have concluded, however, that "constitutional debt limitations tend to keep down state debt, despite the loopholes discovered by state officials and courts." THE TAX FOUNDATION, CONSTITUTIONAL DEBT CONTROL IN THE STATES (1954). Limits may exert more of a psychological restraint than a legal impediment. Most importantly, however, the presence of a requirement for a referendum or other procedure that focuses popular attention on state borrowing helps make the citizen aware of the fiscal activities of government.

Under subsection (d), state debt would continue to require a two-thirds vote of the total membership of both houses of the Legislature and approval at a statewide election. Combined with the new definition of debt in subsection (a), this constitutional approach is intended:

(1) To encourage that state borrowing be backed by the full faith and credit of the state (to reduce interest costs);

(2) To promote greater legislative control over state borrowing;

(3) To assure that the citizen is aware of the debt being incurred by state government; and

(4) To afford the citizen an opportunity to judge the desirability of such borrowing.

In Article III, Section 49 of the 1876 Constitution unlimited debt could be incurred to repel invasion, suppress insurrection, and defend the state in war. These exceptions are antiquated and have never been used. As a result, they have not been included in Section 5. The 1876 Constitution also allows debt for casual deficiencies in revenue up to $200,000. At present this exception is the basis for deficiency warrants issued by the Governor under TEX. REV. CIV. STAT. ANN. art. 4351a (1966) to cover an "unforeseen shortage in a specific appropriation to meet a situation that unexpectedly arises and requires immediate attention at a time when the legislature cannot act." Comment, *Contracting With the State of Texas; Fiscal and Constitutional Limitations*, 44 TEXAS L. REV. 106, 146 (1965). The warrants are subsequently paid by legislative appropriation at the next legislative session ($53,243 was appropriated to pay warrants issued in 1972 and 1973). See also TEX. CODE CRIM. PROC. ANN. art. 35.27 (1965). The warrants are often discounted considerably because of the delay in payment. Elimination of the debt exception for casual deficiencies means that if the Governor is to have the authority to meet unexpected shortages in an appropriation, the Legislature must appropriate an amount to be utilized for that purpose during the fiscal period, as is presently done to pay tort claims arising while the Legislature is not in session.

Subsection (c) of Section 5 is intended to allow the state to refund outstanding bonds to take advantage of reduced interest rates, if that opportunity were to occur. Similar provisions are present in the constitutions of several other states, including Illinois.

Section 6. Appropriations

(a) Money may not be drawn from the State Treasury except in accordance with specific appropriations made by law.

(b) Any appropriation from the State Treasury expires two years after its effective date.

(c) No bill containing an appropriation may be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts certifies that the amount appropriated is within the estimated revenue for the applicable fiscal period.

(d) No appropriation in excess of the estimated revenue shall be valid unless it is made in response to imperative public necessity and approved by four-fifths vote of the membership of each house of the Legislature.

Origin

(a) Rewords Article VIII, Section 6.
(b) Rewords Article VIII, Section 6.
(c) Rewords Article III, Section 49a.
(d) Rewords Article III, Section, 49a.

Commentary

Section 6 is a shortened but substantively unchanged version of the requirement in the 1876 Constitution for a "pay-as-you-go" policy for legislative appropriations. The section continues to require that money be drawn from the state treasury only by specific appropriation and that the appropriation be limited to two years and be no greater than the revenue estimated to be available for that period. Spending in excess of the revenue estimate is permitted only in response to imperative public necessity on the four-fifths vote of both houses of the Legislature.

Despite some difficulties in implementation, the "pay-as-you-go" policy for appropriations has served as a valuable complement to the limitation on state debt which is now contained in Section 5 of this article. It has succeeded in keeping state appropriations near actual revenues and in avoiding the need for state borrowing to meet deficit spending. For example, at the conclusion of the fiscal period ending August 31, 1972, the State General Revenue Fund showed a cash balance of $53 million. The success of the policy for appropriations has contributed to the high ratings for state general obligation bonds and to the resulting decrease in the cost of state general obligation borrowing.

Although there was unanimous agreement on the need for this section in the revised constitution, there was some dispute over who should serve as the state official responsible for certifying that appropriations are within the revenue estimated to be available for the fiscal period. Presently the function is performed by an elected official, the Comptroller of Public Accounts. It was suggested that an appointed Auditor, elevated to constitutional status, could perform the duties in conjunction with other responsibilities including post-audit and performance audit of government activities. Such an officer would have the advantage of being a qualified certified public accountant and would not be subject to the temptations and pressures of political campaigning.

The Comptroller of Public Accounts was continued as the certifying officer because of the success of the certifying process as it presently operates and because of the greater independence afforded by election as opposed to the appointment of an Auditor. In the opinion of the Commission, certification by an independent officer is essential to the "pay-as-you-go" policy.

Section 7. Public Funds

Public money and public credit shall be used for public purposes only.

Origin

Revises: Article III, Section 44;
Article III, Section 50;
Article III, Section 51;
Article III, Section 52;
Article III, Section 52b;
Article VIII, Section 3;
Article XI, Section 3;
Article XVI, Section 6.

Commentary

The Commission believes that imposing a constitutional limitation on the use of public funds is sound policy. Most state constitutions impose such a limitation, at least on extending state credit to private groups. The pervasive taxing power of government should not be used to produce money for private rather than governmental use. By imposing a limitation on government's use of public funds, the constitution provides the courts with the power to review governmental expenditures and to establish a check on expenditures which serve only private economic or purely political interests. Perhaps, as in some jurisdictions, the courts could exercise the same power and imply a similar restriction despite constitutional silence, but including the limitation in the constitution assures that such a judicial check, which is traditional in this state, will continue to be present.

In the 1876 Constitution there are several sections which purport to prevent the use of public funds for private purposes by prohibiting "grants" or "loans" to "individuals" and "corporations, including municipal." See generally, Article III, Sections 50, 51, and 52. Due to the antiquated, confused, and inconsistent wording of the sections, great uncertainty has occurred in regard to the specific nature of the rule. For example, Texas courts have approved government expenditures for such diverse purposes as retirement and pension systems, *Byrd v. City of Dallas*, 6 S.W. 2d 738 (Tex. Comm'n App. 1928, opinion adopted), primary elections, *Bullock v. Calvert*, 480 S.W. 2d 367 (Tex. 1972) and subsidized housing for the poor, *Housing Authority v. Higginbotham*, 143 S.W. 2d 79 (Tex. 1940). Lot courts and attorneys general have disallowed other seemingly similar expenditures for workmen's compensation, *City of Tyler v. Texas Employer's Ins. Assn.*, 288 S.W. 409 (Tex. Comm'n App. 1926, holding approved), contributions to the building fund of a public nonprofit library, TEXAS ATT'Y GEN. OP. NO. V-953 (1949), and sanitary private privies for war-time installations, TEXAS ATT'Y GEN. OP. No. O-5025 (1942). There are many more decisions and opinions which only add to the confusion. The inability to predict court outcomes has affected the willingness of government officials, particularly at the local level, to undertake new programs. In addition, it has contributed to repeated and perhaps unnecessary amending of the constitution to authorize retirement and pension programs for public employees, state welfare assistance, grants and loans to municipal corporations, and appropriations affecting undefined public interests such as historical memorials.

This section permits an appropriation or expenditure if it is for "public purposes only." The determination of what constitutes a public purpose depends on the particular facts in each case. The term *public purpose* has been defined through the years by a body of law in this and other states, with the result that there are established guidelines from which the Legislature, courts, and government planners can determine the validity of appropriations. In addition, the term is valuable in its generality because its meaning can adjust to accommodate social change as new public purposes are identified.

The Commission rejected efforts to apply a more specific meaning to "public purposes only." In particular, the Commission rejected interpretations which (1) would have limited the use of state funds and credit to statewide purposes, (2) would have prevented a political subdivision from using its credit or funds outside its jurisdiction and (3) would have required that governments receive a "comparable value" for any use of public funds or credit which directly benefits a private interest. The Commission did adopt a provision, included as Section 8 of this article, which was intended to "unequivocably" assure that uses of public money which are permissible under the 1876 Constitution could be continued under the new one.

Section 8. Public Purposes

Public purposes, as that term is used in this Constitution, include, but are not limited to, purposes for which taxes could be levied or public money or public credit could be used before the adoption of this Constitution.

Origin

New provision.

Commentary

The reason for including this section in the new constitution is to "unequivocably" assure that no court will interpret "public purpose" in such a manner as to hold invalid appropriations or expenditures which

were specifically authorized under the Constitution of 1876 and its amendments. It is not intended to direct by inference or implication that those purposes for which taxes could be levied or public money or public credit could be used under the Constitution of 1876 are to provide the criteria for determining the prospective meaning of "public purpose."

The "public purposes" requirement of Section 8 of this article imposes a different test from the one which the framers of the Constitution of 1876 intended to be applied under the specific grants and loans prohibitions of Article III, Sections 50, 51, and 52. Those prohibitions focused on the form of the expenditure rather than on the purpose and have led some Texas courts to require that the government receive a clear quid pro quo before spending public funds in a manner which directly or indirectly benefits private interests. This is somewhat inconsistent with the national rule:

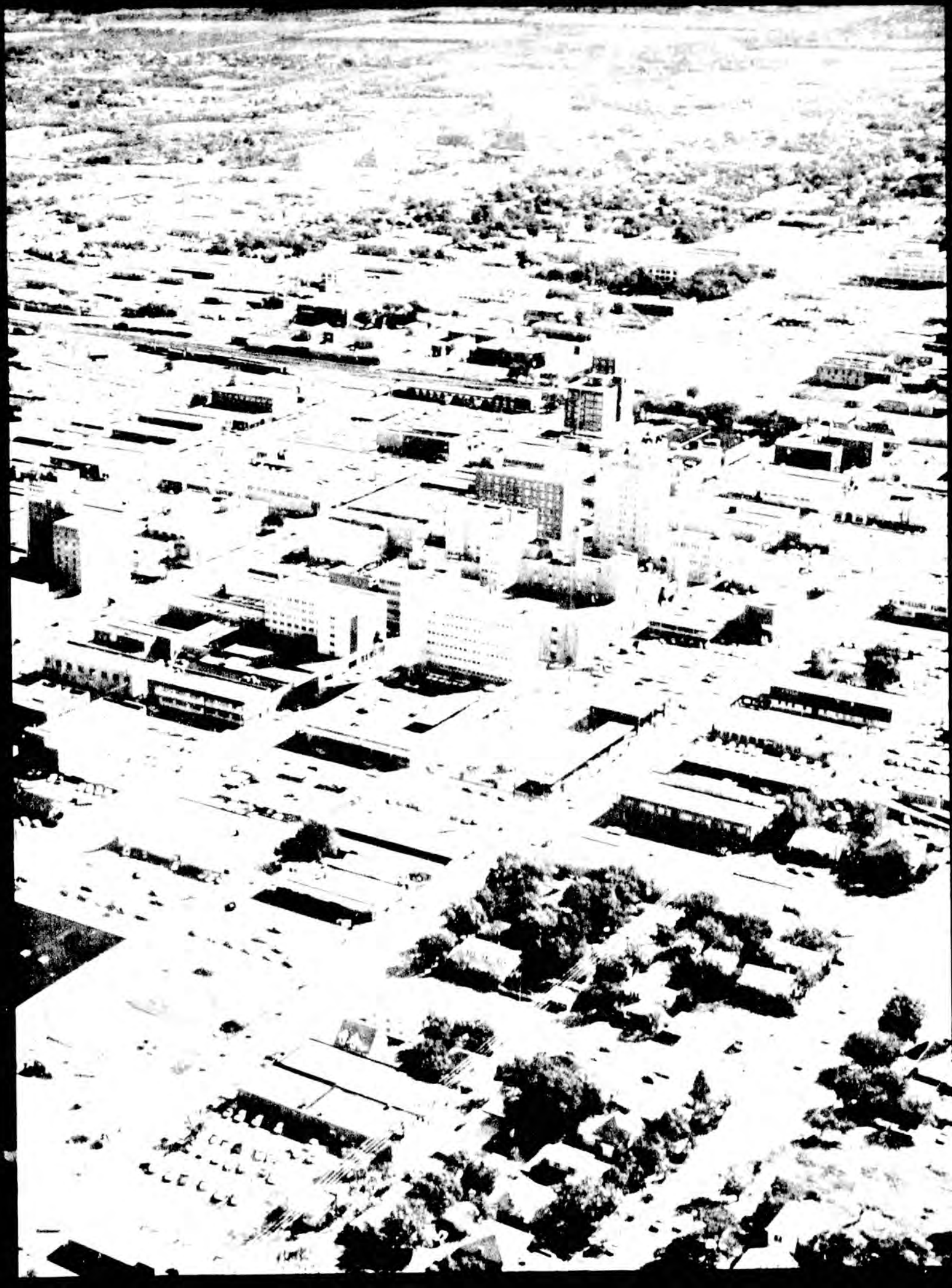
> A constitutional limitation, expressly or implied, on gifts of public money does not generally apply to a disbursement, appropriation or other fiscal statute for a public purpose, or to carry out a function of government, even though private persons may be benefited therefrom.
>
> 81 *C.J.S.* Section 134b (1953).

Some authorities argue that the public purpose limitation has become the current law of Texas. Recent court decisions and attorney general opinions have utilized "public purpose" language to uphold expenditures, but there remain cases and attorney general opinions which have invalidated expenditures without mention of the public purpose test. These latter decisions and opinions have served, at least in part, as the reason for a number of amendments to the constitution to authorize particular uses for public money or credit: for example, workmen's compensation for public employees, social security coverage for proprietary employees of political subdivisions, and assistance for the blind or handicapped. Very few of these uses of public funds appear to present a problem under a public purpose test, but to be "unequivocably" certain, this section was added to the constitution.

It would have been possible to specifically list in the constitution those currently permissible uses of public money which otherwise might be challenged under the public purpose test. But allowing flexibility through judicial interpretation of a general limitation is preferable to a constitutional listing which could be interpreted to be exclusive. For the same reason, the Commission chose not to designate some newly proposed uses for public money, such as industrial revenue bonds, as permissible and as being for a public purpose. Likewise, no specific prohibition against industrial revenue bonds was included although it was the view of the Finance Study Committee of the Commission that such bonds do obligate the public credit for private use in violation of Section 7 of this article.

Article IX

Local Government



Article IX
Local Government

Section 1. Counties

The counties of the State are those that exist on the date of adoption of this Constitution. Changes in county boundaries, the merger and division of counties, and the removal of county seats shall be subject to the approval of a majority of the qualified voters voting on the question in each county affected.

Origin

Revises: Article IX, Section 1;
Article IX, Section 2;
Article XI, Section 1.

Commentary

The first sentence of Section 1 is a new provision intended to insure the continuity of the state's 254 counties as legal and geographical subdivisions of the state. The remainder of this section replaces the detailed provisions in Article IX, Sections 1 and 2 of the 1876 Constitution concerning the creation of new counties, changes in boundaries, and removal of county seats.

The proposed Section 1 is intended to preserve the legal existence of the counties of this state and to require that any future changes in county boundaries or county seats be approved by a vote of the people in each county affected. It was the belief of the Commission that changes in county lines are not likely to occur in the immediate future, but that this option should be available to county residents if they should find the need to make adjustments for their convenience in the future.

The Commission believes that the principle of local approval over changes in local government structure needs to be retained from the 1876 Constitution, but that detailed requirements concerning such changes should be provided by statute.

Section 2. Powers of County Government

The powers of counties shall be those granted by this Constitution and by general law.

Origin

New provision.

Commentary

The intent of Section 2 is to emphasize that counties should be able to perform any functions and exercise such powers necessary for the benefit of the people consistent with the requirements of general law. The provision recognizes the role of a county as a local government as well as an administrative arm of the state.

The powers and responsibilities of county government are ill-defined in the 1876 Constitution. There is no single provision which describes the general functions and responsibilities of the county. Counties are described by Article XI, Section 1 as "legal subdivisions," and there are scattered provisions which refer to county functions such as jails, courthouses, bridges, roads, and poorhouses. Several sections establish limits on the taxing power of counties. One recent amendment to the 1876 Constitution sets forth county authority to regulate traffic and littering.

Section 2 would clarify the role of the county as a local government which can levy taxes and provide a variety of governmental services as needed by county residents. County activities would be subject to regulation by general law as is currently the case. Counties would also perform functions of the state government as required by law. However, there would no longer be any question about the constitutional authority of the county to establish and enforce regulations in unincorporated areas, make public improvements, and

provide services consistent with the programs and activities of county government. This section should help prevent the need for future constitutional amendments to allow counties to take on new responsibilities and functions as required.

Section 3. County and District Officials

(a) The governing body of each county, to be known as the County Commission, shall consist of a County Judge elected by the qualified voters of the county and four County Commissioners, each elected by the qualified voters from separate and compact precincts containing as nearly as practicable an equal number of inhabitants. The County Judge shall serve as presiding officer.

(b) A Sheriff, Treasurer, Tax Assessor-Collector, County Clerk, and District Clerk shall be elected for each county, except that a single County Clerk may be elected to perform the duties of county and district clerk as provided by law.

(c) County Attorneys, District Attorneys, and Criminal District Attorneys shall be elected in such numbers and for such counties as provided by law.

(d) The County Commission may provide for the election of one or more Constables.

(e) The qualifications, duties, and functions of county officials and the grounds and procedure for disqualification, suspension, and removal shall be as provided by law.

(f) Notwithstanding any of the foregoing provisions, the qualified electors of a county, as provided by general law, may by charter, or by a majority vote of those voting on the question, alter the governing body, create additional offices, eliminate offices, combine the duties and functions of offices, and change the method of selection of any one or more county officials. In such an event the county shall provide for the performance of all duties and functions required by State law.

(g) Vacancies in county offices shall be filled as provided by general law or charter. Vacancies in district offices shall be filled as provided by law.

Origin

(a) Revises Article V, Section 18.
(b) Revises: Article V, Section 23;
Article XVI, Section 44;
Article VIII, Section 14;
Article V, Section 9;
Article V, Section 20.
(c) Revises Article V, Section 21.
(d) Revises Article V, Section 18.
(e) Revises Article V, Section 24.
(f) New provision.
(g) New provision.

Commentary

Subsections (a) through (d) of this section provide for the county governing body, county elective offices, and certain district elective offices. There are minor changes from the 1876 Constitution concerning the governing body, the office of county judge, and the elected offices of county government. This section omits reference to three county officers mentioned in the 1876 Constitution: county surveyor; public weigher; and inspector of hides and animals. These offices would be continued as statutory offices as provided by the Legislature.

This section would also allow the Legislature to establish uniform provisions for qualifications and duties of county officials, as well as grounds and procedures for

their disqualification, suspension, and removal. These provisions are contained in subsection (e).

Subsection (f) is a new provision which would allow the residents of a county to modify county offices in any manner deemed appropriate to local circumstances. In such cases it would be necessary for the county to provide for the performance of any duties and functions of county officers required by state law which might be affected by the changes.

Subsection (g) allows the Legislature to establish methods for filling vacancies in all county offices. There are scattered provisions in the 1876 Constitution which prescribe methods of filling vacancies for some county offices, but not for all.

The Commission concluded that the revised constitution should not impose any drastic changes on the existing elective offices and governing bodies of county government. Although the Commission considered the possibility of leaving the definition of the county governing body and elective offices for legislative determination, it was felt that a new constitution should not make any mandatory changes other than the removal from the constitution of the few constitutional county offices not entrusted with significant policy-making responsibilities. These offices would be retained as statutory offices.

While many counties are satisfied with the present system of county government, it became apparent in the Commission hearings that other county officials and residents of counties across the state desire greater flexibility in the pattern of organization as well as in the functions and methods of operation of county government. This is particularly true in some of the large urban areas where Commission hearings were held. Therefore, the Commission has recommended in subsection (f) above that the county electorate be allowed to approve changes in the county structure including the addition, combination, or deletion of offices. Recommendations contained in subsequent sections would also allow counties to assume additional responsibilities and make further changes in their organization and functions if approved by the local electorate.

Section 3 also provides a new designation for the county governing body which better reflects its modern responsibilities. Commissioners courts have no significant judicial responsibilities, and the name "county commission" is more descriptive of their functions. The county judge would serve as the administrative head of county government since the judicial functions of that office would be eliminated by the creation of a unified judicial system that includes the county courts. For an explanation of the unified judicial system see the *Commentary* for Article V, Sections 1 and 5 of this constitution. If a lawyer, the county judge would have the option of becoming a judge of the new county court. The provisions of the 1876 Constitution which allow the sheriff to be tax assessor-collector in counties with a population of under 10,000 are not included in the new document. Testimony received by the Commission indicated that these two offices are not compatible in relation to the experience and knowledge required to perform the duties of both.

The office of constable would be continued by Section 3 although it would not be mandatory that the county provide for the election of a constable, or constables, if not needed. The 1876 Constitution requires that four to eight constables be elected from corresponding precincts in each county. Many counties do not fill this office, and it was felt that the number of constables needed, if any, could best be determined by each county governing body. The county sheriff now assumes the duties of constable in cases where the office is not filled.

A proposal which was considered would allow the county commission to appoint additional county officials to carry out necessary functions. This proposal was not adopted, however, as additional offices can be created by law.

Section 4. County Charters and Ordinances

(a) The Legislature shall by law provide procedures by which any county with a population of not less than twenty-five thousand may adopt, amend, or repeal a charter with the approval of a majority of qualified voters voting on the question. A charter election may be initiated by petition of the qualified voters of the county or by resolution of the governing body as provided by law. No charter or ordinance shall be inconsistent with the Constitution or laws of the State.

(b) The qualified voters of a county without a charter may by a majority of those voting on the question grant the county governing body the power to enact ordinances as authorized by law.

(c) If a county ordinance conflicts with an ordinance of an incorporated city or town, the municipal ordinance shall prevail within its jurisdiction as defined by law.

(d) Neither county charters nor ordinances shall affect jurisdiction or venue or the duties of personnel of courts which are part of the State unified judicial system.

Origin

New provision.

Commentary

Subsection (a) would allow counties of over 25,000 population to exercise self-government powers by local option. Implementation of the provision would depend on legislative action. Subsection (b) would allow county residents to confer legislative authority on the county governing body. This provision would apply to counties which do not elect to adopt charters. Charter powers would include, by implication, full legislative authority subject to any restrictions contained in state law or the constitution. Subsection (c) limits the applicability of county charters and establishes the supremacy of municipal ordinances if county and municipal ordinances conflict. Municipal ordinances applicable to the extraterritorial jurisdiction of cities would also prevail over county ordinances. Subsection (d) restricts the authority which can be exercised by county charter. This provision is necessary since certain officials, such as the county clerk, would serve the county court under the unified judicial system and also remain as an official of county government. The duties of the county clerk would necessarily conform with laws concerning the unified judicial system.

The effect of Section 4 is to extend the options available to county government to provide additional control over matters of local concern. Counties which do not elect to adopt charters may, upon approval by the voters, enact ordinances in accordance with the requirements of general law. If authorized by the Legislature, ordinances might be enacted on such matters as subdivision standards, building codes, land use, motor vehicle traffic, littering, sanitation, and environmental protection. Testimony before the Commission indicated that such controls are needed to prevent undesirable conditions in unincorporated areas.

Although it was the feeling of the Commission that most counties would not choose to avail themselves of charter governments within the near future, the Commission believes that this option should be available to those areas which might desire to make substantial changes in the organization and functions of their county government. Sixty-six of the 254 counties in the state had a population of more than 25,000 in 1970.

Counties which adopt charters would have broad discretion over their organization and functions in the same manner as cities which have adopted their own charters. The grant of self-government powers to counties would not be absolute as any ordinance or exercise of powers would be subject to any restrictions or prohibitions of the general laws of the state.

The procedures set forth by law for adopting charters should include details concerning the methods of selecting the charter commission, hearings, length of the charter preparation process, and elections for the adoption and amendment of a charter. Further issues and alternatives to be considered concerning county charters include:

(1) The possibility of requiring legislative action by a certain date;

(2) The possibility of "self-enacting" charter provisions; and

(3) The possibility of listing additional details concerning charter powers—for example, alter the structure, functions, and powers defined by this constitution and general law.

As provided by subsection (c), charter counties and those which adopt only ordinance-making powers could not adopt ordinances which interfere with municipal governments. The resolution of possible conflicts between county and municipal functions in areas of overlapping jurisdiction can be addressed further by the enabling legislation providing for the adoption of county charters.

Section 5. General Law Cities

Cities and towns having a population of one thousand five hundred or less may be chartered only by general law. They may levy, assess, and collect such taxes as may be authorized by law.

Origin

Revises Article XI, Section 4.

Commentary

Section 5 defines general law cities. Three substantive changes were made in the revision of Article XI, Section 4 of the 1876 Constitution: the reference to taxing limits was not included; the population limit was reduced from 5,000 to 1,500; and, the requirement that taxes be collected only in "current money" was not included.

This section and Section 6 of the new constitution continue the distinction in the 1876 Constitution between general law cities and home rule cities. The population limit for home rule was reduced because the requirement of 5,000 is rather arbitrary and excludes a large number of cities which could function effectively under their own charters. Sixteen Texas cities which adopted charters have now dropped below the 5,000 population limit. The smallest of these is Gorman in Eastland County with a 1970 population of 1,236.

The removal of tax limits for general law cities is consistent with the Commission's belief that all tax limits for local government should be removed from the constitution. Also, the reference to collection of taxes, licenses, fines, forfeitures, and penalties only in "current money" is of doubtful importance in the constitution and can be dealt with as a legislative matter.

As their name implies, general law cities are chartered by general law and function under the provisions of state laws that apply to cities, towns, and villages of the appropriate class. General law cities may incorporate under two separate provisions.

(1) Municipalities which incorporate under TEX. REV. CIV. STAT. ANN. art. 1133 et seq. (1963), as amended, (Supp. 1972), are known as "towns or villages." The minimum population for incorporation is 201.

(2) Municipalities which incorporate under TEX. REV. CIV. STAT. ANN. art. 961 et seq. (1963), as amended, (Supp. 1972), are described as "cities, towns, or villages." The minimum population for incorporation is 600.

The distinction between "cities, towns, and villages" lies primarily in the statute under which the municipality incorporates and the name which is chosen for the municipality. All are commonly referred to as "general law cities" and fall under the definition of the general term "municipalities."

Section 6. City Charters

Cities and towns having more than one thousand five hundred inhabitants may, by a majority vote of the qualified voters voting on the question, adopt, amend, or repeal their charters as provided by law. No charter or ordinance shall be inconsistent with the Constitution or general laws of the State. Cities which adopt charters under this Section may levy, assess, and collect any taxes authorized by law or charter. No city shall lose the power to amend or repeal its charter because its population drops below one thousand five hundred.

Origin

Revises Article XI, Section 5.

Commentary

Section 6 is a revision of Article XI, Section 5 of the 1876 Constitution. There are several important changes:

(1) The population figure is reduced from 5,000 to 1,500;

(2) The tax rate limitation of $2.50 per $100 valuation is not included;

(3) The requirements for approval at an election were made to conform with judicial interpretations;

(4) The sinking fund requirements for creation of debt are removed; and

(5) The two-year restriction on frequency of amending charters is not included.

Section 6 continues the basic grant of home rule powers to cities which elect to adopt their own charters. It also removes a number of restrictions which are outmoded or are more properly dealt with by statute. The Commission believes that cities which adopt charters should have the latitude required for effective self-government and that the basic power of charter cities to provide for their own needs should be continued. As Article XI, Section 5 of the 1876 Constitution has been interpreted by the courts in Texas, home rule cities may exercise any powers or enact ordinances on any matters which the Legislature could authorize. There have been a number of "landmark" cases which interpreted city home rule powers. For example:

. . . If the legislature has placed no limitations on the power of a city to act, and the provision is inconsistent with no provision of the constitution or general laws of the state, the power of the city is as general and broad as is the power of the legislature to act . . . *LeGois v. State*, 190 S.W. 724, 725 (Tex. Crim. App. 1916).

The authority of home rule cities is not absolute, however. Municipal ordinances may be declared invalid if they are in direct conflict with state law, deal with matters that are not purely a local concern, are preempted by state regulation, or are prohibited by state law. In essence, charter cities are still subject to the requirements of general law and the constitution.

Changes which the Commission recommends will provide a measure of additional flexibility for charter cities. The rationale for the recommended changes is as follows:

(1) *Population limit.* The Commission considered the possibility of removing any population limit, but the 1,500 figure represents what the Commission feels is a limit that encompasses the vast majority of cities that would desire to adopt their own charters.

(2) *Tax rates.* Tax rate limits should be a matter for local determination or statutory regulation if necessary.

(3) *Election requirements.* A change was made for clarification to ensure that a charter could be adopted, amended, or repealed by a majority of those voting on the question.

(4) *Sinking funds.* Requirements for retirement of local debt are dealt with by Section 11 of this article and by statute. The requirements contained in the 1876 Constitution are obsolete.

(5) *Frequency of amendment.* Many cities have found it desirable at times to amend their charters more often than every two years. This is especially true in periods of rapid population expansion and development.

Section 7. Special Districts and Authorities

The Legislature shall provide by general law for establishing, financing, consolidating, and abolishing special districts and authorities and shall define their powers by general law. No special district or authority shall be created if the service it is to provide can be provided by an existing political subdivision. The provisions of this Section shall not be applicable to school and community college districts.

Origin

New provision.

Commentary

Section 7 is a new provision providing for the establishment, functions, and taxing authority of special purpose districts other than school and community college districts. This provision would replace several sections of the 1876 Constitution, including: Article III, Section 48d—rural fire prevention districts; Article III, Section 52(b)(c)—various road and water resource districts; Article IX, Sections 4, 5, 7, 9, and 11—various hospital districts; Article IX, Section 12—airport authorities; Article XVI, Section 59(b)(c)(d)—conservation and reclamation districts. The continuity and bonding authority of special districts currently operating under authority of the amendments listed are preserved by transitional provisions.

The Commission believes that the special districts and authorities authorized by the Constitution of 1876 should continue to exist and perform their designated functions, but that constitutional authority for their creation beyond what is provided in this section is unnecessary. The Legislature has plenary power to create and regulate special districts subject to any restrictions contained in the constitution. A wide variety of special districts and authorities have been created by statute or in accordance with provisions of the 1876 Constitution. These include such diverse entities as school districts, water control and improvement districts, navigation districts, hospital districts, airport authorities, soil and water conservation districts, waste disposal authorities, river authorities, and public housing authorities. All such governmental agencies fall within the general classification of "political subdivisions" and are thus subject to legislative control.

A significant change would be brought about by the requirement that all districts and authorities be created only according to the provisions of general law. At present many individual special districts are

created by special or local laws, while others are created and regulated according to general laws which set forth the general requirements for establishment by local initiative. The general law procedure is typified by the procedure for incorporating new municipalities, which is required by Article XI, Section 4 of the 1876 Constitution. Under general law procedure, a petition for the creation of a special district is presented to the appropriate local or state officials and an election is held in the area to be encompassed by the proposed district in order to determine its creation. After establishment, the operation of the district is subject to general laws pertaining to districts of a certain type or class.

The rapid increase in special districts in Texas has been aided in part by the large number of individual water districts created by local laws enacted by the Legislature. Typically such laws receive little scrutiny and, in the case of small, developer-oriented water districts, may not serve the best interests of residents affected. General law procedures should provide appropriate safeguards against the creation of districts which may be unnecessary or inappropriately established.

An intended effect of the new special district provision would be to encourage existing local governments—primarily cities and counties—to assume responsibility for new services or services in areas that would otherwise require the creation of a special district. The removal of constitutional tax limits for local governments in the new constitution should further encourage this approach. The Legislature can, by the enactment of appropriate legislation, implement the policy enunciated in this section that special districts should not be created to perform a service unless that is the only viable alternative.

Section 8. Terms of Office

The terms of office for all elected officials of political subdivisions shall be as provided by law or charter.

Origin

New provision.

Commentary

Section 8 would allow the Legislature to provide by law for terms of office of local elected officials. Under the 1876 Constitution there are several specific restrictions on terms of office. Article XVI, Section 64 provides a term of office for county officials of four years, and Article XI, Section 11 authorizes municipalities to set terms of office for elected officials between two and four years. Since the two year limitation on terms of office contained in Article XVI, Section 30 is not carried forward in the new constitution, there is no longer any necessity of specifying the terms of office for local officials in the constitution. Allowing terms of office to be set by general law or charter will allow the Legislature and the residents of local jurisdictions maximum flexibility to meet the needs of local governments in the future.

Section 9. Compensation of Officials

Elected officials of political subdivisions shall be compensated only on a salary or per diem basis.

Origin

Revises Article XVI, Section 61.

Commentary

Section 9 is intended to bring about a uniform policy for compensating local elected officials. This subject is dealt with by Article XVI, Section 61 of the 1876 Constitution which requires that all county and district officers except public weighers and county surveyors be paid on a salary basis. Section 61 also allows commissioners courts in counties under 20,000 population to determine whether certain county officers shall be compensated on a fee basis or salary basis.

The Commission believes that the fee system of compensation is subject to potential abuse and that a uniform policy should be established in the constitution to eliminate this practice. Section 9 does not apply to appointed officials and employees of local government and would not prevent a local government from contracting for services and providing appropriate compensation for the work performed by contract.

Section 10. Local Redistricting

Within the calendar year following that in which each federal decennial census is published, and at such other times as the governing body of any political subdivision may deem necessary, each governing body not entirely elected at large shall divide its geographical area into districts for the election of those representatives to the governing body not elected at large. The districts shall be composed of contiguous territory and shall be as compact and as nearly equal in population as practicable.

Origin

New provision.

Commentary

The Commission believes that the one-man, one-vote principle should apply to local elections in the same manner as elections for representatives to state and national bodies. Recent federal court decisions have mandated this requirement for representative bodies at various governmental levels, but it would be desirable for state policy to reflect this concern as well. The revised Legislative Article contains requirements for redistricting senatorial and representative districts following each federal census. Section 10 imposes a similar requirement upon the governing bodies of cities, counties, and other political subdivisions which elect at least part of the representatives to the governing body on a district basis.

Section 11. Local Debt

Political subdivisions shall not issue general obligation bonds, except refunding bonds, unless approved by a majority of qualified voters voting on the question. No debt shall be created by a political subdivision unless at the same time provision is made for paying the interest and principal when due.

Origin

New provision.

Commentary

Section 11 was included by the Commission in order to ensure that residents of a local government have the opportunity to vote on the issuance of general obligation bonds which are to be repaid from the taxes raised by the local government. The section provides basically for a continuation of the statutory provisions now in effect for cities, counties, and other political subdivisions concerning voter approval of general obligation bonds.

Short-term debt which is to be repaid from revenues received within the year in which the debt is incurred would not be affected by this provision. Revenue bonds are likewise excluded from the requirements of this provision. If authorized by law, cities, counties, and other political subdivisions could also issue certificates of obligation, time warrants, and refunding bonds without voter approval. These exceptions to the voter approval requirement are a continuation of present law.

Other proposals which were considered by the Commission included requiring voter approval of all debts to be repaid from taxes which exceed one percent of the assessed valuation of property within a political subdivision. The governing body, under this approach, would be able to issue bonds and other evidences of indebtedness without voter approval so long as the outstanding debt issued in this manner did not exceed one percent of assessed valuation.

The Commission also strongly considered the possibility of not including any requirements pertaining to local debt in the new constitution. The 1876 Constitution contains no general requirement for voter approval of bonds nor does it establish limits on the amount of debt which can be issued except for Article III, Section 52 which relates to bonds for roads and other specified improvements. Proponents of the statutory approach felt that adequate safeguards governing the incurring of local debt can be provided by law.

The last sentence of Section 11 requires that a local government, upon the incurring of a debt covered by this section, must make provision for paying the interest and principal by levying a tax or earmarking funds for such payments. The 1876 Constitution contains provisions in Article XI, Sections 5 and 7 which

require that a sinking fund of two percent be established by cities and counties at the time a debt is incurred. This provision is obsolete and would be replaced by the more general language contained in Section 11.

Section 12. Intergovernmental Cooperation

A political subdivision may, by act of its governing body, cooperate or contract with one or more other political subdivisions, the State, or the United States with respect to the exercise of any function, power, or responsibility, or the use of public funds and credit in the public interest.

Origin

Revises Article III, Section 64.

Commentary

Section 12 carries forward the basic authority for cities, counties, and other political subdivisions to enter into contracts for various governmental and proprietary functions that is provided by Article III, Section 64(b) of the 1876 Constitution. Section 12 contains several changes from its predecessor section:

(1) The grant of authority is automatic—no implementing legislation is required; and

(2) The grant of authority is couched in broad terms which should allow the initiation of any contracts which would not be prohibited by the Constitution or general law.

Cooperative agreements are very common among cities, counties, and other political subdivisions. These include such diverse arrangements as water and sewer service, sanitary landfills, libraries, tax administration, and fire and police protection. Contracts and agreements between local governments almost always result in better service to local citizens and reduced costs of operation.

Contracting among local governments is presently regulated by a number of laws including TEX. REV. CIV. STAT. ANN. art. 4413-32c (Supp. 1972). The Commission recommendations envision no change in existing law or practices of local governmental units, except to the extent that the ability to enter contracts will be enhanced.

Article X

General Provisions



Article X
General Provisions

Section 1. Official Oath

All State and local officials shall take the following oath before they enter upon the duties of their office:

"I, _____, do solemnly swear that I will faithfully execute the duties of the office of _____ and will to the best of my ability preserve, protect, and defend the Constitutions and laws of the United States and of the State of Texas, so help me God."

Origin

Revises Article XVI, Section 1.

Commentary

The 1876 Constitution contains two slightly different oaths, one for elected officials and another for appointed officials. They require the potential officeholder to swear innocence of bribery to obtain election or appointment.

The oath is merely a formal recognition of undertaking the duties of public office. As such, the detailed disclaimers in the present oaths serve no real purpose. In view of this, the Commission reached the conclusion that one concise oath would be appropriate for all public officials.

Under federal law, no person may be denied the right to hold office because of a refusal to recite the words "so help me God" in the oath of office. Consequently, this phrase is a formality to be sworn to by those who do not object, but is unenforceable for those who do not wish to observe it.

Section 2. Residence of Civil Officials

All elected and appointed officials shall reside within the State. All elected and appointed officials of a political subdivision shall reside within the political subdivision which they serve, and shall keep their offices at such places as required by law. Failure to comply with these conditions shall vacate the office.

Origin

Revises: Article III, Section 23;
Article XVI, Section 14.

Commentary

Article XVI, Section 14 of the 1876 Constitution requires that district and county officers reside within their district or county. Because of the ambiguity in the term "district," the recommended language substitutes "any political subdivision" for "district or county."

The underlying rationale for the requirement of this section is that the problems and needs of any governmental unit are best understood by persons residing within the unit and subject to its jurisdiction. In order to make the officials more responsive to these needs, it is desirable to require that they share the experiences of the persons they serve.

This section is intended to apply to members of the Legislature as well as to other officials of the state and local political subdivisions who hold policy-making positions. The section does not apply to local government personnel such as policemen, firemen, and other employees.

Section 3. Officials to Serve Until Successor Qualified

All officials may continue to perform the duties of their offices until their successors shall be duly qualified.

Origin

Revises Article XVI, Section 17.

Commentary

This section provides a continuation of the policy expressed in Article XVI, Section 17 of the 1876 Constitution. The purpose of this section is to encourage a smooth transition of duties from one officeholder to the successor by providing that there will be no termination at the end of the term if, for some reason, the new officeholder is not able to assume the office at the proper time. Although it is unlikely that the section of the 1876 Constitution was intended to be mandatory, it has been interpreted by the courts to require the incumbent to remain in office until the successor qualifies. Substitution of the word "may" for "shall" in the Commission proposal clarifies that the continuation in office is merely permissive and thus imposes no undue hardship on an incumbent by refusing to permit that person's retirement until a successor can be found.

Section 4. Forfeiture of Residence by Absence on Public Business

No person shall forfeit the right of suffrage, or of election or appointment to any office because of absence from the State or a political subdivision on business of the United States, this State, or a political subdivision.

Origin

Revises Article XVI, Section 9.

Commentary

The recommended language makes no substantive change in existing law as to statewide offices. It provides an exception to the general rule that residence for purposes of suffrage and election to public office is forfeited by absence from the jurisdiction. The proposed section extends the rationale of Article XVI, Section 9 of the 1876 Constitution to cover residency requirements of political subdivisions as well as state residency requirements.

Section 5. Vacancies Filled for Unexpired Term

Except as otherwise provided in this Constitution, elections to fill vacancies in office shall be for the remainder of the term only.

Origin

Rewords Article XVI, Section 27.

Commentary

The proposed section makes no substantive change in present law. When vacant offices were filled under common law the new official served a full term, not merely the remainder of the current term. Section 5 results in greater convenience because the terms of public officials continue to expire at the same time. This reduces the number of elections required and assures that elections for new terms of various offices will coincide.

Section 6. Disqualification from Constitutional Office

In addition to the grounds and procedures provided in this Constitution, the disqualification, suspension and removal from any constitutional office, withholding of salary, and temporary filling of vacancies shall be as provided by law, but no statute enacted under the authority of this Section may be applicable to conduct committed before its enactment.

Origin

Revises: Article XV, Section 7;
Article IV, Section 25;
Article XVI, Section 2;
Article XVI, Section 5;
Article XVI, Section 10;
Article XVI, Section 41.

Commentary

The 1876 Constitution describes in detail the conduct on the part of a public official that will result in disqualification from office. Article IV, Section 25 of that document permits suspension and removal of custodians of public funds for reasonable cause. Article XVI, Section 2 allows persons convicted of certain crimes to be excluded from any public office. Article XVI, Sections 5 and 41 concentrate on the offense of bribery and prescribe disqualification and exclusion from office for persons guilty of that offense. Article XVI, Section 10 permits deductions from the salary of public officials who neglect their duties. Article XV concerns procedures for impeachment and removal. Except in the case of bribery, the 1876 Constitution does not disqualify anyone from office, but permits the Legislature to do so.

Section 6 permits the Legislature to prescribe grounds and procedures for disqualification and removal from any constitutional office. Section 7 accomplishes this result in the case of statutory offices.

Since it is virtually impossible to predict what conduct may occur in the future, a sensible approach is to permit the Legislature the flexibility to deal with grounds upon which an official may be removed from office. Therefore, Section 6 allows the Legislature to disqualify public officials from holding office for reasons which it deems necessary.

Section 7. Qualification for and Disqualification from Statutory Office

Unless otherwise provided in this Constitution, the qualifications, grounds for disqualification, suspension and removal from office, withholding of salary, and temporary filling of vacancies for statutory officials shall be as provided by law.

Origin

Revises: Article XV, Section 7;
Article IV, Section 25;
Article XVI, Section 2;
Article XVI, Section 5;
Article XVI, Section 10;
Article XVI, Section 41.

Commentary

For a discussion of the purpose of this section, see the *Commentary* for Section 6 of this article.

In order that no negative inferences be drawn from the grant of legislative power to disqualify constitutional officials found in Section 6, this section specifically provides that the Legislature has that power with regard to holders of statutory offices. The power to establish grounds for disqualification and removal of officials of a home rule political subdivision is delegated to the political subdivision when not in conflict with general law.

Section 8. Appointments to State Agencies

The authority responsible for appointing the members or filling vacancies for State governmental agencies shall make appointments that fairly and equitably represent the sexes, ethnic groups, economic groups, and geographical regions of the State.

Origin

New provision.

Commentary

Section 8 has been included in the constitution to set forth a strong statement against discrimination in governmental appointments. The provision would include all appointments by the Governor, Lieutenant Governor, Speaker of the House, or any other officer of the state who has or will be granted authority to make appointments.

In addition to the large number of appointments made each year by the Governor, the Lieutenant Governor and the Speaker in particular are also called upon to make numerous appointments to commissions or legislative study committees. This section mandates consideration and equitable representation among sexes, ethnic groups, economic groups, and geographical areas in making these appointments.

Section 9. Salary Commission

(a) A salary commission shall be established to recommend rates of compensation for members of the Legislature, judges in the State unified judicial system, and officials of the executive branch, and to perform such other duties pertaining to compensation as may be provided by law. Compensation paid by the State shall not exceed the rates recommended by the commission.

(b) The salary commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate. Members of the commission shall serve six-year terms. Vacancies shall be filled by the Governor for the remainder of the term with the advice and consent of the Senate. No member of the commission may hold another public office at the same time.

Origin

New provision.

Commentary

Since 1965, twenty states have taken steps to create permanent salary commissions. These salary commissions vary in function; some are advisory and others make recommendations that are final. Ten states have salary commissions that serve in an advisory capacity. The Salary Commission proposed in this section would be of an advisory nature.

The commentary under Article III, Section 6 of the new constitution points out that an advisory salary commission is intended to mitigate the negative effects of public opinion which often accompany legislators' attempts to raise their own salaries. The Legislature could set salary rates not exceeding the recommendations of the Salary Commission.

The Salary Commission would be required to recommend rates of compensation for members of the Legislature, judges in the state unified judicial system, and officials of the executive branch. The commission would compare the rates of compensation with other states' officials, as well as with the pay in private industry. The "other duties" that may be provided by law would be to recommend rates for per diem, mileage, and other expenses.

There was consideration by the Commission as to the composition of the Salary Commission and the method of selecting its members. It was thought by some that all three branches of government should be able to appoint members to the commission. However, it was decided to let the Governor alone appoint the Salary Commission with the advice and consent of the Senate. Some states set up their salary commissions in the constitution; other states do it by statute. Section 9 provides that the commission is to consist of nine members who will serve six-year terms. It also provides that the Governor shall fill vacancies, with the advice and consent of the Senate, and requires that no member of the commission hold another public office. Otherwise, the mechanics of the creation and operation of the Salary Commission were left to be provided by law to allow flexibility and to keep what seems to be a mass of statutory material out of the constitution.

Section 10. Environment

The State and each person shall maintain and improve a clean and healthful environment in Texas for present and future generations. The Legislature shall provide for the admini-

stration and enforcement of this duty. The Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Origin

New provision.

Commentary

Section 10 is an expression of a basic responsibility of the state for the protection of the environment and its natural resources. This section is unusual among environmental statements in state constitutions in that it defines the responsibility of each individual citizen as well as the state government and Legislature to maintain and improve the environment. The basic effect of the section is to direct the Legislature to enact appropriate laws to carry out the intent which is expressed.

In the process of its deliberations, the Commission considered several environmental proposals. One alternative which was considered would allow individual citizens to sue polluters. Such a provision can be found in Article XI, Section 2 of the recently adopted Illinois Constitution. Michigan has given a similar right to citizens by statute. The legal significance of the Illinois and Michigan authorizations is that they provide an individual "standing" to sue to correct a wrong suffered by the public in general. Without such an authorization, an individual would have to show that an injury has been suffered by that person which is significantly different from the effect on the public. If unable to do so, the individual would have no "standing" and would not be afforded the opportunity to seek relief.

Another alternative which was considered would establish the concept of a public trust of the state's natural resources. The effect of such provisions in other state constitutions has not been fully determined by the courts, but it could mean that citizens would have "standing" to sue state agencies and public officials if they were to breach their duty to administer the natural resources and environmental laws of the state in a proper manner.

Both alternatives discussed above were considered but finally rejected as the Commission feels that the Legislature has adequate authority now to enact environmental laws and provide for their enforcement. A number of important laws pertaining to environmental quality have been enacted by the Legislature within the past few years, and the Commission believes that legislative and administrative actions by the state provide the most certain and efficient means of ensuring the quality of the state's environment. The uncertain effect of the two alternatives listed above was also a factor in the Commission's decision.

The Constitution of 1876 does not contain a provision directly comparable to Section 10 of this article. However, Article XVI, Section 59(a) of the 1876 Constitution defines the right and duty of the state to provide for the conservation and development of natural resources, particularly for water control and conservation, irrigation, navigation, reclamation, and drainage. Article XVI, Section 59 was added by amendment in 1917. Its primary purposes are to allow the creation of special governmental districts for conservation and reclamation purposes and to allow such districts to exercise taxing authority. Pursuant to this amendment the Legislature has established hundreds of water districts of various types as well as river authorities with responsibility for conservation and reclamation for each of the state's major river basins. Article IX, Section 7 of the new constitution provides continuing authority to the Legislature to establish special districts as needed.

Section 11. Separate and Community Property of Husband and Wife

All property owned or claimed by each spouse before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of each spouse in relation to separate property as well as that held in common with one another. A husband and wife may from time to time and by written instrument partition between themselves in severalty or into equal undivided interests all or any part of their existing community property. In like manner, they may exchange between themselves the community interest of one in any property for the community interest of the other in other community property. The portion or interest set aside to each

by partition or exchange shall be and constitute a part of the separate property of such spouse. A partition or exchange under this Section shall not prejudice the rights of preexisting creditors. This provision is self-operative, but laws may be passed prescribing reasonable requirements not inconsistent herewith.

Origin

Revises Article XVI, Section 15.

Commentary

No change in existing substantive law is intended by Section 11. Other than minor drafting changes, the only difference from the corresponding provision of the 1876 Constitution is that the new section speaks in terms of both spouses rather than only the wife.

The basis of the decision to retain a community property provision in the constitution was that property rights are fundamental and should not be subject to change by statute. In the past the Legislature has in fact tried to make significant changes in community property rights and its attempts have been frustrated by this constitutional provision. At one point a law was enacted which purported to change the established principle in Texas that income from separate property is community property. This would have produced a significant change in the community property system had the law been upheld in the courts.

Although generally the best policy may be to provide the Legislature with flexibility in its actions, there lies an exception to the rule in the area of property rights. Even though there is very little chance that the Legislature might attempt to abolish the community property scheme entirely, there is reason to retain this provision in the constitution to prevent the adoption of variations of the community property concept.

In this connection it should be noted that there really is no one community property system, but the jurisdictions which purport to follow it show vast differences from one another. On its face, Article XVI, Section 15 of the 1876 Constitution may not appear to be a proper statement of commitment to the community property system since it speaks only in terms of the wife and her separate property. But the fact that the precise language of the section has undergone extensive judicial interpretation suggests caution before changing the language in any material respect. The courts have relied on the present wording in formulating a comprehensive set of rules implementing the community property system. The importance of stability and certainty in the area of property rights is recognized. Any substantial rewording of Article XVI, Section 15 might result in reversal of certain of these interpretations or at least create an unsettling effect on these rights until a new set of rules could be evolved. Since the complexity of the subject does not lend itself well to explicit codification, especially in a constitution, the present community property provision, along with its extensive interpretations, has been substantially retained.

The provision has been amended to define the separate property of both husband and wife although Article I, Section 3a of the 1876 Constitution no doubt accomplishes this purpose also.

Section 12. Homestead

(a) The homestead of a family and of such other persons as may be designated by law is protected from forced sale for the payment of all debts, except for purchase money therefor, taxes due thereon, and for work and material used in constructing improvements thereon when the work and material are contracted for in writing by the owner but, in the case of married persons, only if both spouses consent to the contract in the manner required when a homestead is sold. A homestead of married persons may be sold only with the consent of both spouses, except that when the homestead is the community property or the separate property of the spouse desiring to sell, it may be sold as provided by law without the consent of the other spouse if the latter is incompetent, has disappeared, or has abandoned the homestead, as provided by law. No mortgage, trust deed, or other lien on a residential homestead shall be valid except for the purchase money therefor or for improvements made thereon, as provided above. Liens may be created on non-residential homesteads but only in the manner required for a conveyance thereof. All pretended sales of the homestead involving any condition of defeasance shall be void.

(b) The homestead not in a city, town, or village shall consist of not more than two hundred acres of land, which may be in one or more parcels with the improvements thereon. Of the two hundred acres, only fifty acres on which the home is located shall be classified as residential and the remainder shall be classified as non-residential. The homestead in a city, town, or village shall consist of land valued at the time of establishment thereof, and without reference to the value of any improvements thereon, at no more than ten thousand dollars or any larger sum as may be provided by law. A homestead in a city, town, or village is a residential homestead if used as a home and is non-residential if used as a place for the exercise of the calling or business of the head of a family or such other person as may be designated by law. A home remains a homestead while temporarily rented only so long as no other homestead is acquired.

(c) The homestead of married persons shall descend and vest like any other real property, except that the homestead shall not be partitioned so long as it is used and occupied as a home either by the surviving spouse, or by minor children if the use and occupancy have been granted by the court.

Origin

Revises: Article XVI, Section 50;
Article XVI, Section 51;
Article XVI, Section 52.

Commentary

The homestead provisions of the 1876 Constitution are altered in three material respects by this section. The new language provides that a non-residential homestead may be subjected to voluntary encumbrance, that the Legislature may define the classes of persons eligible for the homestead exemption, and that the Legislature may define the amount or value of exempt property. The 1876 Constitution sets out the amount and value of property that can be designated as a homestead at a maximum of 200 acres of rural property, or city lots of the value of $10,000 or less at the time of designation as a homestead. A recent case indicates that the effect of exceeding the $10,000 limitation at the time of designation is to permit forced sale, with the proceeds to be divided between the creditor and the homestead claimant. In such a case the debtor receives an amount of the proceeds proportional to the ratio of $10,000 to the value at the time of designation. See *Love v. Hoffman*, 494 S.W. 2d 519 (Tex. Civ. App. 1973, writ ref'd. with per curiam opinion, 17 S.Ct. Journal 5).

The homestead exemption arose as an extension of the civil law concept of exemption of certain personal property from forced sale by creditors, and was a Texas invention to adapt that general policy to an agricultural society. As under the 1876 Constitution, the proposed language protects the homestead from forced sale by creditors for any debts except purchase money, taxes, and improvements contracted for in writing. It requires consent of the wife before the homestead can be conveyed and invalidates all mortgages on the residential homestead, except for purchase money or improvements. Subsection (c) of the revised section carries forward language of the 1876 Constitution and prevents partition of the homestead on the death of one spouse as long as the surviving spouse or minor children continue to occupy it as such.

In the 1876 Constitution, these provisions extend homestead protection only to married persons, single persons with dependents, and their survivors. The proposed section makes the homestead exemption available to these persons and additionally to such other persons as the Legislature may designate. In this way it will become possible for the Legislature to protect the homesteads of invalids or of all single persons or of any other group, as it from time to time determines to be in the public interest. A voluntary mortgage of the business or non-residential homestead is allowed by the proposed provisions. The business homestead may tie up much needed capital if it cannot be mortgaged as collateral for a loan. Permitting voluntary encumbrance of the place of business might help to secure beneficial financial assistance.

The homestead exemption has become so firmly entrenched as a Texas institution that it should keep its constitutional status as a protection device against loss

of the family home to creditors. These sections also have the beneficial effect of preventing the debtor and the debtor's family from becoming dependent on public welfare by preserving a place to live and to produce income. There is no corresponding disadvantage to the creditors who are not allowed to foreclose on the homestead, since they certainly must have known the homestead exemption exists and thus could not have relied on that property for the satisfaction of the debts owing to them.

One further change in Section 12 would permit one spouse to convey or to contract for improvements on the homestead without the consent of the other if the other is incompetent or has disappeared or abandoned the homestead.

Section 13. Protection of Personal Property from Forced Sale

The Legislature shall provide by law for the protection from forced sale of certain portions of the personal property of all adults and heads of families.

Origin

Rewords Article XVI, Section 49.

Commentary

This language preserves the protection afforded by Article XVI, Section 49 of the 1876 Constitution. The provision affirmatively commands the Legislature to protect from forced sale "a certain portion of the personal property" of heads of families and unmarried adults. The recommendation that this section be kept in the constitution, along with a homestead provision and a general prohibition against garnishment of wages, follows a long established policy of this state to protect for a debtor the means of livelihood so that the person has a means of support and does not become dependent on public welfare. Although no such exemption ever existed at common law, chattel exemptions were well recognized at civil law and have existed in Texas since 1839. Since the philosophy of this provision is an expression of fundamental public policy, the constitution should continue to have a provision that mandates the protection of certain personal property from forced sale.

Although an objection might generally be raised against inclusion in a constitution of a provision that is nothing more than a policy statement, this case is an exception and does accomplish a purpose. If the Legislature were to attempt to repeal the existing and traditional exemptions of such items as family clothing and work tools, such a law might possibly be declared unconstitutional under this section.

Section 14. Wages Not Subject to Garnishment

No current wages for personal service shall be subject to garnishment.

Origin

Rewords Article XVI, Section 28.

Commentary

The prohibition against garnishment of wages is an expression of an enlightened, compassionate public policy to protect a debtor and the debtor's family. It is not only in the interest of the debtor to provide protection against such harassment by creditors, but it is in the public interest as well, since the garnishment prohibition helps to provide an opportunity for self support and hence prevents the debtor from becoming a burden on society.

The effect of this provision has been beneficial, and there was no serious consideration of deleting this section altogether. However, there was discussion of providing a limited exception to permit garnishment of up to 25 percent of wages for court-ordered child support. Proponents of this exception emphasized the ineffectiveness of the contempt remedy currently available in securing funds for a child and urged that a threat of garnishment would in most instances make delinquent parents pay. Their conclusion was that garnishment would in fact seldom have to be invoked if the threat of it were present. The Commission ultimately rejected that position and concluded that the garnishment prohibition should be absolute and with-

out exception, reasoning that the garnishment approach to the child support problem is an undesirable one.

The disadvantage of allowing garnishment even for child support is that employers are hesitant to employ or retain a worker whose financial condition is such that the employer must at every pay period deduct a portion of the worker's wages and pay them to the court. The imposition of this burden on the employer could encourage replacement of the debtor, and in that event both the debtor and the children become candidates for public welfare. If the reason the parent has been delinquent in child support payments is inability to earn enough to support a split home, the garnishment remedy may actually worsen the problem if it causes loss of employment.

Section 15. Private Corporations

No private corporation shall be created except by general laws.

Origin

Retained unchanged from Article XII, Section 1.

Commentary

In the early 1800's, the prevailing practice was to establish corporations by special acts of the Legislature. This practice led to pressure on members of the Legislature to enact new special laws granting additional powers to these corporations. This often led to abuses. In order to curb this legislative propensity, the first three Texas constitutions required a two-thirds vote of both houses of the Legislature on all incorporation bills. In 1869 this provision was discontinued but was later revived when Article XII, Section 1 was included in the Constitution of 1876.

The effect of this provision has been a desirable one. The Texas Business Corporation Act (1956), as amended, (Supp. 1972), affords wide latitude for the formation of corporations, so that no general benefit would result from holding out the possibilty of certain businesses gaining preferential treatment from the Legislature. To permit such a practice might do significant harm to the competitive system of free enterprise, since in that way undue advantage might flow to the favored corporation to the detriment of others. Access to the corporate structure should be available on an equal basis to all, and retention of that limitation will further this goal.

Section 16. Foreign Corporations with Banking and Discounting Privileges

No foreign corporation, other than national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State.

Origin

Rewords Article XVI, Section 16, third paragraph.

Commentary

The proposed language is almost identical to the last paragraph of Article XVI, Section 16 of the 1876 Constitution.

The financial organizations within the state exercise far reaching influence in all other facets of Texas business. Since this is the case, the Commission felt that it is undesirable to permit institutions from other states and other countries to wield the power gained by engaging in banking within the State of Texas. To permit such a situation might cause a foreign bank to deplete assets otherwise available for use in Texas by making most of its loans in other states, thereby decreasing the capital available to Texas borrowers.

Branch Banking. Article XVI, Section 16 of the 1876 Constitution also contains a prohibition of branch banking. Because of the dual state-national banking system and because of the control that one bank may have over another through stock acquisition and the like, the Commission feels that the regulation of the business of banking is a difficult matter that should be entrusted to the Legislature. The issue is not whether branch banking should be permitted or prohibited, but rather whether such public policy should be established through a constitutional provision or through legislative enactment. In considering this problem the following possibilities were taken into account:

(1) Congress can subvert any state constitutional prohibition against branch banking by allowing national banks to open branches by authority of the Comptroller of Currency. Such federal legislation would supersede any state prohibition against branch banking, and state chartered banks would be hard pressed to urge amendment of the present constitution so as to be able to compete with national banks.

(2) The apparent ease with which national banks can create affiliate banks and otherwise acquire or merge with smaller suburban banks renders the constitutional prohibitions against branch banking considerably less meaningful.

(3) The acquisition of banks through bank holding company arrangements likewise makes the constitutional prohibition against branch banking less meaningful.

Any consideration of whether the prohibition against branch banking in the present constitution should be retained should be based not solely on the history of other states, but on the state's unique, diversified political and economic climate.

For these reasons, the constitutional prohibition against branch banking contained in the 1876 Constitution was not included in this revision. By repealing this constitutional prohibition the Legislature can and should be in a better position to respond either to congressional enactment permitting branch banking for all national banks in all states or to the unharnessed growth in the number of affiliate banks, bank mergers, and bank holding company acquisitions.

Those favoring the retention of the branch banking prohibition in the constitution contend that the Legislature should not be allowed to alter that provision because it has had a beneficial effect on the banking industry in Texas. Because banks are not allowed to operate in more than one location, Texas is a state where the number of banks owned and operated by local interests is high. It is argued that retaining the branch banking prohibition will help ensure that many of the smaller, independent banks will not be merged into a larger chain, with a possible decrease in the quality of service, or be at a disadvantage because of the greater financial resources of larger banks.

Section 17. Alcoholic Beverages

(a) The Legislature shall regulate the manufacture, sale, possession, and transportation of alcoholic beverages, and shall preserve the right of any county, justice precinct, or incorporated town or city to exercise local option by election to legalize or to prohibit the sale of alcoholic beverages of various types and various alcoholic content.

(b) In any county, justice precinct, or incorporated town or city in which the manufacture, sale, barter, or exchange of alcoholic beverages of any of various types and various alcoholic content was prohibited at the time of the adoption of this Constitution, the same shall continue to be unlawful unless and until a majority of the qualified voters in such political subdivision voting on the question in an election shall determine such to be lawful.

Origin

Revises Article XVI, Section 20.

Commentary

Section 17 retains the substance of the local option requirement of Article XVI, Section 20 of the 1876 Constitution. The Commission concluded that any issue so directly connected with the moral convictions of the persons affected should be decided on a local option basis. The provision is a limitation on the power of the Legislature to establish either statewide prohibition or uniform statewide sale of alcoholic beverages.

The history of the sale of alcoholic beverages in Texas has shown vacillation from one extreme to the other. In this area stability on middle ground is a desirable goal. A constitutional provision can best accomplish that result. Although the authorization under the Constitution of 1876 for the Legislature to establish a statewide monopoly for the sale of alcoholic beverages has not been included in Section 17, the Legislature still possesses such power under this section if it determines that such a monopoly is in the public interest.

Section 18. Practitioners of Medicine

The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine.

Origin

Retained unchanged from Article XVI, Section 31.

Commentary

Section 18 retains the language of Article XVI, Section 31 of the 1876 Constitution. No change in existing law is intended.

The judicial history of Article XVI, Section 31 of the 1876 Constitution demonstrates that the provision has required all persons who undertake to treat the entire human body to be subject to the same requirements and the same qualifications and to pass the same examination in order to be licensed. As a consequence, naturopaths have not been permitted to practice in Texas because they have not been able to meet the qualifications for obtaining a license to treat the ills of the entire human body, although they undertake to do so. The history of this constitutional provision is that pursuant to it, and the judicial construction given it, there has been maintained in the State of Texas a higher standard of requirements for medical practice than has existed in many other states that do not have such protection and where some statutory authorization has allowed unqualified persons to endanger human health and prey upon the public.

Section 19. Gambling Enterprises

Neither the State nor any political subdivision thereof shall sponsor or operate lotteries or any other gambling enterprises.

Origin

Revises Article III, Section 47.

Commentary

The 1876 Constitution prohibits the Legislature from legalizing any lottery or gift enterprise. The proposed section prohibits government-sponsored or government-operated lotteries, but leaves to the Legislature the question of which, if any, private gambling enterprises are to be legalized.

This change does not mean that the legalization of private lotteries and gambling enterprises is now likely to occur because the recently adopted Penal Code, Tex. Laws 1973, ch. 399, sections 47.01 et seq., prohibits such activities. State laws will, with little doubt, continue to prohibit profiteering gambling operations. The Commission feels that the real danger lies in the possibility that the state or a political subdivision of the state could be tempted to rely on a public lottery as a revenue-raising device. Section 19 eliminates such a possibility.

Section 20. Liens of Mechanics, Artisans, and Materialmen

Mechanics, artisans, and materialmen of every class shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Origin

Rewords Article XVI, Section 37.

Commentary

It has been held by the courts in Texas that a mechanic, artisan, or materialman who does not comply with the requirements of the statutory mechanic's lien may, as between that person and the debtor, still acquire

a constitutional lien under this section for labor and materials. While it is sensible to require filing of a lien in order to validate it as to third parties without notice, there is little reason to deny a lien as against the debtor to a mechanic who fails to comply with the filing requirements of the statutory lien designed to protect third parties. The constitutional mechanic's lien accomplishes that result.

Section 21. Pension and Retirement Systems

Any pension or retirement system of this State, or of any political subdivision thereof, or of any governmental agency of either, now in effect shall be continued. No funds held pursuant to any such system shall be used for any purposes inconsistent therewith.

Origin

Revises: Article III, Section 48a;
Article III, Section 48b;
Article III, Section 51e;
Article III, Section 51f;
Article V, Section 1a;
Article XVI, Section 62;
Article XVI, Section 63;
Article XVI, Section 66.

Commentary

The sections of the 1876 Constitution listed above provide a detailed description of the operation of pension and retirement systems for public employees. Article III, Sections 48a and 48b and Article XVI, Section 63 concern teacher retirement; Article III, Sections 51e and 51f deal with the retirement of municipal employees; Article V, Section 1a authorizes a retirement system for judges; Article XVI, Section 62 regulates state and county employees' retirement; and Article XVI, Section 66 provides for a retirement plan for certain Texas Rangers.

The proposed language protects the constitutional safeguards presently enjoyed by persons in such a system but removes the current restrictions on the Legislature's ability to improve the system. The intent of this section is to assure persons who currently enjoy governmental pension and retirement rights that they will not be adversely affected by the adoption of the new constitution. This recommendation assures that funds belonging to a pension or retirement system will not be diverted to other uses. Additionally, it requires that no system presently in effect shall ever be abolished, which is a protection not enjoyed under the present constitutional provisions. This section does not preclude the Legislature from creating other retirement systems in the future.

One of the original justifications for including retirement system provisions in the Constitution of 1876 was the possibility that such a system might otherwise be unconstitutional under the grants and loans prohibitions of Article III, Sections 50, 51, and 52. Today it seems clear that provisions for pension and retirement rights are, in substance, a form of employee compensation and therefore would not fall under the prohibition against grants to individuals contained in the 1876 Constitution. At any rate the constitutionality of a municipal retirement plan was upheld eight years before the teacher retirement system amendment was adopted in 1936, *Byrd v. City of Dallas*, 6 S.W. 2d 738 (Tex. Comm'n App. 1928, opinion adopted). In the new constitution, retirement programs are clearly for a public purpose and therefore do not constitute an exception to any existing provision. The *Commentary* for Article VIII, Section 7 contains additional discussion of the public purpose concept.

Another consideration concerning retirement systems is a guarantee of rights. Whether the constitutional provisions in the 1876 Constitution provide an adequate guarantee of rights is questionable. The provisions do not mandate funding by the state, for example, but authorize the Legislature to appropriate funds. On the other hand, the provisions contain some important limitations concerning benefits. Article III, Section 48a limits the state contribution to the retirement fund to no more than six percent of an employee's compensation each year. Also, Article III, Section 48a requires at least ten years of creditable service before a member may receive benefits under the system.

The detailed constitutional restrictions on the investment of assets of the retirement funds in the 1876 Constitution are another reason for providing the Legislature more flexibility to regulate retirement sys-

tems. Changing economic conditions over the years may substantially alter the desirability of certain types of investments.

The Commission believes that the language of Section 21 will assure the continuation of retirement rights currently in effect, and will allow the Legislature greater flexibility in the future in order to improve the systems to meet changing needs and circumstances.

Sections of the 1876 Constitution Considered by the General Provisions Committee

Many of the miscellaneous sections, or "general provisions," of the 1876 Constitution have not been carried forward in this document. Those dealt with by the General Provisions Study Committee of the Constitutional Revision Commission deserve special attention since the work of that Committee largely consisted of determining which sections assigned to it for study should be included in the new document. While in some cases the removal was the result of an intent to change policy, in others the rationale was that the subject matter belongs in a statute rather than in the constitution. A summary of the major sections of the 1876 Constitution which have no counterpart in the proposed document and the reasons underlying the decisions not to retain them is as follows:

A. Dual Officeholding

Article XVI, Section 12, Members of Congress; Officers of United States or Foreign Power; Eligibility to Hold Office;

Article XVI, Section 33, Salary or Compensation Payments to Agents, Officers or Appointees Holding Other Offices; Exceptions; Non-Elective Officers and Employees;

Article XVI, Section 40, Holding More Than One Office; Exceptions; Right to Vote.

The listed sections deal with the subject of dual officeholding. They have been amended on several occasions but do not yet provide a definitive standard concerning which positions may not be held concurrently. It was felt that the complexity of the dual officeholding problem makes such provisions inappropriate in the constitution, and that this matter can be handled better by statute. It will therefore become a matter to be dealt with in the legislative process, except as to members of the Legislature and Executive Department officers who will still be constitutionally restrained from holding other offices. The Transition Schedule carries forward the prohibitions of the listed sections until the Legislature can undertake a solution to the problem.

B. Welfare

Article III, Section 51a, Assistance Grants and Medical Care for Needy Aged, Disabled and Blind Persons, and Needy Children; Federal Funds; Supplemental Appropriations.

The welfare provision, Article III, Section 51a, along with a number of other sections, was included in the 1876 Constitution as an exception to the prohibition against grants or gifts of public money to individuals, corporations, and municipal corporations. The proposed document contains a spending limitation based on the purpose of the expenditure rather than a grants and gifts prohibition. Since this is the case it is no longer necessary to retain the welfare exception, and others which were necessary because of that prohibition, in order to authorize such use of the funds. (See the *Commentary* for Article VIII, Section 7 for a discussion of spending limitations in the new constitution.)

That disposition of the welfare authorization also applies to the welfare ceiling, which was considered by the Commission as an arbitrary limit which is likely to result in further amendments over the years.

Other important spending authorizations which are no longer necessary in light of the removal of the grants and gifts prohibitions include workmen's compensation, aid to survivors of peace officers, and aid to persons wrongfully imprisoned.

C. Usury

Article XVI, Section 11, Usury; Rate of Interest in Absence of Contract.

This section originally set a maximum legal interest rate of ten percent per annum on all contracts. It was later amended to permit the Legislature to regulate loans and lenders, so that it presently has no real beneficial effect as a constitutional provision. The Legislature has undertaken a comprehensive regulatory scheme in the Consumer Credit Code, TEX. REV. CIV. STAT. ANN. art 5069 (Supp. 1972), so that failure to carry forward this section will have no substantive effect.

D. Fence Laws

Article XVI, Section 22, Fence Laws.

The fence laws provision is an exception to the prohibition against passage of local and special

laws. It permits the Legislature to require fencing of livestock in some areas while allowing free grazing in others. The conclusion of the Commission was that the local and special laws prohibition, as it has come to be interpreted, would no longer bar the Legislature from undertaking to regulate the fencing of livestock on a nonuniform but reasonable basis.

E. Branch Banking

Article XVI, Section 16, Corporations with Banking and Discounting Privileges.

The Commission concluded that regulation of branch banking should be under legislative control rather than in the constitution. For a discussion of the rationale, see the *Commentary* for Article X, Section 16.

F. Miscellaneous Sections

Article X, Railroads;

Article XVI, Section 21, Public Printing and Binding; Repairs and Furnishings; Contracts;

Article XVI, Section 23, Regulation of Live Stock; Protection of Stock Raisers; Inspections; Brands;

Article XVI, Section 24, Roads and Bridges;

Article XVI, Section 25, Drawbacks and Rebatement to Carriers, Shippers, Merchants, etc.;

Article XVI, Section 26, Homicide; Liability in Damages;

Article XVI, Section 43, Exemptions from Public Duty or Service;

Article XVI, Section 47, Conscientious Scruples as to Bearing Arms.

The Commission's decision was to recommend that the above topics be treated in statutes rather than in the constitution. For each of the listed sections a statute is already in existence which accomplishes the same result as the constitutional provision. The Commission determined that none of these subjects is so fundamental to the operation of government that it should be included in the constitution. The decision will produce no change in existing law but will afford an opportunity for such future changes as the Legislature finds to be in the public interest.

Article XI

Mode of Amending the Constitution of the State

A.J.R. No. 18.

No 4.

Joint Resolution

to amend section 11, of article 7. of the Co
of the State of Texas.

Section 1. Be it resolved by the Legislat
State of Texas: That Section 11. of arti
Constitution of the State of Texas, be so
as to read as follows, to wit:

Section 11. It is hereby declared that
and other property heretofore set apar
propriated for the establishment and
tenance of the University of Texas, to
all the principal of the proceeds of
same heretofore made, or hereafter to b
and all grants, donations and app
that may hereafter be made by th
of Texas, or from any other source
stitute and become a permanent
fund. And the same as realized and
into the treasury of the State (together
sum belonging to the fund as may no

Article XI
Mode of Amending the Constitution of the State

Section 1. Amendments to the Constitution

(a) Amendments to this Constitution may be proposed to the qualified voters of the State by a record vote of two-thirds of the membership of each house. Before either house votes, a proposed amendment shall be submitted to the Attorney General who shall within twenty days of receipt of a request render an opinion on its effect on other provisions of this Constitution and on whether the proposal can be enacted without a constitutional amendment.

(b) A proposed amendment shall be submitted at the next general election following the expiration of ninety days after it is proposed by the Legislature. Procedures shall be provided by law for publicizing proposed amendments.

(c) A proposed amendment shall become a part of this Constitution on approval by a majority of the qualified voters voting on the question.

Origin

Revises Article XVII, Section 1.

Commentary

Section 1 provides for the same basic amendment procedure contained in the Constitution of 1876. The Commission feels that this relatively easy amendment procedure has served well in the past and should be retained. Some changes were made, however.

The requirement in subsection (a) that a proposed amendment be submitted to the Attorney General for an opinion is new. Although the Attorney General's opinion is advisory in nature, it could help prevent unneeded constitutional amendments. In cases where an amendment is unnecessary, the Legislature could instead enact a statute. Besides reviewing the substance of a proposed amendment, the Attorney General could also make suggestions as to form. The Constitution of 1876 varies in its language, mainly because there has never been a reviewing agent for form.

Subsection (b) replaces the detailed statutory material concerning publication of proposed amendments. The requirement that amendments be placed on the ballot not less than 90 days after approval guarantees adequate time for publication. Another change is that amendments could no longer be voted on in special elections but would have to be submitted at general elections where there is usually a larger turnout of voters.

Section 2. Constitutional Convention

(a) The Legislature by a record vote of a majority of the membership of each house may submit to the qualified voters of the State the question of whether to call a constitutional convention. The question shall be submitted at the first general election occurring at least six months after the Legislature proposes the question. A constitutional convention shall be called if approved by a majority of the qualified voters voting on the question.

(b) The question of whether to call a constitutional convention shall be submitted to the qualified voters at least once every twenty years.

(c) The Legislature shall, at the next legislative session following approval of a constitutional convention by the qualified voters, provide by law for the time, place, and duration of the convention; fix and provide for the pay, allowances, and expenses of delegates and offi-

cers; and provide for the expenses of the convention. The first meeting of the convention shall be within three months after the election of delegates.

(d) One delegate shall be elected from each representative district and shall have the same qualifications for office as a member of the House of Representatives. Delegates shall be elected and vacancies filled as provided by law, except that no justice or judge, no member of the Legislature, and no elective official of the executive branch may serve as a delegate.

(e) The constitutional convention may, by a majority vote of its membership, propose any revision or amendments to the Constitution. The convention shall determine the manner of submission, the date of the election, which shall be not less than two nor more than six months after the convention adjourns, and the manner of publicizing the proposals to be voted on.

(f) Any proposed revision or amendments shall become effective, as the convention provides, if approved by a majority of qualified voters voting on the question.

Origin

New provision.

Commentary

Thirty-eight states provide for constitutional conventions in their constitutions. Of these states, approximately twelve require a periodic mandatory submission to the voters of the question of whether to call a constitutional convention.

Except for the 1972 amendment which provides for a constitutional convention in 1974, the 1876 Constitution is silent concerning procedures for calling a convention. The proposed Section 2 outlines the procedures by which the Legislature can submit the question of calling a constitutional convention to the people. It also requires that the question be submitted to the people at least once every twenty years so that they may consider whether a new constitution is needed. The procedures outlined in Section 2 will prevent the need for a constitutional amendment each time the question of calling a convention is to be submitted to the people. If a constitutional convention is approved, the Legislature shall provide by law for the time, duration, and expenses of the convention.

No state judge or justice, member of the Legislature, or elected official of the executive branch of state government may serve as a delegate to a future constitutional convention according to the provisions of subsection (d). The Commission felt that such state officeholders could be subject to a conflict of interest which would not be present in citizen members. Revision of the state's fundamental law would take the time and energy of public officials away from managing the day-to-day operations of government and therefore properly should be the responsibility of representatives elected specifically for the purpose of revising the constitution.

Citizen delegates would not be likely to have an immediate vested interest in the structure of state government or in a particular office which might be affected by constitutional change. Convention delegates who are private citizens can be expected to provide broad representation of the population of the state as a whole, and can be expected to take an objective view of decisions affecting state governmental institutions. Typically, citizen delegates reflect the enthusiasm and sense of purpose which are essential ingredients for a successful undertaking of this magnitude.

Transition to a New Constitution

Transition to a New Constitution

There are always some transitional problems in replacing an old constitution with a new one. Such problems can be dealt with in the body of the new constitution, but this results in language that quickly becomes obsolete and then remains as part of the new document for the indefinite future. Several transition provisions were incorporated into the 1876 Constitution at the time it was drafted, and these sections remain although their usefulness has long been outlived. Article XI, Section 6, for example, provides for the repayment of debt incurred by cities and counties prior to 1876.

A constitution should contain only those provisions necessary for the continuing future operation of government. The appropriate method of handling transitional problems is to include the necessary provisions in a schedule which is a separate part of the constitution. As the transitional matters become obsolete they can be removed according to a procedure established in the schedule.

A Transition Schedule has been prepared as part of the new constitution printed at the front of this report. The provisions contained in the schedule can be classified into four general categories.

1. *Provisions with an accelerated effective date.* To assist in a smooth transition it is desirable to have some provisions of the new constitution become effective prior to the effective date of the entire document. This allows the necessary lead time for implementation of the other provisions. (See Sections 1 and 10 of the Transition Schedule.)

2. *Terms of office and officeholding.* Several transition provisions are necessary to ensure continuity for those offices affected by a change in length of term, reorganization, or other changes in their status. (See, for example, Sections 13, 14, and 19 of the Transition Schedule.)

3. *Continuation of powers of government.* There are many provisions of the 1876 Constitution which are not carried forward in the new document because they contain statutory detail or are not of constitutional significance. In most cases the removal of a particular provision from the constitution will not affect the continuity of governmental operation because statutes usually exist which provide essentially the same authority. In those cases where a constitutional provision is removed and no statute exists, a transition provision can be used to keep the section which has been removed in effect until the Legislature has the opportunity to enact appropriate laws. After the Legislature has acted, the transition provision is no longer needed and can be removed according to the procedure established in the schedule. (See, for example, Sections 4, 5, 6, and 7 of the Transition Schedule.)

4. *Preservation of existing laws and rights.* All transition schedules contain some type of statement that all laws and rights of action not inconsistent with the constitution will be carried forward, and that the validity of outstanding bonds and other evidences of indebtedness is preserved. (See Sections 2 and 3 of the Transition Schedule.)

In providing for continued powers of government in the Transition Schedule, only those powers not now provided by statute need to be included. This criterion for including material in the schedule is best illustrated by an example. Section 6 of the Transition Schedule provides for a continuation of the county ad valorem tax of 80 cents per $100 valuation that is authorized by the 1876 Constitution. This provision was necessary since there is no statutory authorization for counties to levy the 80 cent tax. The Constitution of 1876 also authorizes separate county ad valorem taxes of 30 cents per $100 valuation and 15 cents per $100 valuation. Since the 30 cent and 15 cent taxes are now authorized by statute, no transition provision is necessary for their continuation.

In addition to the Transition Schedule, an Adoption Schedule accompanies the new constitution. The Adoption Schedule printed with the constitution at the front of this report is not complete. It was included only to illustrate the general framework and purposes of such a schedule. The details of the completed schedule will depend on the nature of proposals made by the constitutional convention.

The Adoption Schedule is part of the constitution only for the purpose of providing for its adoption and establishing the effective dates of its provisions. It may be used to provide for the implementation of alternative provisions if any such proposals are submitted to the voters separately. The completed Adoption Schedule should also provide for the form of the ballot which will be submitted to the people for approval of the new document.

Appendices

Appendix A

Article XVII, Section 2, Constitution of 1876

(Adopted November 7, 1972 as Amendment 4)

Section 2. (a) When the legislature convenes in regular session in January, 1973, it shall provide by concurrent resolution for the establishment of a constitutional revision commission. The legislature shall appropriate money to provide an adequate staff, office space, equipment, and supplies for the commission.

(b) The commission shall study the need for constitutional change and shall report its recommendations to the members of the legislature not later than November 1, 1973.

(c) The members of the 63rd Legislature shall be convened as a constitutional convention at noon on the second Tuesday in January, 1974. The lieutenant governor shall preside until a chairman of the convention is elected. The convention shall elect other officers it deems necessary, adopt temporary and permanent rules, and publish a journal of its proceedings. A person elected to fill a vacancy in the 63rd Legislature before dissolution of the convention becomes a member of the convention on taking office as a member of the legislature.

(d) Members of the convention shall receive compensation, mileage, per diem as determined by a five member committee, to be composed of the Governor, Lieutenant Governor, Speaker of the House, Chief Justice of the Supreme Court, and Chief Justice of the Court of Criminal Appeals. This shall not be held in conflict with Article XVI, Section 33 of the Texas Constitution. The convention may provide for the expenses of its members and for the employment of a staff for the convention, and for these purposes may by resolution appropriate money from the general revenue fund of the state treasury. Warrants shall be drawn pursuant to vouchers signed by the chairman or by a person authorized by him in writing to sign them.

(e) The convention, by resolution adopted on the vote of at least two-thirds of its members, may submit for a vote of the qualified electors of this state a new constitution which may contain alternative articles or sections, or may submit revisions of the existing constitution which may contain alternative articles or sections. Each resolution shall specify the date of the election, the form of the ballots, and the method of publicizing the proposals to be voted on. To be adopted, each proposal must receive the favorable vote of the majority of those voting on the proposal. The conduct of the election, the canvassing of the votes, and the reporting of the returns shall be as provided for elections under Section 1 of this article.

(f) The convention may be dissolved by resolution adopted on the vote of at least two-thirds of its members; but it is automatically dissolved at 11:59 p.m. on May 31, 1974, unless its duration is extended for a period not to exceed 60 days by resolution adopted on the vote of at least two-thirds of its members.

(g) The Bill of Rights of the present Texas Constitution shall be retained in full.

Appendix B

Senate Concurrent Resolution Number 1

BE IT RESOLVED by the Senate of the State of Texas, the House of Representatives concurring:

Sec. 1. CONSTITUTIONAL REVISION COMMISSION. Pursuant to Article XVII, Section 2, of the Texas Constitution, the Texas Constitutional Revision Commission is created.

Sec. 2. DEFINITIONS. In this resolution:

(1) "Commission" means the Texas Constitutional Revision Commission.

(2) "Convention" means the Texas Constitutional Convention of 1974, created by Article XVII, Section 2, of the Texas Constitution.

Sec. 3. COMPOSITION OF COMMISSION. (a) The commission shall be composed of 37 members, and it is the legislative intent that the appointment committee give consideration to fair and equitable representation of the sexes, ethnic groups, social groups, economic groups, and geographical regions of the state.

(b) No elected officer who receives compensation by warrant drawn on the state treasury is eligible to serve as a member of the commission. The service of any other public officer or employee as one of the 37 members of the commission shall be considered an additional duty of his regular office or employment, and such officer or employee appointed pursuant to the provisions of this resolution shall be an ex officio commissioner. Such ex officio commissioners shall have all rights, powers, and privileges that are accorded the other members by this resolution.

(c) The members shall be appointed by an appointment committee composed of the governor, the lieutenant governor, the attorney general, the speaker of the house of representatives, the chief justice of the supreme court, and the presiding judge of the court of criminal appeals. The governor shall be chairman of the appointment committee. The governor shall call meetings of the appointment committee and shall guide it toward completing the appointment process at the earliest possible date.

(d) Except as otherwise provided in this subsection, all meetings and deliberations of the appointment committee shall be open to the public and shall be subject to the public notice requirements of the Open Meetings Law, Chapter 271, Acts of the 60th Legislature Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes). Once a meeting begins following compliance with these requirements, the committee by majority vote may close the meeting for the purpose of deliberating and considering proposed appointees, but shall reconvene in the place where the meeting began before adjourning. Whenever any deliberation or any portion of a meeting is closed to the public as permitted by this subsection, no final action, decision, or vote with regard to any matter considered in the closed meeting shall be made except in a meeting which is open to the public and in compliance with the requirements prescribed in this subsection.

(e) The appointment shall be formalized by filing with the secretary of state a certificate of appointment identifying all 37 persons appointed to the commission and the appointment committee shall designate one of them chairman and one of them vice-chairman of the commission. The certificate of appointment must be signed by at least four members of the appointment committee.

(f) The secretary of state shall transmit a true copy of the certificate of appointment to the lieutenant governor and to the speaker. On the same day or the next legislative day, the lieutenant governor and the speaker shall each announce in open session the names of those appointed. The secretary of state shall prepare and make available in his office a petition of nonconcurrence. During the period ending with the 10th calendar day following the day the appointments are announced in open session, or if the 10th day is a Saturday, Sunday, or legal holiday, the next following business day of the secretary of state, any member of the legislature may personally appear in the office of the secretary of state during regular business hours and sign the petition of nonconcurrence. If, during the prescribed period, fewer than 76 members of the house or fewer than 16 members of the senate sign the petition, the appointments shall be considered in all respects ratified and confirmed. If, during that period, as many as 76 members of the house and 16 members of the senate sign the petition, the appointments shall be considered rejected; the secretary of state shall so notify the governor, and the appointment committee shall submit another certificate of appointment which shall be subject to the same process of legislative review as was the original. The appointment committee may reappoint any one or more or all of those persons named as appointees in any

earlier appointment process, and the entire appointment and review process shall be repeated as many times as necessary to achieve confirmation.

(g) The secretary of state shall officially notify each member of his appointment. With the exception of eligible public officers (ex officio members), who shall be qualified for service on the commission by virtue of their office, members shall qualify by taking the oath of office before an officer authorized to administer oaths and by filing the oath with the secretary of state.

Sec. 4. TERM OF OFFICE; VACANCIES. (a) Members of the commission hold office until 60 days after the second Tuesday in January, 1974, which is the day the constitutional convention will be convened.

(b) Any vacancy on the commission caused by death, disability, or resignation shall be filled by certificate of appointment signed by at least four members of the appointment committee and filed with the secretary of state.

Sec. 5. MEETING, CONDUCT OF BUSINESS. (a) The commission shall meet initially in Austin, Travis County, Texas, at the call of the chairman not later than 14 days after the date the appointment process is completed. The commission shall adopt rules to govern the calling and holding of meetings and the conduct of its business generally; provided, however, that the commission upon organization shall submit a budget and rules governing payment for staff, per diem, travel (including out-of-state travel) and consultants to the appointment committee.

(b) A majority vote of the appointment committee shall be necessary for the approval of such rules and budget. On November 1, 1973, the commission shall be required to submit a budget to the appointment committee for the conduct of its business from November 1, 1973, until the expiration date of said commission, which budget must be approved by a majority of the appointment committee.

Sec. 6. PER DIEM; EXPENSES. Each member of the commission is entitled to a per diem of $50 for each day he spends attending to the business of the commission, including time spent in traveling, as provided by rule of the commission. Each member of the commission is entitled to reimbursement for actual and necessary travel and other expenses incurred while attending to the business of the commission, as provided by rule of the commission.

Sec. 7. OFFICE SPACE, EQUIPMENT, SUPPLIES, ETC. The commission may obtain office space, equipment, supplies, printing, and services through the State Board of Control or by contract, including interagency contract.

Sec. 8. STAFF. (a) The commission shall employ and fix the compensation of an executive director.

(b) The executive director, to the extent authorized by the commission, shall employ and fix the compensation of staff and consultants within approved budget limits.

Sec. 9. DUTIES AND FUNCTIONS OF COMMISSION. (a) As provided by Article XVII, Section 2, of the Texas Constitution, the commission shall study the need for constitutional change and shall report its recommendations to the members of the legislature not later than November 1, 1973.

(b) The commission shall provide for the maximum participation at the grass roots level by scheduling and holding open public hearings in a minimum of six geographical areas of the state. To facilitate these public hearings, the commission is empowered to select citizen committees who shall serve without compensation or expenses in each of the geographical areas to assist in its work. The open public hearings shall be given as much advance publicity as possible as to time and place so that as many citizens as possible may participate.

(c) The commission shall issue publications of its findings and recommendations from time to time, and shall disseminate information through appropriate media to insure public awareness of its work.

(d) The commission shall issue a final report and make copies widely available to the citizens of Texas, including distribution to all public libraries. Copies of the report, which is due to the legislature on November 1, 1973, shall be made available to citizens and public libraries not later than December 31, 1973.

(e) The commission shall provide information, briefings, and other appropriate support to the constitutional convention.

(f) The commission shall submit legal drafts to the convention of all changes or alternative changes it proposes be made in the constitution.

(g) All papers, documents, and work product of the commission shall be public records, and shall be made available to the public for inspection and copying at reasonable times and places.

Sec. 10. FINANCIAL SUPPORT. The commission may receive appropriations only from the Texas Legislature for its operations.

Sec. 11. ASSISTANCE OF STATE AGENCIES. All departments and agencies of the state, including the Texas Advisory Commission on Intergovernmental Relations and the Texas Legislative Council, shall cooperate with the commission and its staff, and shall make all reports and other materials available.

Sec. 12. SEVERABILITY. If any provision of this resolution or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

President of the Senate

Speaker of the House

I hereby certify that S.C.R. No. 1 was adopted by the senate on January 24, 1973; February 1, 1973, senate refused to concur in house amendments and requested appointment of conference committee; February 5, 1973, house granted request of the senate; February 6, 1973, senate adopted conference report by the following vote: Yeas 26, Nays 1.

Secretary of the Senate

I hereby certify that S.C.R. No. 1 was adopted by the house on January 31, 1973, with amendments, by the following vote: Yeas 146, Nays 1; February 5, 1973, house granted request of the senate for appointment of conference committee; February 7, 1973, house adopted conference report by the following vote: Yeas 121, Nays 24.

Chief Clerk of the House

Approved:

Date

Governor

Appendix C
Brief Biographies of Commission Members



CALVERT, JUDGE ROBERT W.– (Commission Chairman) Attorney. Former State Representative, Hill and Navarro Counties for three terms. House Speaker his last term. Elected to the Texas Supreme Court in 1950 and elected Chief Justice in 1960, re-elected in 1966. Elected Chairman, National Conference of State Chief Justices in 1970. 1411 W. 29th, Austin, Texas 78703



BASS, BILL–Attorney. Three terms as State Representative from Van Zandt County. Member of the Constitutional Amendments Committee of the House and author of several constitutional amendments approved by the voters. Director of the Van Zandt County Farm Bureau and District Director of the Boy Scouts. Graduate of Texas A&M and SMU Law School. Route 2, Ben Wheeler, Texas 75754



MILBURN, MRS. MALCOLM – (Commission Vice Chairman) Civic worker. Former President of the Texas Federation of Republican Women and former Vice Chairman of the Texas Republican Party. 2606 Pecos St., Austin, Texas 78703



BETO, DR. GEORGE–Clergyman. Former Director of the Texas Department of Corrections. Member of the General Research Study Section for the Department of Health, Education and Welfare. Past President of the American Correctional Association. Sam Houston State University, Huntsville, Texas 77340



BARBOUR, LOYS D. – Farmer. Helped organize the Texas Farm Bureau and served on the TFB Board until 1959. Served as Chairman of the Rural Roads Committee. Legislative representative for TFB for 10 years. P. O. Box 236, Iowa Park, Texas 78367



BONILLA, TONY–Attorney. Former State Representative, Nueces County and State Director of the League of United Latin American Citizens. 2590 Morgan Ave., Corpus Christi, Texas 78405



BARRERA, ROY R.–Attorney. Former Assistant Bexar County District Attorney. Former Texas Secretary of State. President of the San Antonio Bar Association. 424 E. Nueva, San Antonio, Texas 78205



BRIENT, MRS. MARY BETH– Civic worker. Organizer and former President of the League of Women Voters of El Paso. Former Board member of the LWV of Texas. Member of the Texas Urban Development Commission. 2011 North Kansas, El Paso, Texas 79902



CHAPPELL, MRS. DAVID F. (ANN)—Consultant and journalist. Former Research Associate, Institute of Urban Studies at The University of Texas at Arlington, and former Urban Analyst for the Regional Office of HUD. 2321 Mistletoe Blvd., Fort Worth, Texas 76110



CULVER, BARBARA – County Judge, Midland, Texas. Vice-Chairman of the West Texas County Judges and Commissioners Association and serving on the National Advisory Council on the Education of Disadvantaged Children. Has served 10 years on the bench. Active in regional planning. 315 Permian, Midland, Texas 79701



DONNELL, WILLIAM – Rancher. President of the Texas and Southwestern Cattle Raisers Association. Past Chairman of the Board of Regents, State Senior Colleges in Texas. Director of the American National Cattleman's Association. P. O. Box 845, Marathon, Texas 79842



FISHER, BEEMAN—Retired Board Chairman of Texas Electric Service Co., formerly with Texas Power & Light Co., the Associated Press and WOAI Radio in San Antonio. Past President of the Fort Worth and West Texas Chambers of Commerce. Immediate Past Chairman, Texas Water Conservation Association and Texas Research League. P. O. Box 970, Fort Worth, Texas 76101



FLAWN, DR. PETER T.—Educator. President of The University of Texas at San Antonio and former Executive Vice-President of UT Austin. Professor of geological sciences and public affairs. Former Director of The Bureau of Economic Geology (State Geologist) 1960-1970. 4242 Piedras Drive East, Suite 250, San Antonio, Texas 78284



FROST, M. F. "MIKE"—Farmer. Former Vice President of the Texas Farm Bureau. Manager and part owner of the McAllen Fruit and Vegetable Co., and the McAllen Gin Co. P. O. Box 100, McAllen, Texas 78501



GARCIA, DR. CLOTILDE—Physician. Regent of Del Mar College. Former schoolteacher. Served on the Board of Directors of the Nueces County Community Action Agency. Member of the U.S. Senate Committee on Aging's Advisory Council. State Director of the American G.I. Forum Committee on Education and Aged. 3017 Ocean Drive, Corpus Christi, Texas 78404



HAMILTON, MRS. C. F. (SIBYL)—Married to a physician. Mother of three. Grandmother. Former member of the Dallas City Council. Member of President Nixon's Air Quality Advisory Board. Citizen Representative from Dallas County to the North Central Texas Council of Governments. District Director of Public Information, Dallas County Community College District. 6883 Lakewood Blvd., Dallas, Texas 75214



HARTMAN, BILL—Journalist. Editor and Publisher of the *Beaumont Enterprise and Journal*, past Director, Texas Daily Newspaper Association, Director, St. Elizabeth's Hospital, Member of the Advisory Committee for the Texas Advisory Commission on Intergovernmental Relations. 380 Walnut St., Beaumont, Texas 77701



HOLMES, REV. ZAN—Clergyman. District Superintendent of Dallas Metropolitan District for the United Methodist Church. Former State Representative, Dallas County. Former Assistant Director of the Dallas War on Poverty. 6910 Robin Road, Dallas, Texas 75209



HOLUB, MRS. FAYE—Communications. Vice President of the Austin AFL-CIO. Business Services Instructor for Southwestern Bell. Served 21 years as an officer in the Communications Workers of America. 1515 Suffolk, Austin, Texas 78723



KRONZER, W. JAMES JR.—Attorney. Former President of The University of Texas Law School Association and former President of the Houston Bar Association. Member of the House Interim Committee on Governmental Immunity. President of the Houston Legal Foundation. 711 Fannin, Houston, Texas 77002



JAWORSKI, LEON—Immediate Past President of the American Bar Association and Past President of the American College of Trial Lawyers. Former Special Assistant U.S. Attorney General. Presidential Advisor, 1964-1969. Chairman of the Governor's Committee on Public School Education. Chief of U.S. Army War Crimes Trial Section, European Theatre, World War II. 3665 Ella Lee Lane, Houston, Texas 77027



LEWIS, EARL—Professor of political science and Director of the graduate Urban Studies Program at Trinity University. Has served as consultant to the United States Office of Education and as vice-chairman of the Texas Urban Development Commission. On the Board of the United Way of San Antonio. Trinity University, 715 Stadium Dr., San Antonio, Texas 78212



JEFFERS, LEROY—Attorney. President of the State Bar of Texas. Past Chairman of the American Bar Association Anti-Trust Section. Past Chairman, University of Texas Board of Regents and past Chairman of the Board of the Texas Bill of Rights Foundation. 674 Piney Point Rd., Houston, Texas 77024



LIGARDE, HONORE – Attorney, banker. Board Chairman of the International Bank of Commerce of Laredo. State Representative from Webb County for 10 years. Drawer 1359, Laredo, Texas 78040



JEFFERSON, ANDREW JR. – Judge, Harris County Court of Domestic Relations No. 2. Former Chief Assistant United States Attorney for the Western District of Texas, and former Chief of the Criminal Section, U. S. Attorney's Office. Former Vice Chairman of the American Bar Association Committee on Organized Crime, Criminal Law Section. 310 San Jacinto, Houston, Texas 77002



MADDEN, WALES JR. – Attorney and businessman. Member of the Coordinating Board of the Texas College and University System. Former member of the Governor's Committee on Public School Education. Former Regent of The University of Texas System. 2701 Teckla, Amarillo, Texas 79101



KEETON, PAGE – Educator. Dean of The University of Texas Law School since 1949. Former member of the President's Advisory Committee on Labor-Management Policy. A Fellow of the American Bar Foundation and former Chairman of the State Bar Advisory Committee on penal code revisions. 5316 Western Hills, Austin, Texas 78731



MARTIN, MARK – Attorney. Board Chairman, State Bar of Texas, past President of the Dallas Bar Association and Texas Association of Defense Counsel. Trustee of The University of Texas Law School Foundation. 3525 Wentwood, Dallas, Texas 75225



MAY, JANICE—Educator. Assistant Professor of Government, The University of Texas at Austin. Member of the 1967-68 Texas Constitutional Revision Commission. Author of *Amending the Texas Constitution: 1951-1972* and co-author of *The Texas Constitution: Problems and Prospects for Revision*. Past President of the Austin League of Women Voters. 6504 Auburnhill Drive, Austin, Texas 78723



McLAUGHLIN, MARK – Attorney, rancher. Former Assistant Attorney General of Texas. Vice Chairman of the Continuing Legal Education Committee of the State Bar of Texas. Member of the Texas Board of Corrections. First Savings Building, San Angelo, Texas 76901



MOORE, L. G.—Operating engineer. International Representative of the International Union of Operating Engineers, AFL-CIO, for the last 8 years. 2418 Hillshire Dr., Deer Park, Texas 77536



NASHER, RAYMOND – Developer and businessman. Member of the Advisory Committee to HUD of National Service Foundation. Former Executive Director of the White House Conference on International Cooperation. Former U.S. Delegate to the General Assembly of the United Nations. 318 St. Paul St., Dallas, Texas 75201



OAKES, E. L. JR.—Business Agent for Ironworkers Local 84 in Houston for six years. Former Assistant Coordinator of Houston Ironworkers Apprenticeship and Training. 3821 Old College Road, Bryan, Texas 77801



RIVES, DON – Attorney. Former United States Commissioner for the Marshall Division of The Eastern District of Texas. Former instructor in business law at East Texas Baptist College. Marshall National Bank Building, Marshall, Texas 75670.



SHIRLEY, PRESTON – Attorney. Past President of the Galveston County Bar Association, and the Texas Association of Defense Counsel. Former member of the Committee on Administration of Justice of the Texas Bar Association. Director of the Sealy & Smith Foundation for the John Sealy Hospital. 4602 Sherman, Galveston, Texas 77550



WEATHERBY, JIM W. – Attorney and rancher. Former County Attorney and County Judge of Kerr County; former District Attorney, and former District Judge of the 2nd 38th Judicial District. Former President of the Charles Schreiner Bank. P. O. Box 168, Kerrville, Texas 78028



YARBOROUGH, RALPH W.—Attorney. Instructor at The University of Texas Law School. United States Senator for 13 years. Former Assistant Attorney General of Texas and former District Judge in Austin. Served on the Texas Board of Law Examiners and as a director of the Lower Colorado River Authority. Brown Building, Austin, Texas 78701

Appendix D

Texas Constitutional Revision Commission Study Committees

Chairman—Judge Robert W. Calvert
Vice-Chairman—Mrs. Malcolm Milburn

Education Committee
L. G. Moore, *Chairman*
Peter Flawn, *Vice-Chairman*
Clotilde Garcia
Earl Lewis
Wales Madden, Jr.

Executive Branch Committee
Preston Shirley, *Chairman*
Mary Beth Brient, *Vice-Chairman*
William Donnell
Raymond Nasher
Don Rives

Finance Committee
Beeman Fisher, *Chairman*
Mark McLaughlin, *Vice-Chairman*
Mike F. Frost
Faye Holub
Janice C. May

General Provisions Committee
Honore Ligarde, *Chairman*
Leroy Jeffers, *Vice-Chairman*
Ann S. Chappell
Page Keeton
Jim Wetherby

Judiciary Committee
Leon Jaworski, *Chairman*
Andrew Jefferson, *Vice-Chairman*
Roy R. Barrera
Bill Bass
Mark Martin

Legislative Committee
Zan Holmes, Jr., *Chairman*
Loys D. Barbour, *Vice-Chairman*
George Beto
W. James Kronzer, Jr.
Ralph Yarborough

Local Government
Barbara Culver, *Chairman*
Bill Hartman, *Vice-Chairman*
Tony Bonilla
Sibyl Hamilton
E. L. Oakes, Jr.

Style and Drafting Committee
Mark Martin, *Chairman*
Earl Lewis, *Vice-Chairman*
Sibyl Hamilton
Leroy Jeffers
W. James Kronzer, Jr.
Janice C. May
Preston Shirley

Appendix E
Disposition of Articles from Constitution of 1876

Note: The disposition of each section of the Constitution of 1876 is indicated by the terms defined below.

1. **Revised** indicates that substantive changes were made.
2. **Reworded** indicates grammatical changes, reordering of sentences, or other nonsubstantive changes.
3. **Statutory** indicates that the section is not carried forward in the new constitution, and that the Legislature may enact laws to continue the substance of the section in statutory form if it has not already done so. In most cases, statutes already exist which carry forward the substance of these sections.
4. **Deleted** indicates that the section is obsolete or otherwise unnecessary.
5. **Retained** indicates that the section is carried forward without change.

Section	Disposition

Article I
Bill of Rights

Article I of the Constitution of 1876 is retained in full.

Article II
Separation of Powers

Sec. 1 *Division of Powers; Three Separate Departments; Exercise of Power Properly Attached to Other Departments.*	**Revised:** See Article II, Section 1, Separation of Powers.

Article III
The Legislature

Sec. 1 *Senate and House of Representatives.*	**Reworded:** See Article III, Section 1, The Legislature.
Sec. 2 *Membership of Senate and House of Representatives.*	**Revised:** See Article III, Section 2, The Legislature.
Sec. 3 *Election and Term of Office of Senators.*	**Revised:** See Article III, Section 4(b), The Legislature.
Sec. 4 *Election and Term of Members of House of Representatives.*	**Revised:** See Article III, Section 4(c), The Legislature.
Sec. 5 *Meetings; Order of Business.*	**Revised:** See Article III, Section 7(a), The Legislature.

Sec. 6 *Qualifications of Senators.*	**Revised:** See Article III, Section 3(a), The Legislature.
Sec. 7 *Qualifications of Representatives.*	**Reworded:** See Article III, Section 3(b), The Legislature.
Sec. 8 *Each House Judge of Qualifications and Election; Contests.*	**Reworded:** See Article III, Section 8(a), The Legislature.
Sec. 9 *President Pro Tempore of Senate; Speaker of House of Representatives.*	**Reworded:** See Article III, Section 8(c) and (d), The Legislature.
Sec. 10 *Quorum; Adjournments From Day to Day; Compelling Attendance.*	**Reworded:** See Article III, Section 8(f), The Legislature.
Sec. 11 *Rules of Procedure; Expulsion of Member.*	**Revised:** See Article III, Section 8(b) and (h), The Legislature.
Sec. 12 *Journals of Proceedings; Entering Yeas and Nays.*	**Reworded:** See Article III, Section 8(g), The Legislature.
Sec. 13 *Vacancies; Writs of Election.*	**Revised:** See Article III Section 4(d), The Legislature.
Sec. 14 *Privileged From Arrest.*	**Statutory:** See Transition Schedule, Section 2.
Sec. 15 *Disrespectful or Disorderly Conduct; Obstruction of Proceedings.*	**Deleted.**
Sec. 16 *Open Sessions.*	**Revised:** See Article III, Section 7(b), The Legislature.
Sec. 17 *Adjournments.*	**Reworded:** See Article III, Section 7(c), The Legislature.
Sec. 18 *Ineligibility for Certain Other Offices; Interest in Contracts.*	**Revised:** See Article III, Section 10(a), (b), and (d), The Legislature.
Sec. 19 *Ineligibility of Persons Holding Other Offices.*	**Revised:** See Article III, Section 3(d), The Legislature.
Sec. 20 *Collectors of Taxes; Persons Entrusted with Public Moneys; Ineligibility.*	**Statutory.**
Sec. 21 *Words Spoken in Debate.*	**Reworded:** See Article III, Section 9, The Legislature.

Sec. 22 *Disclosure of Private Interest in Measure or Bill; Not to Vote.*	**Reworded:** See Article III, Section 10(c), The Legislature.
Sec. 23 *Removal From District or County From Which Elected.*	**Revised:** See Article X, Section 2, General Provisions.
Sec. 23a *John Tarleton Contract Validated.*	**Statutory.**
Sec. 24 *Compensation and Expenses of Members of Legislature.*	**Revised:** See Article III, Section 6, The Legislature.
Sec. 25 *Senatorial Districts.*	**Revised:** See Article III, Section 5(b), (c), and (d), The Legislature.
Sec. 26 *Apportionment of Members of House of Representatives.*	**Revised:** See Article III, Section 5(b), (c), and (d), The Legislature.
Sec. 26a *Counties With More Than Seven Representatives.*	**Deleted.**
Sec. 27 *Elections.*	**Reworded:** See Article III, Section 4(a), The Legislature.
Sec. 28 *Time For Apportionment; Apportionment by Legislative Redistricting Board.*	**Revised:** See Article III, Section 5(a), (e), (f), (g), and (h), The Legislature.
Sec. 29 *Enacting Clause of Laws.*	**Statutory.**
Sec. 30 *Laws Passed by Bill; Amendments Changing Purpose.*	**Reworded:** See Article III, Section 11(a) and (b), The Legislature.
Sec. 31 *Origination in Either House; Amendment.*	**Reworded:** See Article III, Section 11(b), The Legislature.
Sec. 32 *Reading on Three Several Days; Suspension of Rule.*	**Reworded:** See Article III, Section 11(f), The Legislature.
Sec. 33 *Revenue Bills.*	**Revised:** See Article III, Section 11(b), The Legislature.
Sec. 34 *Defeated Bills and Resolutions.*	**Reworded:** See Article III, Section 11(g), The Legislature.
Sec. 35 *Subjects and Titles of Bills.*	**Revised:** See Article III, Section 11(c), The Legislature.

Sec. 36 *Revival or Amendment by Reference; Reenactment and Publication at Length.*	**Reworded:** See Article III, Section 11(d), The Legislature.
Sec. 37 *Reference to Committee and Report.*	**Revised:** See Article III, Section 11(e), The Legislature.
Sec. 38 *Signing Bills and Joint Resolutions; Entry on Journals.*	**Reworded:** See Article III, Section 11(h), The Legislature.
Sec. 39 *Time of Taking Effect of Laws; Emergencies; Entry on Journal.*	**Revised:** See Article III, Section 11(i), The Legislature.
Sec. 40 *Special Sessions; Subjects of Legislation; Duration.*	**Revised:** See Article IV, Section 11, The Executive.
Sec. 41 *Elections by Senate and House of Representatives.*	**Revised:** See Article III, Section 8(e), The Legislature.
Sec. 42 *Laws Carrying Provisions of Constitution Into Effect.*	Repealed August 5, 1969.
Sec. 43 *Revision of Laws.*	**Statutory.**
Sec. 44 *Compensation of Public Officers, Servants, Agents and Contractors; Extra Compensation; Unauthorized Claims; Unauthorized Employment.*	**Revised:** See Article VIII, Section 7, Finance.
Sec. 45 *Change of Venue in Civil and Criminal Cases.*	**Statutory.**
Sec. 46 *Vagrant Laws.*	Repealed August 5, 1969.
Sec. 47 *Lotteries and Gift Enterprises.*	**Revised:** See Article X, Section 19, General Provisions.
Sec. 48 *Taxes; Restrictions on Levy; Permissible Purposes.*	Repealed August 5, 1969.
Sec. 48a *Fund For Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities.*	**Revised:** See Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 48b *Teacher Retirement System of Texas.*	**Revised:** See Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 48d *Rural Fire Prevention Districts.*	**Statutory:** See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 49 *State Debt.*	**Revised:** See Article VIII, Section 5, Finance.
Sec. 49a *Financial Statement and Estimate by Comptroller of Public Accounts; Limitation of Appropriations; Bonds.*	**Reworded:** See Article VIII, Section 6(c) and (d), Finance.
Sec. 49b *Veterans' Land Program.*	**Statutory:** See Transition Schedule, Sections 3 and 16.
Sec. 49c *Texas Water Development Board; Bond Issue; Texas Water Development Fund.*	**Statutory:** See Transition Schedule, Sections 3 and 16.
Sec. 49d *Acquisition and Development of Water Storage Facilities; Filtration, Treatment and Transportation of Water; Enlargement of Reservoirs.*	**Statutory:** See Transition Schedule, Sections 3 and 16.
Sec. 49d-1 *Additional Texas Water Development Bonds.*	**Statutory:** See Transition Schedule, Sections 3 and 16.
Sec. 49e *Texas Park Development Fund.*	**Statutory:** See Transition Schedule, Section 3.
Sec. 50 *Loan or Pledge of Credit of State.*	**Revised:** See Article VIII, Section 7, Finance.
Sec. 50a *State Medical Education Board; State Medical Education Fund; Purpose.*	**Statutory.**
Sec. 50b *Student Loans.*	**Statutory:** See Transition Schedule, Section 3.
Sec. 50b-1 *Additional Student Loans.*	**Statutory:** See Transition Schedule, Section 3.
Sec. 51 *Grants of Public Money Prohibited; Exceptions.*	**Revised:** See Article VIII, Section 7, Finance.
Sec. 51a *Assistance Grants and Medical Care for Needy Aged, Disabled and Blind Persons, and Needy Children; Federal Funds; Supplemental Appropriations.*	**Statutory.**
Sec. 51b *State Building Commission; State Building Fund.*	**Statutory.**
Sec. 51c *Aid or Compensation to Persons Improperly Fined or Imprisoned.*	**Statutory.**

Sec. 51d *Payment of Assistance to Survivors of Law Enforcement Officers.*	**Statutory.**
Sec. 51e *Municipal Retirement Systems and Disability Pensions.*	**Statutory:** See Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 51f *State-Wide Retirement and Disability System for Municipal Officers and Employees.*	**Statutory:** See Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 51g *Social Security Coverage of Proprietary Employees of Political Subdivisions.*	**Statutory.**
Sec. 52 *Counties, Cities or other Political Corporations or Subdivisions; Lending Credit; Grants.*	**Revised:** See Article VIII, Section 7, Finance; Transition Schedule, Section 4.
Sec. 52a *Vacant.*	
Sec. 52b *Loan of State's Credit or Grant of Public Money for Toll Road Purposes.*	**Revised:** See Article VIII, Section 7, Finance.
Sec. 52c *Vacant.*	
Sec. 52d *County or Road District Tax for Road Purposes.*	**Statutory:** See Transition Schedule, Section 4.
Sec. 52e *Payment of Medical Expenses of Law Enforcement Officials.*	**Statutory:** See Transition Schedule, Section 4.
Sec. 52e *Dallas County Bond Issues for Roads and Turnpikes.*	**Statutory:** See Transition Schedule, Section 4.
Sec. 53 *County or Municipal Authorities; Extra Compensation; Unauthorized Claims.*	**Deleted.**
Sec. 54 *Liens on Railroad, Release, Alienation or Change.*	**Deleted.**
Sec. 55 *Release or Extinguishment of Indebtedness to State, County, Subdivision or Municipal Corporation.*	**Statutory.**
Sec. 56 *Local and Special Laws.*	**Revised:** See Article III, Section 12, The Legislature.

Sec. 57 *Notice of Intention to Apply for Local or Special Law.*	**Statutory.**
Sec. 58 *Seat of Government.*	**Reworded:** See Article III, Section 7(d), The Legislature.
Sec. 59 *Workmen's Compensation Insurance for State Employees.*	**Statutory.**
Sec. 60 *Workmen's Compensation Insurance for Employees of Counties and Other Political Subdivisions.*	**Statutory.**
Sec. 61 *Workmen's Compensation Insurance for Municipal Employees.*	**Statutory.**
Sec. 61 *Minimum Salaries.*	**Deleted.**
Sec. 62 *Continuity of State and Local Governmental Operations.*	**Deleted.**
Sec. 63 *Consolidation of Governmental Functions of Political Subdivisions in Counties of 1,200,000 or More.*	**Deleted.**
Sec. 64 *Consolidation of Governmental Offices and Functions.*	**Revised:** See Article IX, Section 12, Local Government.
Sec. 65 *Public Bonds; Interest Rate; Conflicting Rates Repealed.*	**Statutory:** See Transition Schedule, Section 3.

Article IV
The Executive

Sec. 1 *Officers Constituting the Executive Department.*	**Revised:** See Article IV, Section 1, The Executive.
Sec. 2 *Election of Officers of Executive Department.*	**Revised:** See Article IV, Section 2, The Executive.
Sec. 3 *Returns of Election; Declaration of Election; Tie Votes; Contests.*	**Revised:** See Article IV, Section 3, The Executive
Sec. 3a *Death, Disability or Failure to Qualify of Person Receiving Highest Vote.*	**Revised:** See Article IV, Section 5, The Executive.

Sec. 4 *Installation of Governor; Term; Eligibility.*	**Revised:** See Article IV, Section 4, The Executive.
Sec. 5 *Compensation of Governor.*	**Revised:** See Article IV, Section 7, The Executive.
Sec. 6 *Holding Other Offices; Practice of Profession; Other Salary Reward or Compensation.*	**Revised:** See Article IV, Section 8, The Executive.
Sec. 7 *Commander-in-Chief Military Forces; Calling Forth Militia.*	**Revised:** See Article IV, Section 9, The Executive.
Sec. 8 *Convening Legislature on Extraordinary Occasions.*	**Revised:** See Article IV, Section 11, The Executive.
Sec. 9 *Governor's Message and Recommendations; Accounting for Public Money; Estimates of Money Required.*	**Revised:** See Article IV, Sections 12, 14, 15, and 17, The Executive.
Sec. 10 *Execution of Laws; Conduct of Business With Other States and United States.*	**Revised:** See Article IV, Section 10, The Executive.
Sec. 11 *Reprieves, Commutations and Pardons; Remission of Fines and Forfeitures.*	**Revised:** See Article IV, Section 18, The Executive.
Sec. 11a *Suspension of Sentence and Probation.*	**Reworded:** See Article V, Section 15, The Judiciary.
Sec. 12 *Vacancies in State or District Offices.*	**Revised:** See Article IV, Section 24, The Executive.
Sec. 13 *Residence of Governor.*	**Revised:** See Article IV, Section 2, The Executive.
Sec. 14 *Approval or Disapproval of Bills; Return and Reconsideration; Failure to Return; Disapproval of Items of Appropriation.*	**Revised:** See Article IV, Section 13, The Executive.
Sec. 15 *Approval or Disapproval of Orders, Resolutions or Votes.*	**Revised:** See Article IV, Section 13, The Executive.
Sec. 16 *Lieutenant Governor.*	**Revised:** See Article IV, Sections 2, 5, and 19, The Executive.
Sec. 17 *Death, Resignation, Refusal to Serve, Removal, Inability to Serve, Impeachment or Absence; Compensation.*	**Revised:** See Article IV, Sections 5 and 7, The Executive.

Sec. 18 ***Restrictions and Inhibitions.***	**Deleted.**
Sec. 19 ***Seal of State.***	**Reworded:** See Article IV, Section 26, The Executive.
Sec. 20 ***Commissions.***	**Reworded:** See Article IV, Section 26, The Executive.
Sec. 21 ***Secretary of State.***	**Revised:** See Article IV, Sections 2, 7, and 20, The Executive.
Sec. 22 ***Attorney General.***	**Revised:** See Article IV, Sections 2, 7, and 21, The Executive.
Sec. 23 ***Comptroller of Public Accounts; Treasurer; Commissioner of General Land Office; Fees, Costs and Perquisites.***	**Revised:** See Article IV, Sections 1, 2, 7, 22, and 23, The Executive.
Sec. 24 ***Accounts and Reports; Information To, and Inspection By, Governor; Perjury.***	**Revised:** See Article IV, Section 14, The Executive.
Sec. 25 ***Custodians of Public Funds; Breaches of Trust and Duty.***	**Revised:** See Article X, Sections 6 and 7, General Provisions.
Sec. 26 ***Notaries Public.***	**Statutory.**

Article V
The Judiciary

Sec. 1 ***Judicial Power; Courts in Which Vested.***	**Revised:** See Article V, Section 1, The Judiciary.
Sec. 1a ***Retirement, Censure, and Removal of Justices and Judges; State Judicial Qualifications Commission.***	**Revised:** See Article V, Sections 10 and 11, The Judiciary; Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 2 ***Supreme Court; Justices; Sections; Eligibility; Election; Vacancies.***	**Revised:** See Article V, Sections 2(a), 7, 8(d), and 9, The Judiciary.
Sec. 3 ***Jurisdiction of Supreme Court; Writs; Sessions; Clerk.***	**Reworded:** See Article V, Section 13(a), The Judiciary.
Sec. 3a ***Sessions of Court.***	**Statutory.**
Sec. 4 ***Court of Criminal Appeals; Judges.***	**Deleted:** See Transition Schedule, Section 19.

Sec. 5 *Jurisdiction of Court of Criminal Appeals; Terms of Court; Clerk.*	**Deleted:** See Transition Schedule, Section 19.
Sec. 6 *Courts of Civil Appeals; Transfer of Cases; Terms of Judges.*	**Revised:** See Article V, Sections 3, 7, 8(d), and 9, The Judiciary. **Reworded:** See Article V, Section 13(a), The Judiciary.
Sec. 7 *Judicial Districts; District Judges; Terms or Sessions; Absence, Disability or Disqualification of Judge.*	**Revised:** See Article V, Sections 4, 7, 8(f), and 9, The Judiciary.
Sec. 8 *Jurisdiction of District Court.*	**Statutory:** See Transition Schedule, Section 19.
Sec. 9 *Clerk of District Court.*	**Revised:** See Article IX, Section 3(b), Local Government.
Sec. 10 *Trial by Jury.*	**Revised:** See Article V, Section 14(e), The Judiciary.
Sec. 11 *Disqualification of Judges; Exchange of Districts; Holding Court for Other Judges.*	**Statutory.**
Sec. 12 *Judges to be Conservators of the Peace; Style of Writs and Process; Prosecutions in Name of State; Conclusion.*	**Statutory.**
Sec. 13 *Number of Grand and Petit Jurors; Number Concurring.*	**Revised:** See Article V, Section 14(a) and (b), The Judiciary.
Sec. 14 *Judicial Districts and Time of Holding Court Fixed by Ordinance.*	**Deleted.**
Sec. 15 *County Court; County Judge.*	**Revised:** See Article V, Sections 5, 7, 8(f), and 9, The Judiciary.
Sec. 16 *County Courts; Jurisdiction; Appeals to Court of Civil Appeals and Court of Criminal Appeals; Disqualification of Judge.*	**Statutory:** See Transition Schedule, Section 19.
Sec. 17 *Terms of County Court; Prosecutions; Juries.*	**Revised:** See Article V, Section 14(c), The Judiciary.
Sec. 18 *Division of Counties into Precincts; Election of Constable and Justice of the Peace; County Commissioners and County Commissioners Court.*	**Revised:** See Article V, Sections 6 and 8(g), The Judiciary; Article IX, Section 3(a), Local Government

Sec. 19 *Justices of the Peace; Jurisdiction; Appeals; Ex Officio Notaries Public; Times and Places of Holding Court.*	**Statutory:** See Transition Schedule, Section 19.
Sec. 20 *County Clerk.*	**Revised:** See Article IX, Section 3(b), Local Government.
Sec. 21 *County Attorneys; District Attorneys.*	**Revised:** See Article IX, Section 3(c), Local Government.
Sec. 22 *Changing Jurisdiction of County Courts.*	**Statutory.**
Sec. 23 *Sheriffs.*	**Revised:** See Article IX, Section 3(b), Local Government.
Sec. 24 *Removal of County Officers.*	**Reworded:** See Article V, Section 13(a), The Judiciary. **Revised:** See Article IX, Section 3(e), Local Government.
Sec. 25 *Rules of Court.*	**Revised:** See Article V, Section 2(c), The Judiciary.
Sec. 26 *Criminal Cases; No Appeal by State*	**Retained:** See Article V, Section 16, The Judiciary.
Sec. 27 *Transfer of Cases Pending at Adoption of Constitution.*	**Deleted.**
Sec. 28 *Vacancies in Judicial Offices.*	**Revised:** See Article V, Section 8(d), (f), and (g), The Judiciary.
Sec. 29 *County Court; Terms of Court; Probate Business; Commencement of Prosecutions; Jury.*	**Statutory.**
Sec. 30 *Judges of Courts of County-Wide Jurisdiction; Criminal District Attorneys.*	**Statutory.**

Article VI
Suffrage

Sec. 1 *Classes of Persons Not Allowed to Vote.*	**Revised:** See Article VI, Section 1, Suffrage.
Sec. 2 *Qualified Elector; Registration; Absentee Voting.*	**Revised:** See Article VI, Sections 1 and 2, Suffrage.
Sec. 2a *Voting for Presidential and Vice-Presidential Electors and Statewide Officers; Qualified Persons Except for Residence Requirements.*	**Revised:** See Article VI, Sections 1 and 2, Suffrage.

Sec. 3 *Municipal Elections; Qualifications of Voters.*	**Revised:** See Article VI, Sections 1 and 2, Suffrage.
Sec. 3a *Bond Issues; Loans of Credit; Expenditures; Assumption of Debts; Qualifications of Voters.*	**Statutory.**
Sec. 4 *Election by Ballot; Numbering, Fraud and Purity of Elections; Registration of Voters.*	**Revised:** See Article VI, Sections 1 and 2, Suffrage.
Sec. 5 *Privilege of Voters from Arrest.*	**Statutory.**

Article VII
Education

Sec. 1 *Support and Maintenance of System of Public Free Schools.*	**Revised:** See Article VII, Section 1, Education.
Sec. 2 *Perpetual School Fund.*	**Reworded:** See Article VII, Section 2, Education.
Sec. 3 *Taxes for Benefit of Schools; School Districts.*	**Revised:** See Article VII, Section 2, Education. **Reworded:** See Article VII, Sections 4 and 6, Education.
Sec. 3a *Validation; Formation of Districts; Bonds; Levy of Tax Authorized; Election of Trustees.*	Repealed August 5, 1969.
Sec. 3b *Independent School Districts and Junior College Districts; Taxes and Bonds; Changes in Boundaries.*	**Statutory:** See Transition Schedule, Sections 3 and 8.
Sec. 4 *Sale of Lands; Investment of Proceeds.*	**Reworded:** See Article VII, Section 2, Education.
Sec. 5 *Permanent School Fund; Available School Fund; Use of Funds; Distribution of Available School Fund.*	**Reworded:** See Article VII, Section 2, Education. **Revised:** See Article VII, Section 3, Education.
Sec. 6 *County School Lands; Proceeds of Sales; Investment; Available School Fund.*	**Statutory.**
Sec. 6a *County Agricultural or Grazing School Land Subject to Tax.*	**Statutory.**
Sec. 6b *Additional Grant of Power to County.*	**Statutory:** See Transition Schedule, Section 4.

Sec. 7 *Separate Schools.*	Repealed August 5, 1969.
Sec. 8 *State Board of Education.*	**Revised:** See Article VII, Section 5, Education.
Sec. 9 *Lands for Benefit of Asylums; Permanent Fund; Sale and Investment of Proceeds.*	**Statutory.**
Sec. 10 *Establishment of University; Agricultural and Mechanical Department.*	**Revised:** See Article VII, Section 7, Education.
Sec. 11 *Permanent University Fund; Investment; Alternate Sections of Railroad Grant.*	**Revised:** See Article VII, Section 8(a) and (c), Education.
Sec. 11a *Investment of Permanent University Fund.*	**Revised:** See Article VII, Section 8(c) and (d), Education.
Sec. 12 *Sale of Lands.*	**Reworded:** See Article VII, Section 8(b), Education.
Sec. 13 *Agricultural and Mechanical College.*	**Revised:** See Article VII, Section 7, Education.
Sec. 14 *College or Branch University for Colored Youths; Taxes and Appropriations.*	**Revised:** See Article VII, Section 9(c), Education.
Sec. 15 *Grant of Additional Lands to University.*	**Reworded:** See Article VII, Section 8(a), Education.
Sec. 16 *Terms of Office.*	**Statutory.**
Sec. 16 *County Taxation of University Lands.*	**Revised:** See Article VIII, Section 2, Finance.
Sec. 17 *State Ad Valorem Tax for Pensions and for Permanent Improvements at Institutions of Higher Learning.*	**Revised:** See Article VII, Section 10, Education.
Sec. 18 *Texas A&M University System; University of Texas System; Bonds or Notes Payable From Income of Permanent University Fund.*	**Revised:** See Article VII, Section 9, Education.

Article VIII
Finance

Sec. 1 *Equality and Uniformity; Tax in Proportion to Value; Poll Tax; Occupation Taxes; Income Tax; Exemption of Household Furniture.*	**Revised:** See Article VIII, Sections 1, 2(b), and 4, Finance.

Sec. 1a *No State Ad Valorem Tax Levy; County Levy for Roads and Flood Control; Tax Donations.*	**Statutory.**
Sec. 1b *Residence Homestead Exemption.*	**Revised:** See Article VIII, Section 2(b) and (d), Finance.
Sec. 1c *Effectiveness of Resolution.*	**Deleted.**
Sec. 1d *Assessment of Lands Designated for Agricultural Use.*	**Statutory:** See Transition Schedule, Section 7.
Sec. 1e *Abolition of Ad Valorem Property Tax.*	**Revised:** See Article VIII, Section 1, Finance.
Sec. 2 *Occupation Taxes, Equality and Uniformity; Exemptions from Taxation.*	**Revised:** See Article VIII, Sections 1 and 2(c) and (f), Finance.
Sec. 3 *General Laws; Public Purposes.*	**Revised:** See Article VIII, Sections 1 and 7, Finance.
Sec. 4 *Surrender Suspension of Taxing Power.*	**Revised:** See Article VIII, Section 1, Finance.
Sec. 5 *Railroad Property; Liability to Municipal Taxation.*	**Statutory.**
Sec. 6 *Withdrawal of Money from Treasury; Duration of Appropriation.*	**Reworded:** See Article VIII, Section 6(a) and (b), Finance.
Sec. 7 *Borrowing, Withholding or Diverting Special Funds.*	**Statutory.**
Sec. 7a *Revenues From Motor Vehicle Registration Fees and Taxes on Motor Fuels and Lubricants; Purposes for Which Used.*	**Revised:** See Article VIII, Section 3, Finance. **Reworded:** See Article VII, Section 4, Education.
Sec. 8 *Railroad Companies; Assessment and Collection of Taxes.*	**Statutory.**
Sec. 9 *Maximum State Tax; County, City and Town Levies; County Funds; Local Road Laws.*	**Statutory:** See Transition Schedule, Section 6.
Sec. 10 *Release from Payment of Taxes.*	**Statutory.**
Sec. 11 *Place of Assessment; Value of Property Not Rendered by Owner.*	**Statutory.**

Sec. 12 *Unorganized Counties; Assessment and Collection of Taxes.*	**Repealed August 5, 1969.**
Sec. 13 *Sales of Lands and Other Property for Taxes; Redemption.*	**Statutory.**
Sec. 14 *Assessor and Collector of Taxes.*	**Revised:** See Article IX, Section 3(b), Local Government.
Sec. 15 *Lien of Assessment; Seizure and Sale of Property.*	**Statutory.**
Sec. 16 *Sheriff to Be Assessor and Collector of Taxes; Counties Having 10,000 or More Inhabitants.*	**Deleted.**
Sec. 16a *Assessor-Collector of Taxes; Counties Having Less Than 10,000 Inhabitants.*	**Deleted.**
Sec. 17 *Specification of Subjects Not Limitation of Legislature's Power.*	**Deleted.**
Sec. 18 *Equalization of Valuations; Classification of Lands.*	**Statutory.**
Sec. 19 *Farm Products and Family Supplies; Exemption.*	**Revised:** See Article VIII, Section 2(a), Finance.
Sec. 20 *Fair Cash Market Value Not to Be Exceeded; Discounts for Advance Payment.*	**Statutory.**

Article IX
Counties

Sec. 1 *Creation of Counties.*	**Revised:** See Article IX, Section 1, Local Government.
Sec. 1a *Counties Bordering on Gulf of Mexico or Tidewater Limits Thereof; Regulation of Motor Vehicles on Beaches*	**Statutory.**
Sec. 2 *Removal of County Seats.*	**Revised:** See Article IX, Section 1, Local Government.
Sec. 3 *County Home Rule Charters.*	Repealed August 5, 1969.

Sec. 4 *County-Wide Hospital Districts.*	**Statutory:** See Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 5 *City of Amarillo; Wichita County; Jefferson County; Creation of Hospital Districts.*	**Statutory:** See Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 6 *Lamar County Hospital District; Abolition; Transfer of Assets.*	**Statutory.**
Sec. 7 *Hidalgo County; Hospital District; Creation; Tax Rate.*	**Statutory:** See Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 8 *County Commissioners Precinct No. 4 of Comanche County; Hospital District; Creation; Tax Rate.*	**Statutory:** See Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 9 *Hospital Districts; Creation, Operation, Powers, Duties and Dissolution.*	**Statutory:** See Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 10	*Vacant.*
Sec. 11 *Hospital Districts; Ochiltree, Castro, Hansford and Hopkins Counties; Creation, Taxes.*	**Statutory:** See Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 12 *Airport Authorities.*	**Statutory:** See Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 13 *Participation of Municipalities and Other Political Subdivisions in Establishment of Mental Health, Mental Retardation or Public Health Services.*	**Statutory.**

Article X
Railroads

Sec. 1 *Construction and Operation of Road; Connnections.*	Repealed August 5, 1969.
Sec. 2 *Public Highways; Common Carriers; Regulation of Tariffs, Correction of Abuses and Prevention of Discrimination and Extortion; Means and Agencies.*	**Statutory.**
Sec. 3 through 9	Repealed August 5, 1969.

Article XI
Municipal Corporations

Sec. 1 *Counties as Legal Subdivisions*	**Revised:** See Article IX, Section 1, Local Government.

Sec. 2 *Jails, Court-Houses, Bridges and Roads.*	**Statutory.**
Sec. 3 *Subscriptions to Corporate Capital; Donations; Loan of Credit.*	**Revised:** See Article VIII, Section 7, Finance.
Sec. 4 *Cities and Towns With Population of 5,000 or Less; Chartered by General Law; Taxes; Fines, Forfeitures and Penalties.*	**Revised:** See Article IX, Section 5, Local Government.
Sec. 5 *Cities of 5,000 or More Population; Adoption or Amendment of Charters; Taxes; Debt Restrictions.*	**Revised:** See Article IX, Section 6, Local Government.
Sec. 6 *Taxes to Pay Interest and Create Sinking Fund to Satisfy Indebtedness.*	**Deleted.**
Sec. 7 *Counties and Cities on Gulf of Mexico; Tax for Sea Walls, Breakwaters and Sanitation; Bonds; Condemnation of Right of Way.*	**Statutory.**
Sec. 8 *Donation of Portion of Public Domain to Aid in Construction of Sea Walls or Breakwaters.*	**Statutory.**
Sec. 9 *Property Exempt from Forced Sale and from Taxation.*	**Revised:** See Article VIII, Section 2(a), Finance.
Sec. 10 *City or Town as Independent School District; Maintenance of Institution of Learning.*	Repealed August 5, 1969.
Sec. 11 *Maximum Four Year Terms of Office For Elective and Appointive City Officials Authorized.*	**Statutory:** See Transition Schedule, Section 13.

Article XII
Private Corporations

Sec. 1 *Creation by General Laws.*	**Retained:** See Article X, Section 15, General Provisions.
Sec. 2 *General Laws to be Enacted; Protection of Public and Stockholders.*	**Statutory.**
Sec. 3, 4, 5, 7	Repealed August 5, 1969.
Sec. 6 *Consideration for Stock or Bonds; Fictitious Increase.*	**Statutory.**

Article XIII
Spanish & Mexican Land Titles

Repealed August 5, 1969.

Article XIV
Public Lands and Land Office

Sec. 1
General Land Office.

Revised:
See Article IV, Section 23, The Executive.

Sec. 2 through 8

Repealed August 5, 1969.

Article XV
Impeachment

Sec. 1
Power of Impeachment.

Revised:
See Article III, Section 13(a), The Legislature.

Sec. 2
Trial of Impeachment of Certain Officials by Senate.

Revised:
See Article III, Section 13(a), The Legislature.

Sec. 3
Oath of Affirmation of Senators; Concurrence of Two-Thirds Required.

Revised:
See Article III, Section 13(c), The Legislature.

Sec. 4
Judgment; Indictment, Trial and Punishment.

Reworded:
See Article III, Section 13(d), The Legislature.

Sec. 5
Suspension Pending Impeachment; Provisional Appointments.

Reworded:
See Article III, Section 13(b), The Legislature.

Sec. 6
Judges of District Court; Removal by Supreme Court.

Revised:
See Article V, Section 11(b), The Judiciary.

Sec. 7
Removal of Officers When Mode Not Provided in Constitution.

Revised:
See Article X Sections 6 and 7, General Provisions.

Sec. 8
Removal of Judges by Governor on Address of Two-Thirds of Each House of Legislature.

Revised:
See Article V, Section 11(a), The Judiciary.

Article XVI
General Provisions

Sec. 1
Official Oath.

Revised:
See Article X, Section 1, General Provisions

Sec. 2 *Exclusion from Office, Jury Service and Right of Service; Protection of Right of Service.*	**Revised:** See Article X, Sections 6 and 7, General Provisions.
Sec. 3 *Fines and Costs; Discharge by Manual Labor.*	Repealed August 5, 1969.
Sec. 4 *Dueling.*	Repealed August 5, 1969.
Sec. 5 *Disqualification to Office by Giving or Offering Bribe.*	**Revised:** See Article X, Sections 6 and 7, General Provisions.
Sec. 6 *Appropriations for Private Purposes; State Participation in Programs Financed With Private or Federal Funds for Rehabilitation of Blind, Crippled, Physically or Mentally Handicapped Persons.*	**Revised:** See Article VIII, Section 7, Finance.
Sec. 7 *Issuance of Paper Intended to Circulate as Money.*	Repealed August 5, 1969.
Sec. 8 *County Poor House and Farm.*	**Statutory.**
Sec. 9 *Forfeiture of Residence by Absence on Public Business.*	**Reworded:** See Article X, Section 4, General Provisions.
Sec. 10 *Deductions from Salary for Neglect of Duty.*	**Revised:** See Article X, Section 6.
Sec. 11 *Usury; Rate of Interest in Absence of Contract.*	**Statutory.**
Sec. 12 *Members of Congress; Officers of United States or Foreign Power; Ineligibility to Hold Office.*	**Revised:** See Article III, Section 3(d), The Legislature; Transition Schedule, Section 17.
Sec. 13 *Arbitration.*	Repealed August 5, 1969.
Sec. 14 *Civil Officers; Residence; Location of Offices.*	**Revised:** See Article X, Section 2, General Provisions.
Sec. 15 *Separate and Community Property of Husband and Wife.*	**Revised:** See Article X, Section 11, General Provisions.
Sec. 16 *Corporations with Banking and Discounting Privileges.*	**Revised:** See Article X, Section 16, General Provisions.
Sec. 17 *Officers to Serve Until Successors Qualified.*	**Revised:** See Article X, Section 3, General Provisions.

Sec. 18 ***Existing Rights of Property and of Action; Rights or Actions Not Revived.***	**See Transition Schedule, Section 2.**
Sec. 19 *Qualifications of Jurors.*	**Reworded:** See Article V, Section 14(d), The Judiciary.
Sec. 20 *Mixed Alcoholic Beverages; Intoxicating Liquors.*	**Revised:** See Article X, Section 17, General Provisions.
Sec. 21 *Public Printing and Binding; Repairs and Furnishings; Contracts.*	**Statutory.**
Sec. 22 *Fence Laws.*	**Statutory.**
Sec. 23 *Regulation of Live Stock; Protection of Stock Raisers; Inspections; Brands.*	**Statutory.**
Sec. 24 *Roads and Bridges.*	**Statutory.**
Sec. 25 *Drawbacks and Rebatement to Carriers, Shippers, Merchants, Etc.*	**Statutory.**
Sec. 26 *Homicide; Liability in Damages.*	**Statutory.**
Sec. 27 *Vacancies Filled for Unexpired Term.*	**Reworded:** See Article X, Section 5, General Provisions.
Sec. 28 *Wages Not Subject to Garnishment.*	**Reworded:** See Article X, Section 14, General Provisions.
Sec. 29 *Barratry.*	Repealed August 5, 1969.
Sec. 30 *Duration of Offices; Railroad Commission.*	**Statutory.**
Sec. 30a *Members of Boards; Terms of Office.*	**Revised:** See Article IV, Section 25, The Executive.
Sec. 30b *Civil Service Offices; Duration.*	**Deleted.**
Sec. 31 *Practitioners of Medicine.*	**Retained:** See Article X, Section 18, General Provisions.
Sec. 32 *Board of Health and Vital Statistics.*	Repealed August 5, 1969.

Sec. 33 *Salary or Compensation Payments to Agents, Officers or Appointees Holding Other Offices; Exceptions; Non-Elective Officers and Employees.*	**Statutory:** See Transition Schedule, Section 17.
Sec. 34 *Leases and Sales to United States Government for Military Purposes.*	Repealed August 5, 1969.
Sec. 35 *Protection of Laborers on Public Buildings and Public Works.*	Repealed August 5, 1969.
Sec. 36 *Payment or Funding of Amounts Due Teachers.*	Repealed August 5, 1969.
Sec. 37 *Liens of Mechanics, Artisans and Material Men.*	**Reworded:** See Article X, Section 20, General Provisions.
Sec. 38 *Commissioner of Insurance, Statistics and History.*	Repealed August 5, 1969.
Sec. 39 *Appropriations for Historical Memorials.*	**Statutory.**
Sec. 40 *Holding More than One Office; Exceptions; Right to Vote.*	**Statutory:** See Transition Schedule, Section 17.
Sec. 41 *Bribery and Acceptance of Bribes.*	**Revised:** See Article X, Sections 6 and 7, General Provisions.
Sec. 42 *nebriate Asylum.*	Repealed August 5, 1969.
Sec. 43 *Exemptions from Public Duty or Service.*	**Statutory.**
Sec. 44 *County Treasurer and County Surveyor.*	**Revised:** See Article IX, Section 3(b), Local Government.
Sec. 45 *Historical Records, Rolls, Correspondence and Other Documents.*	Repealed August 5, 1969.
Sec. 46 *Militia.*	Repealed August 5, 1969.
Sec. 47 *Conscientious Scruples as to Bearing Arms.*	**Statutory.**
Sec. 48 *Existing Laws to Continue in Force.*	See Transition Schedule, Section 2.
Sec. 49 *Protection of Personal Property from Forced Sale.*	**Reworded:** See Article X, Section 13, General Provisions.

Sec. 50 *Homestead; Protection from Forced Sale; Mortgages, Trust Deeds and Liens.*	**Revised:** **See Article X, Section 12, General Provisions.**
Sec. 51 *Amount and Value of Homestead; Uses.*	**Revised:** See Article X, Section 12(b), General Provisions.
Sec. 52 *Descent and Distribution of Homestead; Restrictions on Partition.*	**Revised:** See Article X, Section 12(c), General Provisions.
Sec. 53 *Process and Writs Not Executed at Adoption of Constitution.*	See Transition Schedule, Section 2.
Sec. 54 *Indigent Lunatics, Custody and Maintenance.*	Repealed August 5, 1969.
Sec. 55 *Pensions to Soldiers and Volunteers; Signers of Declaration of Independence; Widows.*	Repealed August 5, 1969.
Sec. 56 *Appropriations for Development and Dissemination of Information Concerning Texas Resources.*	**Statutory.**
Sec. 57 *Public Lands for State Capitol and Public Buildings.*	Repealed August 5, 1969.
Sec. 58 *Prison System.*	Repealed August 5, 1969.
Sec. 59 *Conservation and Development of Natural Resources; Conservation and Reclamation Districts.*	**Statutory:** See Article X, Section 10, General Provisions; Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 60 *Texas Centennial.*	Repealed August 5, 1969.
Sec. 61 *Compensation of District, County and Precinct Officers; Salary or Fee Basis; Disposition of Fees.*	**Revised:** See Article IX, Section 9, Local Government.
Sec. 62 *State and County Retirement, Disability and Death Compensation Funds.*	**Revised:** See Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 63 *Teachers and Employees Retirement Systems, Service Credit.*	**Revised:** See Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 64 *Terms of Office, Certain Offices.*	**Statutory:** See Transition Schedule, Section 13.

Sec. 65
Transitior from Two-Year to Four-Year Terms of Office.

Statutory:
See Transition Schedule, Section 13.

Sec. 66
Texas Rangers; Retirement and Disability Pension System for Rangers Ineligible for Membership in Employees Retirement System.

Revised:
See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Article XVII
Mode of Amending
The Constitution of the State

Sec. 1
Proposed Amendments; Submission to Voters; Adoption.

Revised:
See Article XI, Section 1, Mode of Amending the Constitution of the State.

Sec. 2
Constitutional Revision Commission; Establishment; Report; 1974 Constitutional Convention.

Deleted:
See Article XI, Section 2, Mode of Amending the Constitution of the State.

Appendix F

Tabular Summary of Attendance at Texas Constitutional Revision Commission Public Hearings

Public Hearing	*Date*	*Number Attending*	*Number Testifying*
Amarillo	April 25	334	52
Lubbock	April 26	199	40
El Paso	April 27	78	20
Midland	May 2	173	31
San Angelo	May 3	196	27
San Antonio	May 4	142	31
Arlington	May 11, 12	298	•93
Texarkana	May 16	56	15
Tyler	May 17	142	31
Lufkin	May 18	62	21
Houston	May 25, 26	292	•92
Corpus Christi	June 6	500	74
McAllen	June 7	150	26
Laredo	June 8	238	38
Beaumont	June 15, 16	200	•84
Abilene	June 21	185	34
Wichita Falls	June 22	125	30
Waco	June 28	236	35
Austin	June 29, 30	422	•97
Other Committee hearings			40
	Totals	4,028	911

Average number at ea h public hearing (excluding committee hearings) was 212
Average number testifying (excluding committee hearings) was 36
•Includes those testifying before committees.

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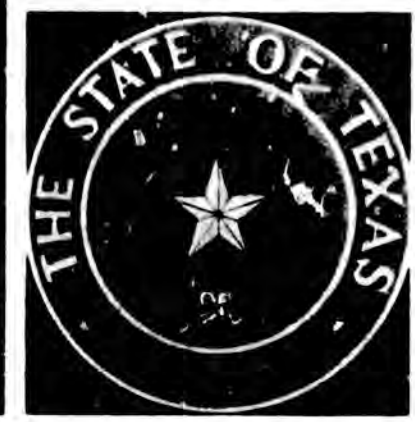
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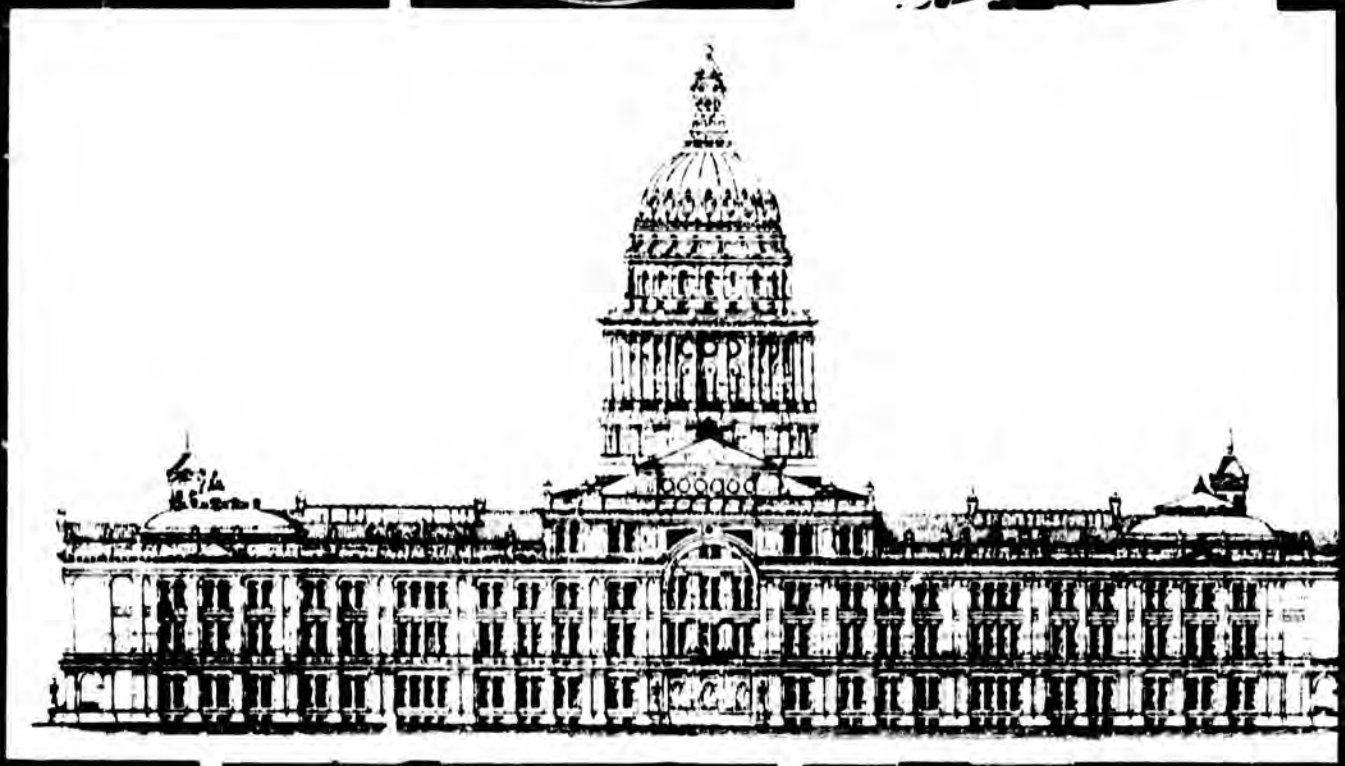


Public Hearing
TEXAS CONSTITUTIONAL
REVISION COMMISSION



SCOMM

#27:16

STATE CONSTITUTION REVISION: THE ILLINOIS OPPORTUNITY

Jefferson B. Fordham
George D. Braden
William N. Cassella, Jr.
Milton L. Rakove

GEORGE A. MILLER LECTURES

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GEORGE A. MILLER LECTURES
December 10–11, 1969

Edited by Samuel K. Gove

INSTITUTE OF GOVERNMENT AND PUBLIC AFFAIRS
UNIVERSITY OF ILLINOIS
FEBRUARY, 1970

FOREWORD

On December 10 and 11, 1969, the George A. Miller Lecture Committee of the University of Illinois at Urbana-Champaign sponsored a two-part lecture-discussion series on problems of state constitutional revision. The timing of the lectures was particularly appropriate because earlier in that week on December 8, the sixth Illinois Constitutional Convention had convened in Springfield.

There is much interest in state constitutional change across the country. Many claim that shortcomings in state constitutions have hindered state governments from coping with their many problems, including those associated with our urban crises. Some states have gone, and others are going, the route of Illinois and convening a constitutional convention to provide a complete review of their constitution. Others are using approaches that provide less extensive reviews.

The lecture-discussion series was aimed at putting the Illinois situation in the national context. Some of the discussion was directed specifically toward Illinois problems, while other parts of it looked at the general picture.

The Institute of Government and Public Affairs wishes to thank the speakers for participating in this important series. Also thanks are extended to Dean John Cribbet of the University of Illinois College of Law who presided at the first night's lecture delivered by Jefferson B. Fordham. The undersigned moderated the second night's panel discussion by George D. Braden, William N. Cassella, Jr., and Milton Rakove.

In publishing these lectures, the Institute hopes that it may present some new insights into the problems facing the delegates to the Illinois Constitutional Convention.

SAMUEL K. GOVE
Director

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LECTURE

STATE CONSTITUTIONALISM IN AMERICA

JEFFERSON B. FORDHAM

I congratulate the people of Illinois upon the opportunity their open constitutional convention affords them for achieving a grand design in the state constitutional order. During the century that has passed since Illinois and other states adopted post–Civil War constitutions, experience has confirmed strongly that, to be viable, a state organic law must be broadly conceived and highly flexible. The role of a state constitution is to provide the basic governmental framework and make the distribution of responsibility and authority for decision-making, which will enable the state to deal, not simply with the perceived problems of today, but also with the as yet undisclosed problems of the future. Surely it is not the office of a state constitution to commit the future by hardening particular policy decisions of the present.

It is rather incongruous, as a matter of political theory, to have, as we do, a national constitution, which is brief and largely general in character, and lengthy state constitutions fraught with policy determinations. I say this because the federal government is one of delegated powers, which, of necessity, must be identified in the organic instrument, whereas residual powers abide in the states. You do not have to spell out the powers of a state legislature; it is enough to say in a constitution that the legislative power is vested in the legislative branch. The power of a state legislature is plenary except as restricted by the federal Constitution, the state constitution, and limitations implicit in the federal system.

In my perspective, it would be difficult to exaggerate the importance of the charge of the Illinois Constitutional Convention of 1969. This statement is premised upon the belief that the states — far from finding themselves well along the road to limbo — have and will continue to bear major responsibilities in the total governmental scheme of things.

A few years ago there was much serious talk to the effect that practically all important decision-making in this country, then and thenceforth, was and would be done at the national level. In this view the states and their legislatures were relegated to a subordinate, insignificant level. Things have changed; such talk is seldom heard these days. There is fresh awareness that, in a huge and complex country such as ours, the responsibilities of government have to be distributed among different levels of government if the total job is to be

manageable. I mean by this, of course, something much more substantial than administrative decentralization. I am referring to distribution of responsibility for policy-making. Beyond this, of course, is the store laid in a democratic society by citizen participation. We are engaged right now in carrying this to the subcommunity level in large urban centers.[1]

We have found that decentralization in the governmental scheme as a whole does not erect jurisdictional barriers. In a given problem area governmental units standing in horizontal, as well as vertical, relationships may have interests which bespeak co operation. Intergovernmental relations are an important factor in responding to problems which do not respect jurisdictional lines.

That the federal government has immense influence over our lives in the spheres both of external affairs and domestic concerns is obvious, but it is no less clear to me that state responsibilities with respect to a congeries of human affairs are of first-rank importance and pervasive influence.

State responsibility for so-called law and order is primary. The principal body of private law is state law. The basic system of criminal justice and law enforcement is the state system. This is emphasized by the Federal Assimilative Crimes Act, through which Congress has borrowed state criminal law for Federal enclaves. It is still true that the responsibility for public education is that of the state. State responsibilities for both utilization and conservation of natural resources are large. Local government is the creature of the state; surely the problems of urban life in this highly urban civilization are of first-rank importance. This is but a start on the list. Local government, in particular, may touch upon the life of the citizen from start to finish. The functions of local units run into the hundreds. To say that these things are relatively inconsequential is to fail to see the woods at all.[2]

What are the basic components of a state constitution? Some years ago in speaking of constitutions more broadly, I said:

A written constitution for a democratic society, which pursues its political ends through representative government, needs but four elements: (1) provision of the basic framework of government; (2) distribution broadly of governmental powers within the designed framework, with secondary power-devolution left to the legislative arm; (3) substantive and procedural guaranties to the individual against the arbitrary exercise of governmental authority — a bill of rights; and (4) provision of machinery for change in the constitution.[3]

I hardly need add that I would apply this to a state constitution.

One is aware, of course, that the way we have been acting over a long period as to state constitutional development tends to condition what we can do; we are somewhat habituated to constitutional specificity, to trying to

[1] See the New York statute with respect to decentralization as to public education in New York City, *New York Laws of 1969*, c. 330.

[2] Jefferson B. Fordham, "The States in the Federal System — Vital Role or Limbo?" *Virginia Law Review* 49(1963): 666, 668.

[3] Jefferson B. Fordham, "The Legal Profession and American Constitutionalism," *The Record of the Association of the Bar of the City of New York* 12 (1957): 518, 519.

perpetuate particular policies by embodying them in state constitutions. I, however, am free to speak with as great detachment as I may choose; and it pleases me to say that any departure, in current state constitutional revision, from the four basic elements mentioned should be grounded upon the most compelling considerations.

I would not suppose, for example, that Reconstruction-Era constitutional provisions on corporations and railroads have any place in the 1970 scheme of things. About all that can be said of them is that they restrict the range of legislative policy-making, thus limiting the freedom of the lawmakers to respond with sensitivity to social need as conditions change.[4]

Human Rights

In 1970 terms, the treatment of human rights in a state constitution is to be undertaken in a very different federal constitutional setting from that of 1870. The pertinent provisions of the Constitution of the United States, as amended, were pretty much the same in 1870 as 1970, with the notable exception of the provisions of the Nineteenth Amendment for woman suffrage, but judicial exegisis during the past sixty years has carried us far.

While the first ten amendments to the federal Constitution, familiarly called the Bill of Rights, were designed as safeguards against action by the national government,[5] the force of nearly all of their safeguards has been rendered effective against state and local governments through interpretation of the due process of law clause of the Fourteenth Amendment. This is true as to substantive matters, such as freedom of speech and assembly, as well as procedural safeguards, such as protection against unreasonable searches and seizures.[6] Whether we explain this on the basis that Fourteenth Amendment due process broadly guarantees fundamental rights as to life, liberty, and property which are more particularly safeguarded against action by the federal government or that Fourteenth Amendment due process incorporates the guaranties of the Bill of Rights, the result, to the extent of the coverage, is the same.

It will be borne in mind that the federal constitutional safeguards of human rights are enforceable in the state, as well as the federal courts, or as Article VI of the federal Constitution lays it down, the state courts are bound by the provisions of that instrument.[7]

[4] In the recent revision of the Constitution of Pennsylvania, such provisions were eliminated.

[5] *Barron* v. *Mayor, etc.*, of Baltimore 7 Pet. 243 (1833).

[6] Most recently the Supreme Court has held that the provision of the Fifth Amendment against double jeopardy "represents a fundamental ideal in our constitutional heritage, and it should apply to the States through the Fourteenth Amendment." *Benton* v. *State of Maryland*, 89 S. Ct. 2056, 2062 (1969).

[7] Of course, a state court ruling against constitutionality rested upon an adequate independent state (nonfederal) ground obviates federal court review on federal grounds.

I believe it fair to say that there has been much greater sensitivity to human rights in the federal courts than in the state courts. What has been done under Fourteenth Amendment due process makes this so perspicuous as to render substantial extrapolation a bore. I will add that the courts of the Union — with their greater detachment from the state governmental establishment and interests and their national orientation — were the obvious recourse of the aggrieved citizen.

What the Supreme Court has done with respect to fairness in legislative representation is the most conspicuous example of federal judicial interposition in default of state action, whether by the state legislature or the state courts.[8] One recalls the frustrations of John B. Fergus, who, back in the twenties, tried in vain to get the Illinois courts to act on malapportionment in the legislature. He sought a writ of mandamus to compel the legislature to reapportion.[9] He sought a writ of quo warranto by way of challenge to the very legal standing of a malapportioned legislature.[10] He was much too far ahead of his time and was bounced unceremoniously out of court.

In these circumstances — marked by broad federal protection — why bother with a declaration or bill of rights in a state constitution? There are several things to be said in response to this question:

1. It may be desired to cover in a state instrument more ground than in the federal. A right to collective bargaining in private employment, recognized by the New Jersey Constitution of 1947, is one example.[11] Pennsylvania, by the way, recently adopted a constitutional amendment, which provides for collective bargaining between policemen or firemen and their public employers and for compulsory arbitration in case of an impasse in negotiations.[12] I must say that I am not persuaded of the wisdom of constitutional provisions on employer-employee relations; I prefer to leave the legislature with wider range in policy-making in this field.

There are those who may wish to have a woman's rights provision in a state constitution.

Then, there are the so-called right-to-revolution clauses, which go back to the days of Madison and Jefferson and which are to be found in a number of state constitutions, including the Illinois Constitution of 1870. What they have added has not been altogether clear. It is noteworthy that, in 1966, the Kentucky Court of Appeals relied upon such a clause to uphold resort to a constitutional revision assembly, established by statute, to put forward for

[8] *Reynolds* v. *Sims*, 377 U.S. 533 (1964) and companion cases. For general information, see Robert G. Dixon, Jr., *Democratic Representation* (New York: Oxford University Press, 1968).

[9] *Fergus* v. *Marks*, 321 Ill. 510, 152 N.E. 557 (1926).

[10] *People* ex rel. *Fergus* v. *Blackwell*, 342 Ill. 223, 173 N.E. 750 (1930). See also *Fergus* v. *Kinney*, 331 Ill. 437, 164 N.E. 665 (1929).

[11] *Constitution of New Jersey*, Art. I, Par. 19.

[12] *Constitution of Pennsylvania*, Art. III, Section 31.

electoral approval proposed amendments to or revisions of the state constitution, even though the constitution expressly provided a convention method of revision.[13] The convention method was slow and depended upon electoral approval.[14] The majority opinion exalted the state bill of rights as something supreme and inviolate, while all else was considered transitory and changeable.

Should a state constitution respond expressly to the widely-asserted need of better recourse for the common man against unfairness and abuse of power in public administration? Does the ombudsman idea deserve constitutional recognition?[15] It seems to me that the importance of the subject gives it a claim to consideration in a state constitutional convention. This is not to say that I am fully persuaded. But constitutional status would accord notable recognition to this special officer, which should fortify him in standing up to all and sundry in the administrative establishment.

Should there be express constitutional recognition of so-called welfare rights? In my view, human interests call strongly for action by organized society; but we are dealing here with positive social policy as to distribution or redistribution of goods and services, or the means to acquire them, and I doubt that we could enunciate a viable constitutional principle on the subject. Thus, I do not suggest that a state go beyond an equal rights provision at this time.

2. As a matter of internal completeness and symmetry, an organic instrument for a major political entity, even a unit in a federal system, calls for declared safeguards of human rights, especially in a system in which there were states before there was a federation or union. The tradition involves a commitment of large psychological value, I suggest, and I favor following it, even though provisions of state bills of rights have not always been liberally interpreted in favor of human rights.

3. As to some matters affecting human rights, it might be desired in a particular state to be more restrictive of government than is the federal Bill of Rights. This could be the case as to aspects of separation of church and state and religious liberty. A state could take a position in the declaration of rights which would not allow of shared time, that is, a program in which pupils in church-related schools would get part of their educational experience in classes on secular subjects in public schools. It is my guess that the Supreme Court of the United States would hold, as has the Supreme Court of Illinois,[16] that shared-time programs are constitutional. But such policies do not relieve the pressure; the cost of education has grown so great that the

[13] *Gatewood* v. *Matthews*, 403 S.W. 2d 716 (Kentucky 1966).

[14] *Constitution of Kentucky*, Section 258.

[15] It was first articulated, as a legal matter, in the Swedish Constitution of 1809. The Swedish experience is examined in Walter Gellhorn, *Ombudsman and Others: Citizens' Protectors in Nine Countries* (Cambridge: Harvard University Press, 1966).

[16] *Morton* v. *Board of Education*, 69 Ill. 2d 38 (1966).

push is toward direct public subsidy of church-related schools, which are carrying part of the responsibility for primary and secondary education.[17]

It is noteworthy that a three-judge federal court, by a two-to-one decision, rendered less than two weeks ago, upheld a Pennsylvania statute which provided for state payment — from an earmarked tax on horse racing — of the actual cost of teachers' service, textbooks, and instructional materials in certain secular courses in nonpublic schools.[18] The majority concluded that the purpose and primary effect of the statute was secular in nature and that incidental benefits to sectarian schools were not enough to violate the establishment clause. Chief Judge Hastie, of the United States Court of Appeals for the Third Circuit, the dissenter, saw the arrangement as a subsidy rather than a genuine purchase of educational services and concluded that the state was supporting a religious enterprise of which secular courses were a part. Beyond that, as he saw it, the state was both inviting political activity by religious groups and state intrusion into the affairs of religious institutions. Review by the Supreme Court is being sought. Meanwhile, the Hastie position is sound, in my opinion, and I make bold to predict that it will prevail. Obviously, if it does, Illinois will be bound by it.

Does the establishment clause of the First Amendment proscribe tax exemption of property used for religious purposes? I mean here property used directly for religious activities as distinguished from business or charitable properties of a religious organization. Bear in mind, of course, that the establishment clause, by interpretation of Fourteenth Amendment due process, is a limitation upon state action. There is an historical argument grounded in general practice from the beginning of the Republic, which substantially supports the exemption. But the evolution of thought in the ongoing business of filling in the content of broad constitutional principles runs the other way. A direct cash subsidy of religion would not stand up. Tax-free provision of governmental services to religion is, in plain economic terms, just as real a subsidy. A test case is pending in the Supreme Court.[19]

Meanwhile, it is clear that exemption is a matter of state choice; a state may tax religious property if it sees fit. With respect to constitutional revision, my suggestion is that a state constitution should permit classification of property for ad valorem tax purposes. This suggestion calls for qualification of the traditional uniformity clause. The policy thrust is along the line that religious property ought to be taxed on a basis that bears some relation to governmental services received, which might well be less burdensome than

[17] See the free school book case, *Board of Education* v. *Allen*, 392 U.S. 236 (1968). (Provides for the loan, mandated by statute, of school books, free of charge to all children in grades seven through twelve upheld as to parochial school pupils.)

[18] *Lemon* v. *Kurtzman*, USDC E. Pa. (38 LW 2329).

[19] *Welz* v. *Tax Commission*, 24 N.Y. 2d 30 (1960); probable jurisdiction noted, 395 U.S. 957 (1969).

taxes on property devoted to other types of uses. Obviously government — the organized public sector — is providing many of t : services necessary or desirable to meet human needs, and it is entirely rational to expect payment for what is rendered, apart from welfare considerations and policy.

Equal rights provisions in a state constitution plainly cover some of the same ground as related federal constitutional provisions, such as the equal protection clause of the Fourteenth Amendment. State commitment to equal rights is, nonetheless, of concern to a state constitutional convention. The principle is too important as a matter of the basic integrity of the social order.

In some states, notably Louisiana, it has been a commonplace to engage in a kind of popular legislation by writing a congeries of policy determinations into the constitution by frequent and often detailed amendments. This is a grave offense to my notions of state constitutionalism in general. I make particular reference to it here because I see a kind of parallel in what is taking place today in the federal courts. Reform in the interest of human welfare is being sought vigorously in the judicial forum. I hardly need say that I believe deeply in liberal interpretation of federal and state constitutions in favor of human rights. What concerns me is something that I expect to explore more fully in a separate published paper. I refer to the great pressure for judicial decision at the constitutional level in default of legislative reform at the statutory level. The ardent advocate is a pragmatist; even if the point I am making occurred to him, it is not likely that he would be deterred by it. My point, of course, is that judicial reform at the constitutional level necessarily constricts the range of legislative choice and decision in the ongoing business of policy-making in a changing social condition. It bypasses, moreover, deliberative processes in policy-making.

The Legislature

Central to state constitutional reform is the legislative institution. I have in mind, you can be sure, the lively contemporary interest in one form or another of participatory democracy, but it is evident enough to me that in large community units there is no effective escape from recourse to representative government. Even New England towns have had to acknowledge this. In populous towns, representative town meetings have replaced the traditional town meeting.

The state legislature — a body with plenary powers — should be seen both as a policy-making organ and as a power-distribution or devolution arm of government. This is patently so as to delegation of authority to local government, absent an expansive constitutional grant of home rule. It is, in fact, true as well of structural arrangements and delegation of authority in the state government.

It does not take a numerous body to do a legislative job. The most

populous state, California, has a bicameral legislature of 120 members, and I have heard the chairman of the state's constitutional revision commission proudly proclaim it to be the best of the state legislatures. What is needed is a substantial representative assembly, which is entrusted with responsibility for policy-making unhampered by rigid time or procedural limitations and which has the freedom to mobilize the staff and other resources it takes to do the job well. If we are to confide broad substantive powers to a legislature, we should not hesitate to accord it autonomy as to internal organization and procedure and treat it as a continuing arm of government working regularly in annual sessions not subject to any limitation as to length of session.

It is my notion that the unicameral structure is better designed for responsible action and genuine political accountability. Now that we are guided by the one-man, one-vote principle for both houses of a bicameral legislature, the permissible range of differences in the representative systems for two houses is considerably narrowed. Some differences can be worked into a unicameral system, in any event, as by having the state covered by single-member districts over which is laid a layer of larger regional districts. Such an arrangement would be calculated to afford regional as well as more local perspective.

The unicameral form is simpler, more visible to the citizen. It fixes institutional and political responsibility. It avoids that third-house mechanism, the conference committee. In contrast, an impasse in the two politically-divided chambers in Pennsylvania has the state in a fiscal crisis at this very moment. It is true that a second house may serve as a brake upon hasty, ill-considered action, but the brake might be applied as well to thoroughly-considered reform measures. The unicameral form is calculated to facilitate a more positive, decisive legislative process, while still subject to ultimate political accountability.

I add only that the matter of structure is not of the highest order of importance. Representatives of character and ability can work well in the bicameral framework, given the scope to which I have already referred.

Apart from the bill or declaration of rights, a state constitution should contain a minimum of limitations upon the legislative power or how that power may be exercised. A traditional type of limitation upon the "how" of legislating, as distinguished from substantive jurisdiction, is the constitutional ban upon special or local legislation. Commonly, such provisions have spelled out a whole list of subjects as to which special or local legislation is proscribed and have ended with a catch-all clause. I would eschew such listing and simply articulate a general prohibition. Local legislation is, of course, one type of special legislation — in practical terms, the most important part of the problem area. It is appropriate to deal with that type in the state constitutional article on local government.

It may be desired to direct a few constitutional mandates to the legisla-

ture. The Illinois Constitution of 1870 ordains that the legislature shall provide a thorough and efficient system of free schools. This establishes the basic policy for the state. Why say more in the organic law?

If legislative redistricting and reapportionment are to be left to the legislature, there should be a constitutional command that the legislature act. I suggest, however, that it would be better to establish intelligible constitutional policies as to redistricting and reapportionment and place their execution in nonlegislative hands. There is an inescapable element of conflict of interest in legislative performance of the function.

I anticipate that there will be laid before the Illinois Constitutional Convention proposals for the initiative and referendum. Recent experience affords no basis for expecting them to originate in civil rights circles. Certainly, not if California's initiated anti–fair-housing constitutional amendment, Proposition XIV,[20] or Akron's compulsory referendum on fair housing measures[21] are any indication. Over time, however, this could be a passing matter; at a later juncture, it might be human rights forces seeking to get adoption by initiative of the policy they espouse. I say "it might," but who knows, for are we not talking about the "great silent majority"?

One recognizes that the initiative affords a means of bringing into decision-focus policy ideas to which a legislature appears insensitive. Likewise, the referendum, as available independently of the initiative, is a means of rejecting a legislative policy determination that does not have sustaining popular support. But neither affords any institutionalized means of gathering facts and opinions, deliberation, and debate. Thus, the indirect initiative, which affords opportunity for legislative consideration, has some appeal.

The Executive

There is a widely-held opinion among students of state government that there should be centralized responsibility and accountability in the executive branch. I embrace this view. It exacts a short ballot calling for the election of a governor and lieutenant governor. It allows, in addition, for an official charged with post-audit, who might be chosen either by popular election or by the legislature.

The logic of this view is that the department heads should be appointed by the governor, without any requirement of advice and consent by a legislative body, and should be removable by him. The advice and consent qualification of executive authority exacts a large price in restriction of executive freedom of action in order to assure some check on unwise appointments.

A limitation upon the successive terms that one may serve as governor

[20] Held invalid in *Reitman* v. *Mulkey*, 387 U.S. 369 (1967).
[21] Held invalid in *Hunter* v. *Erickson*, 89 S. Ct. 557 (1969).

is a declaration of distrust of the democratic process and a built-in scheme for lame-duck leadership. I do not recommend it.

In fiscal matters, planning and execution of both capital and operating budgets are executive functions and include the responsible estimate of revenues against which appropriations are made. On the appropriation side, a governor needs the leverage of the item veto, not just the power to reject an item outright but authority, as well, to reduce it. This power is particularly important under a system of lump-sum or performance budgeting, as distinguished from the old line-item type, since a veto of a lump-sum appropriation for a department or a program would leave no provision for the purpose and would entail further legislative consideration regardless of the timing.

The Judiciary

Illinois achieved judicial reform in 1962 by constitutional amendment. This development was notable; there was brought into being a simple, three-level system of constitutional courts, with centralized administrative authority in the state supreme court. The reform is widely regarded in legal circles as very advanced and constructive. I do not suggest that the amendment is beyond review in the Illinois Convention; some changes may be proposed. But in my overview of constitutional revision, I regard the judicial posture in Illinois to be so well-considered that I am refraining from talking about the judicial branch.

Finance

Since a state legislature has the nonfederal residuum of legislative power in our system, its taxing power, absent express limitations, is sweeping. Why impose limitations? I do not know.

Taxation is not simply a means of raising funds for the support of government. It serves, at the same time, to distribute the burden. More than that, taxation and appropriation together perform a function of redistributing economic substance to advance the objects of public policy. In the light of all this and in the face of critical need of public revenue for education and whatnot, the case for unfettered legislative power with respect to taxation is a strong one. I have a notion that, before long, federal leverage may be applied to influence state tax policy and that it may be toward an income tax keyed to the federal levy. If Congress is to begin sharing revenues with the states and the local units, it would be rational to move toward coordination of tax policy.

So long as local government is dependent, in large part, upon ad valorem property taxation, a constitutional requirement as to uniformity in assessment and levy is in order, subject to such degree of legislative classification as may well be desired. I certainly would not recommend a uniformity clause applicable to all forms of taxation. I can testify that such a clause

has been an instrument of regression in Pennsylvania and an obstacle to the raising of adequate public revenue.

I would abandon constitutional debt limitations for state and local government. Let the legislature bear the responsibility for the needed prudence exercised by adoption of statutory policies and by subsequent legislative oversight.

There are to be found in a number of state constitutions provisions dedicating particular revenues to particular purposes. Especially noteworthy, at this time, are constitutional dedications of gasoline and motor vehicle license tax revenues to highway — and, in some instances, airport — purposes. Simply from the standpoint of fiscal decision-making, such a commitment denies the legislature the discretion to allocate revenues both with a broad overview and with sensitivity to developing needs. It is extremely bad constitutionalism; it is, moreover, a conspicuously objectionable example of dedication. It favors the private automobile willy-nilly with all the enormous public outlay it takes for operating surfaces for motor vehicles and all the ecological and other problems generated in the use of trucks and automobiles. It seems plain enough that public revenue should be left open to appropriation by the legislature to serve the public interest, broadly perceived, to the best advantage. Highways are but one component of the social circulatory system; other elements, such as mass transit, must be considered in the planning and achieving of a sound, balanced system.

The Suffrage

I imagine that the Illinois Convention's most lively concern with respect to the suffrage will relate to the voting age. The question of whether the age should be lowered is a serious one. This is a new era. Young people, many of whom are under twenty-one, the traditional age of majority, are exerting an active voice in a great range of public issues at all levels of community. And, of course, young males under twenty-one, in large numbers, have been in active military service.

Speaking generally, I have a notion that state reduction of the voting age will be gaining in acceptance in the years ahead. Meanwhile, I am not convinced that it will be wise.

The contention that a person who is old enough to be required to serve in the military forces is old enough to vote is something short of compelling. Of course, males in their late teens provide a pool of persons generally qualified physically and mentally for military duty. Experience validates this. Their capacity to bear political responsibilities is hardly to be determined by the same standards. Justice Holmes said that the life of the law is experience. He might have said with equal force that it is experience which enables the individual to achieve maturity as a social being. I do not recall

having seen an infant prodigy in the social sciences. Experience and maturation vary with the individual, but, in general terms, it cannot be said that an eighteen-year-old — who may still be in high school, who in many states at least cannot even make an irrevocable contract, and who is not ready to bear adult economic and social responsibilities — is yet mature enough to vote.

The more weighty consideration on the side of a lower voting age is the demonstrated concern and involvement of youth in this troubled period. They are better informed about public affairs than earlier student generations, and they are participating in the actions and passions of their times in ways other than voting. I grant that these things are not to be taken lightly.

Local Government

Let me conclude with but a brief reference to my area of special concern as a student of law and public affairs — local government. I defer to others, yet to speak under these auspices, for treatment which is adequate in reach and depth.

I do commend for constitutional articulation a broad grant of home rule powers to counties and to cities of substantial population. My approach to home rule is to give the affected local units, those which adopt home rule charters, the full sweep of authority a state legislature might devolve upon them, subject to the overriding authority of the legislature to be exercised by general law. Constitutional provision for a real and regional governmental jurisdiction and arrangements for intergovernmental cooperation are desirable to afford maximum flexibility in fitting responsibility to changing community configurations and needs. My views on home rule are articulated more fully in the *Model Constitutional Provisions for Municipal Home Rule*, put forward by the American Municipal Association some years ago.

In this area of concern I renew the suggestion, of general application, that the dynamics of our society urgently call for organic political instruments that afford great flexibility in policy development and execution.

PANEL DISCUSSION

THE 1870 ILLINOIS CONSTITUTION DISSECTED

GEORGE D. BRADEN

My assignment for this part of the panel discussion is to tell you what I found upon dissection of the present Illinois Constitution. I must first enter two caveats to what follows. First, I did not in fact dissect all of the Illinois Constitution. My coauthor, Professor Rubin G. Cohn, dissected the bill of rights, the judicial article, and the revenue article. Second, I cannot tell you in fifteen or twenty minutes all that I found. For the complete autopsy, I must refer you to our analysis.[22]

Upon dissection of the Illinois Constitution I found a mess. It must be conceded, of course, that once I have said that the Illinois Constitution is a mess, I have made a value judgment. Unless, that is, I mean that the Constitution is incomprehensible and unreadable. Except for that drafting monstrosity, Section 34, Article IV, "Special Laws for City of Chicago," this is not the case. What then is the value structure that I use in asserting that the Illinois Constitution is a mess? I would argue that a state constitution is a mess if (1) it unnecessarily and improperly limits the government; (2) it contains statutory material; and (3) it unnecessarily freezes the structure of local government. I hasten to point out that two of my three value judgments have subsidiary values — *unnecessarily* and *improperly* — expressed, and thus we are off and running on a mighty slippery road. But since, for the moment, I am in the groves of academe, and logical positivism is dead anyway — or is not "in" these days — I assume we can all slip and slide along together.

Now, in what way does the Illinois Constitution improperly or unnecessarily limit the government? First, and foremost, there are improper fiscal limitations on the government. There are absolute limitations on the incurring of local debt and conditional limitations on the incurring of state debt. In 1870 in Illinois, there was undoubtedly a felt need for these restrictions because of the internal improvement scandals of the preceding two or three generations. Today, these restrictions are not only unnecessary, they are actually counterproductive, to use one of the newer bits of bureaucratese. The fact is that the limitations do not prevent the incurring of debt; they simply

[22] George D. Braden and Rubin G. Cohn, *The Illinois Constitution: An Annotated and Comparative Analysis* (Urbana: Institute of Government and Public Affairs, University of Illinois, 1969).

force the use of devices that are either expensive or inefficient, or both. On the state level, authorities proliferate. They borrow money to build buildings, toll roads, recreational facilities, and the like. These authorities do not enjoy the credit rating of the state, and the result is that they have to pay a higher rate of interest than the state would have to pay on full faith and credit bonds. On the local level, special districts, each with borrowing power, proliferate and jobs proliferate. This is both inefficient and expensive.

The other type of fiscal limitation is in the taxing power. Here, I am tempted to say, after the tenth reading of the tax sections of the Illinois Constitution, "it's spinach, and the hell with it." My best guess is that the 1870 drafters really were not trying to impose improper limitations on the government. I suspect that they were trying to do two things: assure fairness in taxation and cure some procedural abuses that had crept into the system. The latter is more legislative than constitutional and it became an improper limitation only because it is so difficult to amend the Constitution. (Let me note, parenthetically, that I am referring not to the specific difficulty of obtaining the vote of a majority of those voting in a general election or two-thirds of those voting on an amendment, but to the difficulty of getting the legislature or the public interested in technical amendments to technical constitutional provisions.)

As to fairness in taxation, the 1870 drafters used such words as a "tax in proportion to the value" of property, and, as to franchise and privilege taxes, "uniform as to the class upon which it operates." This was all right then, for they were thinking of the types of tax with which they were familiar. Unfortunately, they were too specific, for clever lawyers and judges, clever or not so clever, carried the words over to other taxes and created unnecessary limitations which the drafters probably had not envisioned. The recent Illinois supreme court opinion upholding the income tax, is, I might say with my tongue just barely touching my cheek, a brilliant example of strict construction of the Constitution. The justices have, in effect, gone back to the beginning and read the language in accordance with the true principles that guided the 1870 drafters.[23] Of course, the Convention could go the supreme court one better and simply drop all reference to state taxing power and rely on the courts to use the due process clause to preserve fairness in taxation. That, however, is not the type of convention action that some are worried about.

The other major type of improper limitation on government is by way of excessive control over the legislative process. The debates of the 1870 Convention reveal a great distrust of the legislature. In general, the delegates believed that the legislature was corrupt in several respects. It feathered its own nest and that of local officials; and it granted special privileges and

[23] *Thorpe et al.* v. *Mahin*, 43 Ill. 2nd 36, 250 N.E. 2d 633 (1969).

immunities. Out of this generally held opinion came several restrictions. There was the extensive prohibition on special legislation, principally embodied in Section 22 of Article IV, but sprinkled also here and there throughout the Constitution. There were various attempts to assure honesty and integrity, such as the oath required of legislators, prohibitions on dual-office holding, conflict of interest provisions, restrictions on compensation via the fee system, and even some general restrictions that do not appear on their face to be related to the integrity of the legislative process.[24]

Finally, there were several restrictions added to the rules for the enactment of legislation. These include the bill-reading requirement, the limiting of a bill to a single subject, the prohibition on revision or amendment by reference, and some of the restrictions on the appropriations process. These are all examples of naive do-gooders trying to prevent legislative skullduggery. It is my *guess* that none of these restrictions ever prevented any skullduggery. I *know* that they provided lawyers with lovely devices for attacking legislation and that, over the years, the courts aided and abetted lawyers in what I call an irrelevant exercise in limiting government. It is irrelevant because the person attacking the legislation couldn't care less about the legislative process — he simply does not like the substance of the legislation.

In all fairness to the 1870 drafters, I should note that most of these restrictions on the legislative process produce a judicially enforceable limitation on government only if the courts follow the "journal entry rule." Under this rule, the courts will examine the legislative journals to see if the constitutional procedure has been followed. Under what is called the "enrolled bill rule," the legislature alone enforces the rule, for the courts accept as conclusive a certification by the proper legislative officers that a bill was duly passed. I am not sure that the Illinois courts had decided prior to 1870 which rule they would follow. I strongly suspect that the 1870 delegates would have opted for the journal entry rule, so strong was their disapproval of the legislature. In any event, the Illinois courts have followed that rule. I should also note that the most mischievous of these restrictions are the one subject to a bill requirement and the amendment by reference prohibition, and both of them are operative without reference to the legislative journals.

My second characterization of a constitutional mess, the one without a subsidiary value judgment, is the inclusion of statutory material. Need I say more? Well, yes, I think I should note that there are two types of statutory material — that which everybody concedes is statutory and that which is statutory because one thinks that it is really not appropriate to limit the government in this way. (Thus, another subsidiary value judgment has

[24] For examples of general restrictions, see Braden and Cohn, *op. cit.*, pp. 226–27, 454–55, and 457.

crept in.) The first type is exemplified by Article XIII on warehouses. Even the 1870 delegates themselves recognized this.

Just before the Committee rose, a delegate offered an additional section, as follows: "This act shall be deemed a public act and shall be in force from and after its passage." (Debates 1627.)

The proposal was voted down. As the convention proper was subsequently about to refer the Warehouse Article to the Committee on Revision and Adjustment, another delegate offered an additional section, reading: "Be it enacted by the people of the State of Illinois, in Convention assembled." The proposal was ruled out of order.[25]

The second type is exemplified by most of the sections in Article XI on corporations. I personally do not think that the legislature should be prohibited from allowing noncumulative voting for corporate directors, or creating a state bank, or allowing less than double liability for bank stockholders, or requiring banks to publish only annual statements, and so on. Nor, for that matter, do I think there is any need to prohibit lotteries or the employment of convict labor in a constitution. Thus, at some point a limitation on government becomes "statutory" only because in someone's judgment it ought not be a constitutional limitation at all, which is to say that the matter ought to be left to the legislature. The Illinois Constitution has several provisions that approach the true statute, several that are sort of in the middle, and several, such as those on lotteries and convict labor, that are "statutory" by subjective fiat.

My third characterization of a constitutional mess is the unnecessary freezing of the structure of local government. I do not propose at this point to enter into an extensive discussion of home rule. The essence of the home rule debate turns on whether or not local units should have a constitutionally protected power to set up their own forms of government. In the absence of a home rule provision, the legislature can provide for complete home rule or limited home rule, or, in the absence of a prohibition of local legislation, it can theoretically deny any home rule. I wish simply to note that, except for the geography of counties and the choice of having or not having township government, the structure of county government is fairly well frozen in the 1870 Constitution. Obviously, the structure of the state government, within fairly narrow limits, must be frozen. In the case of local governments, I see no good reason for freezing the structure. The key issue to be decided is who *controls* structure — the state or the people of the local units, or both in some combination. The extent to which home rule ought to be constitutionally guaranteed is debatable, and reasonable people can disagree on that extent. My point about a mess is that, under the existing Constitution, no one except the people of the whole state by constitutional amendment

[25] Braden and Cohn, *op. cit.*, p. 555.

or convention can do much about county government. Without passing judgment on the vision of the delegates to the 1870 Convention, I would say the result has been a mess.

Having covered my three elements of messiness, I should stop. But, I would not want to leave the impression that I think everything else in the Constitution is "hunky dory." Since I am a student and not a practitioner of government, I am naturally "gung-ho" for the short ballot — the shorter the better — for statewide executive officers. Indeed, for years I had been touting the Connecticut Constitution as the best in the country, but last July "Mr. State Constitution," that is, John Bebout, turned on me and muttered that Connecticut still had a long ballot including, particularly, an elected comptroller with pre-audit powers. I now bow to John and *his* favorite constitution — New Jersey's — for which, as a matter of fact, he personally can take a great deal of credit.

It seems appropriate, also, to note that, by virtue of the adoption of a new article in 1962, Illinois has just the opposite of a mess insofar as the judicial system is concerned. Nevertheless, since I have carefully pointed out the value judgments involved in passing on the merits of a constitution, I must note that I do not favor the election of judges, particularly by partisan elections.

Finally, I must concede that in characterizing various constitutional provisions as "bad" and in setting forth what I think is "good," I am exercising a freedom that delegates to a constitutional convention do not possess. Constitution-making is part of the process of government, and government is the art of the possible. For a variety of reasons, it is not possible to change everything for the good, to say nothing of the best. It is possible, however, for the 1970 Convention to propose a constitution that will be accepted by the people and that, when next dissected, will surely not be called a "mess."

STATE CONSTITUTIONAL REFORM: TRENDS AND COUNTERTRENDS

WILLIAM N. CASSELLA, JR.

"Removing specific constitutional obstacles to state action" was cited by the recent American Assembly on "The States and the Urban Crisis" as the primary objective of constitutional reform today. This purpose is very different, indeed, from that which motivated most state constitutional reformers during the greater part of our history. Their goal more often than not was to place restriction on action by agencies of state government.

In 1776 the Continental Congress urged each colony to adopt a constitution where there was "no government sufficient to the exigency of their affairs." Whether framed and proclaimed by Revolutionary conventions or Colonial legislatures, the peculiar circumstances of the American Revolution were responsible for the negative preoccupation reflected in the original constitutions. This point was emphasized in an early twentieth century appraisal which said:

> . . . American state government, in its essential principles, was not originally designed for efficient, constructive public work, but was the product of temporary and peculiar conditions growing out of revolt against Great Britain. In their natural antipathy to leadership by a royal agent, the revolutionists rejected leadership altogether. In their fear of the British crown and the royal governor, they came to fear all power, even if exercised by their own agents. Instead of making the executive authority responsible, therefore, they shackled it. Knowing that royal agents could not be entrusted with authority, they came to the conclusion that no one could be entrusted with authority. Their ideal of government was a negative one and in seeking after a government powerless to do harm they set up one weak in power for good. This principle of negation, of preventing evil by dividing the powers of government into numerous parts is the chief source of the wastefulness, irresponsibility, and inefficiency which characterize the present system of government.[20]

The division of powers was professed in virtually all original state constitutions, but with few exceptions in practice they followed a system of near legislative supremacy. The pre-Revolutionary legislatures had been seen as the people's bulwark against royal and proprietary tyranny and thus retained an undue share of popular confidence as the first constitutions were framed.

As the original draftsmen of state charters concentrated their fire on

[20] *The Constitution and Government of the State of New York: An Appraisal*, transmitted to the New York State Constitutional Convention by the New York State Constitutional Convention Commission (Albany: Bureau of Municipal Research, 1915), p. 2.

executive tyranny, the first wave of reform was an attack on legislative supremacy. Jefferson was a most articulate spokesman of that point of view.

> All the powers of government, legislative, executive and judiciary, result to the legislative body. The concentrating of these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. 173 despots i.e., legislators would surely be as oppressive as one.[27]

Jefferson became the first serious advocate of constitutional reform when he drafted a model constitution for Virginia in 1783. His draft stressed broadening the electorate and an effective division of powers — the two tenets of positive reform — but his recommendations were unheeded and the original constitution endured until 1830.

The strain upon state governments in wartime, the interstate bickering during the period of the Confederation, and the ineffectiveness of legislatures in dealing with state problems caused a rapid decline in public confidence in the legislature as the supreme instrument of state government. Individual legislators as the determined representatives of local or private interests against dominent colonial executives had served a most useful role. However, this extreme localism continued when the executive was all but nonexistent. The result was a neglect of the general interests of the state. Logrolling for local favors and legislating for private benefit of land speculators were common. Taxation was highly discriminatory and the public credit was extended for speculative purposes.

The Executive Veto

Reaction against the abuses of legislative supremacy was generally in the form of restricting legislative power. Suggestions that this be done by a more effective system of checks and balances met with but limited enthusiasm. In New York there had been a popularly elected governor since the time of independence. However, his powers were diluted by a council of appointments, which shared the appointing power, and a council of revision, which shared the veto power.

Massachusetts governors from the start had the veto which could be overridden by a two-thirds vote of the legislature. Gradually, as other original states made their governors popularly elected and new states were admitted, the executive veto was adopted primarily as a negative device to check the legislature rather than as a positive instrument to strengthen the hand of the governor.

Limiting Legislative Powers

Although state constitutional reform efforts were mainly focused upon

[27] Thomas Jefferson, *Notes on the State of Virginia*, edited by William Peden (Chapel Hill: University of North Carolina Press, 1955), p. 120.

preventing the abuses of legislative power, they were also motivated by a general distrust of government. Indeed, practices of the late eighteenth and early nineteenth centuries were so blatantly corrupt that the demand for restraint is certainly understandable.

> With the gradual decline . . . in the prestige of state legislatures, the constitutional limitation[s] upon their powers were steadily increased. . . . The record of legislative folly and corruption in the American states is spread upon their constitutions in the form of a stream of amendments designed to check the abuse of legislative powers. The power to pass special and local acts, the power to tax and to grant tax exemptions, the power to invest the public money, loan the public credit, and dispose of the public resources in general, all were subjected to a series of restrictions ever increasing in number and stringency.[28]

The outrageous discrimination in the granting of early nineteenth century bank charters by the New York legislature was the cause of increasingly rigid constitutional limitations. First in the Constitution of 1821 an extraordinary majority in each house was required to grant a charter, but one commentator relates: "The only effect of the restrictive clause in the constitution has been to increase the evil by rendering necessary a more extensive system of corruption. . . ."[29]

The obvious next step came in the 1846 Constitution, which prohibited outright the granting of special charters and the requirement that corporations and associations must be formed under general law. For every abuse, the remedy seemed to be a constitutional restriction or prohibition.

Procedural Limitations

Reformers were not content to restrict the substantive powers of the legislature; they also injected procedural limitations which were motivated by the feeling that the less time the legislature was in session the less harm it would do. They tried to give a positive twist to the argument, for example, "With less frequent legislative sessions, the more important matters will occupy the attention of the legislators, and individual members will recognize the futility of advancing pet schemes of a merely personal or local interest."[30]

The original almost universal practice of holding annual sessions was replaced by constitutional provisions permitting only biennial regular sessions frequently limited to a specific number of days.

This development illustrates how yesterday's reforms have become the target of today's reformers who are advocating unlimited annual sessions.

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[28] Arthur N. Holcombe, *State Government in the United States* (New York: The Macmillan Company, 1916), p. 119.

[29] Jabez D. Hammond, *History of Political Parties in New York* (Syracuse: Hall, Mills and Co., 1852), Vol. I, p. 337.

[30] Paul S. Reinsch, *American Legislatures and Legislative Methods* (New York: The Century Co., 1913), p. 132.

A Popularly Elected Governor, but a Plural Executive

The ambivalence of reformers has been particularly apparent in the constitutional role of the executive. A rational method of checking legislative supremacy would be to strengthen the executive. To an extent, the adoption of the executive veto with the requirement of extraordinary legislative majorities to set it aside strengthened the executive's position. Certainly, the most significant reform during the nineteenth century was making the governor popularly elected. Popular election was provided in only 5 of the original 13 states. In the others he was chosen by the legislature. But popular control of the executive went much further. Indeed, the plural executive in fact was the result, with a total of 435 executive officers — by the most recent count — elected in the 50 states, or an average of 8.8 per state.

The evolution of reform dogma on executive selection can be illustrated by successive constitutional changes made in New York. In its first constitution, only the governor was popularly elected, with his appointing powers shared with a council of appointment composed of four senators. This was originally proposed by John Jay who considered the council as a device for approving or rejecting gubernatorial appointments. Legislators did not see it that way. The legislative members individually were to have equal status with the governor and thus be in a position to dictate appointments. This thinly veiled mechanism of legislative domination was replaced in the Constitution of 1821 by straight legislative appointment, which in turn was shortly subjected to bitter attack. It was contended that the "bosses" known as the "Albany Regency" had practically taken out of the hands of the legislature and the governor the selection of high public officers. . . ."[31]

Control of patronage by this "invisible" government led to demands for a new constitution in 1846.

> It was the clamor for the abolition of the Albany Regency and the widespread agitation against official despotism of European monarchs which reached our shores that the convention of 1846 made the secretary of state, comptroller, treasurer, attorney general, state engineer, and the judges elective by popular vote. The one was aimed at the abuse of legislative power, the other aimed at the abuse of executive power. Both sought to accomplish their ends by giving to the electorate a larger share of power.[32]

This position came under vigorous attack almost seventy years later as New York prepared for its 1915 Constitutional Convention:

> It is true, the proceedings of the convention of 1846 record a demand that these high officers be made responsible to the people by the establishment of popular election, but it is likewise true that abolition of certain evils was uppermost in the minds of the delegates. They evidently assumed that by transferring the right of election from the legislature to the people the irresponsible and unofficial boss system, which had hitherto controlled the choice in fact, would disappear, on the

[31] New York State Constitutional Convention Commission, *op. cit.*, p. 30.
[32] *Ibid.*

general theory that leadership is not essential to intelligent operations in such matters. That which was a historical accident then became a dogma, namely, that all high officers, no matter what their duties, must on democratic principles, be elected by popular vote. And the theory has been carried to such a great length that a governor of a western state solemnly declared not long ago that the appointment of the state veterinarian by the chief executive savored of monarchy.[33]

A proposal to shorten the ballot won approval in the 1915 Convention but was rejected by the voters. Ten years later, following the recommendation of a special commission headed by former Governor Charles Evans Hughes and supported by the then Governor Alfred E. Smith, the secretary of state, treasurer, and state engineer were made appointive, leaving only the attorney general and the controller, as well as the governor and lieutenant governor, elected. Proposals in the 1938 and 1967 Constitutional Conventions to take these two officers off the ballot met with little support. Actually, New York has gone further than most states in reversing the nineteenth century "reform" which had so drastically lengthened the ballot.

Three constitutions adopted since World War II are the "short ballot" models. The only state executive officer elected in New Jersey is the governor; in Alaska, the governor and the secretary of state, who is the constitutional stand-in for the governor; in Hawaii, the governor and the lieutenant governor.

An Elected Judiciary

Popular election was also the nineteenth century reform prescription for judicial selection. It was in keeping with the prevailing view that the judiciary, as well as the legislative and executive branches, should be accountable to the people. No doubt popular election was an improvement over the original practice of a judiciary chosen by and therefore dependent upon the legislature. However, unlike legislative or executive elections, the election of judges has seldom evoked significant popular interest and has generally been characterized by voter indifference which has permitted almost complete partisan domination of the judiciary in many states.

Twentieth century judicial reform has called for an appointed judiciary. Most reform proposals have been variations of the Missouri Plan, which provides for gubernatorial appointment from nominations made by a nonpartisan selection commission composed of laymen and lawyers. Upon the expiration of his first term, the judge then runs for election without opposition, providing the electorate with an opportunity to remove him. It is said that he runs against his record rather than against a political opponent. The American Judicature Society and the American Bar Association have strongly advocated this method of judicial selection and it is gaining acceptance.

[33] *Ibid.*, p. 31.

Direct Legislation and the Recall

The early twentieth century reforms which most explicitly expressed dissatisfaction with the operation of representative government at the state level were the initiative and referendum first adopted in South Dakota in 1898 and now included in the constitutions of twenty-three states.

The advocates of these reforms were careful to assert, as did Charles A. Beard in 1912, that "it is the practice of representative government as it now prevails in the United States, rather than its theory" which should be considered when the initiative and referendum are appraised.[34]

The third member of this popular reform triumvirate was the recall of elected officers in a special election initiated by popular petition, but it has gained considerably less acceptance.

Broadening the Franchise

Although for more than 150 years the thrust of most state constitutional reform has been to prevent or correct some abuse, the positive rationale was almost always expressed in terms of making government truly responsible to the electorate. Thus reformers have justified popular election of a whole retinue of executive officers, the major and minor judiciary, direct legislation, and popular recall of unpopular officials. The emphasis upon the role of the electorate did come at a time when the franchise was being greatly broadened. Indeed, this was the most significant series of constitutional reforms which extended from the time of independence into the twentieth century with the gradual elimination of property qualifications and restriction because of sex or color.

Urban-Rural Conflict and Home Rule

Since 1850, intense urban-rural conflict has been a fact of life in the American states. One reform which grew directly out of this conflict was constitutional home rule. The cities, particularly the larger ones, resented domination by rurally controlled legislatures. Prohibition of local legislation was the first constitutional measure to prevent some of the more blatant abuses such as "ripper" bills which abolished exsisting local governments for purely partisan purposes. However, the more drastic reform was to give municipalities substantial control of their own "property affairs and government." The first constitutional home rule provision was included in the Missouri Constitution of 1875 and applicable only to the city of St. Louis. Shortly, this became standard reform dogma and has been adopted in various forms in well over half the states. Like so many reform measures, it has had consequences unforeseen by its originators and is presently in the

[34] Charles A. Beard and Birl E. Shulta, *Documents on the Statewide Initiative, Referendum, and Recall* (New York: The Macmillan Company, 1912), p. 33.

process of reappraisal as new patterns of intergovernmental relations are emerging.

Frequency of Change

The foregoing panorama of state constitutional reform only shows the more conspicuous objects in a very detailed and complicated picture. In fact, it is more ambitious than wise for one to attempt such a portrayal, but any consideration of future reform needs to be placed in the perspective of almost two centuries of constitution-making, an art which generally has not improved with age. The reformers of each generation have contributed to the ever growing corpus of state constitutional law the legal prescriptions to right the wrongs of their predecessors and prevent transgressions by their successors. Jefferson thought that governments tend to grow away from the needs and wishes of the people and therefore advocated frequent revision of constitutions. He was the originator of the provision which at regular intervals automatically submits to the voters the question of calling a constitutional convention. This provision now exists in eleven states.

During the nineteenth century there was a much greater willingness on the part of the states to call conventions and adopt the new documents proposed by them. The results showed marked similarities to the reconstruction of eighteenth century houses in the Victorian era. Simple, classic lines were obscured by the addition of elaborate adornments — heavy cornices, gables, cupolas, and so on.

It is significant that the 1965 Connecticut Constitution is very similar in form and substance to its 1818 predecessor and is one of the shortest in the nation. The Connecticut Constitution, in both the old and the new version, is distinguished for the fact that it has avoided adding various new provisions which to many seemed meritorious at the moment but which in time have proved otherwise. Actually, the most unfortunate aspect of constitutional revision experience has been the willingness to add new provisions and the unwillingness to remove outdated sections. Many of the latter were adopted as important reforms to meet problems of another generation. Frequently, some special interest for good or ill has developed a special attachment to these provisions, making it extremely difficult to remove them even though now they may obstruct the operation of the state in meeting current problems. It is problems of this sort that require the most careful scrutiny of those who have revision responsibilities.

An illustration of the problem is provided by the prohibitions against gifts or loans to private persons or corporations by the state or its subdivisions in the New York Constitution (Article VII, Section 8, and Article VIII, Section 1). The prohibitions were inserted in the last half of the nineteenth century to guard against overexpansion of public credit for railroad develop-

ment, especially subsidies by local governments to promote the building of spur lines, many of which were never warranted by economic considerations. Now these provisions present a very real problem as the state endeavors to cooperate with the private sector to continue faltering rail passenger service, particularly within the greater New York region. The legal restrictions have necessitated the outright purchase of the Long Island Railroad by the state and a long-term lease arrangement with the Penn Central for improvement of the New Haven line.

Protection Dies Hard

Among perennial opponents of constitutional reform are the elected local officers who are named in constitutions: assessors, attorneys, auditors, clerks, commissioners, constables, coroners, elisors, public weighers, jailors, marshals, ordinaries, superintendents of the poor, rangers, recorders, registers of deeds, registrars of voters, registers of wills, road commissioners, sheriffs, surveyors, tax collectors, and treasurers. It is understandable that they oppose giving up this protection, which found its way into constitutions as part of the early and mid-nineteenth century preoccupation with keeping government responsible to the people by having executive and judicial officers of state and local government directly elected. Thus, again, it can be seen that the reform of an early era has become a stumbling block in meeting organizational and operational needs of today.

The Changing Agenda of Reform: Fewer Dogmas

For those of us who are involved in organizations which help set the agenda of reform by publication of model constitutions, charters, and laws, it is a sobering thought to realize that some of our most cherished reform prescriptions may within a generation become an impediment rather than an aid to making government more responsible and responsive.

For example, the dogmatic civil service provision, an essential of the reform agenda of only a few years ago, was not endorsed in the latest edition of the *Model State Constitution*[35] as it was in the previous one.

Drastic changes in the provisions for state-local relations were labeled by some as a repudiation of "home rule," a fundamental part of the traditional reform creed. The new edition endorses a formula which encourages maximum initiative at both the state and local levels but recognizes that in the last analysis the broader interests of the state must take precedence.

The initiative and referendum are no longer considered as priority items of a reform program and are now included only as an appendix to the *Model State Constitution*.

Model-building is characterized by some of the same restraints as the actual

[35] National Municipal League, *Model State Constitution* (New York: National Municipal League, 1963).

process of constitutional revision. In both endeavors it is much more difficult to take something out of a constitution than it is to put something in. The obstacles presented by vested interests in existing constitutional language are not easily overcome. Today's reformers must be very sure to heed the words of the late Justice Benjamin Cardezo: "A constitution states, or ought to state, not rules for the passing hour, but principles for an expanding future."[36]

If we believe that states do have a significant role in an "expanding future," the direction of constitutional reform should be obvious. We must be wary of measures whose purpose is simply to correct abuses. Their potential for ultimate harm may outweigh their immediate benefits. Each reform measure must be judged as to whether or not it enhances the capacity of the state to act.

[36] Benjamin N. Cardezo, *The Nature of the Judicial Process* (New Haven: Yale University Press, 1921), p. 24.

POLITICS AND CONSTITUTION-MAKING IN ILLINOIS

MILTON L. RAKOVE

Long before the 116 delegates, who were elected by a small percentage of the mostly disinterested sovereign voters of the State of Illinois, met in Springfield to write a new constitution for the state, they had already become the recipients of a great deal of well-meaning advice as to how they should conduct themselves in their deliberations.

The newly elected Founding Fathers of Illinois have been told to be vigorously virtuous, eminently above board, always open, conscientiously representative, completely nonpartisan, and above all totally nonpolitical. They have been advised that their sole concern should be the interests of all the people of Illinois without regard to local, sectional, regional, ethnic, racial, religious, or economic concerns. And they have been warned that the watchdogs of the public interest, the representatives of the mass media, would be hovering over their shoulders as they met in open convention, in the full glare of the public eye, ready to expose to a concerned electorate any violation of their public trust.

It should be said publicly, what most of the delegates must know privately, that most of this well-meaning advice should be discounted and ignored by the delegates if they have any hope of writing a constitution that has any chance of being adopted by the sovereign voters of the State of Illinois. If the Founding Fathers of this country — or their descendants down to the fifth generation — had followed such advice they would still be sitting in Independence Hall in Philadelphia, trying to write a workable constitution for the new republic they were founding. We can all be thankful that those Founding Fathers locked the doors and windows; posted a guard outside to keep busybodies away; and bargained, wheeled, dealed, and horsetraded with each other. In general, they conducted themselves as practical politicians who had to write a political document that could be accepted by, or at least put over on, a divided, selfish, and generally apathetic and uninformed populace.

The delegates in Springfield surely must recognize, too, that Illinois is not one state made up of a homogeneous mass of public-spirited, concerned citizens. Illinois is at least three states — the City of Chicago, the suburbs of Chicago ranging into some of the communities in Cook County's neighboring counties, and the rest of Illinois, Downstate.

Indeed, if one is to be realistic about the makeup of Illinois, the state is divided into much more than three separate parts. For the facts of life are that each of these separate parts of the state are fragmented into numerous subdivisions, divided along racial, ethnic, religious, economic, and political lines.

There is no such entity as the City of Chicago; neither is there an area called the suburbs, nor a subdivision of Illinois called Downstate, except in the most vague and general sense. The City of Chicago is a kaleidoscope of separate communities inhabited by diverse peoples ranging from the high-rise Gold Coast fringe along Lake Michigan, through the deteriorating neighborhoods, into the black belts of the inner city's West and South Sides, to the middle-class white neighborhoods of the Northwest and Southwest Sides. Chicago's suburbs encompass a spectrum of communities from Kenilworth to Hometown, with the Skokies, Park Forests, Streamwoods, Park Ridges, Glencoes, and Hazelcrests in between these two economic and social extremes. What is called "Downstate" ranges geographically from the towns on the Wisconsin border to the communities south of the Mason-Dixon line to the Tri-Cities on the Iowa border, and encompasses a social, cultural, and economic potpourri that includes the microcosm of Chicago that is East St. Louis, the southern town of Cairo, and the prosperous farm communities of central Illinois.

All of these peoples and all of these diverse communities have different interests, aspirations, and needs. The divergent interests of these groups sometimes coincide as members of the body politic of the State of Illinois, but they more often serve to divide and fragment the people of the state. A close look at the character of each of the three major subdivisions of the State of Illinois would document the social, cultural, and political differences that differentiate these three areas from each other.

Chicago

Chicago, with three and a half million people, about one-third of the population of the state, is Catholic, nationality-ethnic, and black.

Settled originally by the Catholic Irish and Germans; inundated by successive waves of Poles, Bohemians, Italians, Lithuanians, and Jews; and overwhelmed since 1940 by a massive migration of southern blacks; Chicago might have been a classic example of the melting pot that is America in the twentieth century.

It might have been an example, except for the fact that the cliché is not very relevant for Chicago. For in Chicago and its environs the "melting pot" has not "melted." The ethnic, racial, and religious divisions among the polyglot population of the city have remained fairly rigid and have perpetuated themselves into the second and third generations of the children of the original immigrants.

Chicago developed as a city of nationality neighborhoods and has remained so until this very day. The sons of the Irish tavern-owners, policemen, and firemen have segregated themselves from their Polish neighbors even as they moved up into the upper economic and social echelons of the practice of law and medicine. Their fathers remained aloof from the non-Irish immigrants, and the sons and daughters have separated themselves, not only from the East Europeans, but also from the Irish who have not made it in the new world. The Poles and Italians, the Bohemians and Lithuanians, and the Germans and the Jews have all maintained their social and cultural distances from each other. And all of these groups have maintained a rigid wall between themselves and the exploding black population and the less important Puerto Rican–Mexican elements of the city.

Politics in Chicago today remains, to a considerable extent, a bargaining process among the leaders of these fairly self-contained and self-directed ethnic communities. Chicagoans do not identify themselves with their city as an ancient Athenian would with his *polis*, an imperial Roman with his world capital, or even a modern Parisian, Londoner, Florentine, or Berliner with his community. Chicagoans think socially, culturally, economically, and, as a consequence, politically, in terms of their neighborhoods or the ethnic groups rather than in terms of their city.

The political leadership of the city is drawn from these ethnic, parochially oriented neighborhoods. Those political leaders reflect and represent the local prejudices, narrow outlooks, and indigenous aspirations of their home bases. The Anglo-Saxon, white Protestant, Western European, middle-class ethos and concept of government has little or no meaning to the lower-class, peasant-descended, East and South European, heavily Catholic population of the city. Good government means services, favors, and concessions on a local basis rather than fiscally conservative, nonpartisan, normally righteous, community-oriented, city-wide concern.

The influx of a million blacks into the city has fragmented the population even more deeply than the ethnic divisions. The division between two and a half million whites and one million blacks has added another dimension to the ethnically separated city. In one sense, it has unified the ethnic whites on a single political issue: blocking the movement of the blacks into white neighborhoods. But, at another level, the rapid growth of the black population and the steady spread of the black ghetto has opened a wide chasm within the city's body politic between the nonwhite and white populations of the city. Race has begun to replace nationality as the major factor in the politics of the city. And the blacks, even more than the ethnic whites, refuse to identify themselves socially, culturally, or politically on a communal basis with a city which keeps them penned in a ghetto and forces them into a separate but not equal life within the city.

A third factor in Chicago's politics is religion. In the largest Roman Catholic diocese in North America, no political decision can be made without due consideration for the feelings and aspirations of the majority Catholic population of the city. It is with good reason that the State of Illinois annually awards license plate Number 1, not to the Governor, but to the Roman Catholic Archbishop of Chicago. The influence of the hierarchy and the many parishioners of the Church of Rome is always present in decision-making in the politics, law, educational policy, and cultural life of the city.

This is not to say that that influence is necessarily bad or necessarily good — merely that it is so. Roman Catholic power in Chicago has contributed mightily to the growth and development of the city and to its problems. If, as Christ told his people, his Father's house has many rooms, so does his Roman Catholic Church in Chicago have many factions. Some of the most liberal as well as some of the most conservative proposals and pressures in the life of Chicago have emanated from the many-splendored, broad-based, variegated Roman Catholic clergy and laity of the city.

In contrast to the dominant Catholic religious community, the Protestant and Jewish communities, with the exception of powerful business leaders, are weak and ineffectual. This is not to say that they are ignored or are not consulted, but that their political influence is nowhere near so great as that of the Roman Catholic community. Since most of the Protestants in the city are now the blacks, they can be dealt with politically on the basis of race rather than religion. Since most of the Jews have fled the city for the suburbs, except for residence in a few fringe areas, they can be easily ignored, although recognized and tolerated in the political decision-making in the city.

To sum up, the politics of Chicago is affected most by three major factors — the nationality makeup of its white population, the race issue stimulated by the exploding black population, and the religious dominance of the city's life by the Roman Catholic leadership and population.

Suburbia

Chicago's suburbs, like the city, are also undergoing radical change. The black migration into Chicago has stimulated a massive exodus of white middle-class and working-class citizens. While the black population of the city doubled between 1950 and 1960 — going from 400,000 to 800,000 — the total population dropped 2 percent. In the same period, the population of the suburban area of Cook County increased by 71 percent.

The face of the suburban area of Cook County is being altered in two major ways. First, many new development suburbs have sprung up where farmers' fields once graced the landscape. Second, the old, established, close-in suburban cities and villages are undergoing a transformation.

Chicago's working-class and lower middle-class, ethnic, heavily Catholic,

white population is leaving the city for new tract-development suburbs. New, fairly homogeneous population centers are being established by the fleeing working class and lower middle-class white Democrats from the city.

Contrary to popular mythology, these fleeing Democrats are not becoming Republicans in their new communities. Isolated from surrounding established towns, in close proximity physically to other emigrant Democrats like themselves, and relatively untouched by established Republican-dominated suburban organizations, most of the former city Democrats are retaining their traditional affiliation with the Democratic Party nationally.

However, on local issues they have tended to become relatively nonpartisan, as homeowners and taxpayers without regard to any formal party affiliation or doctrine. Traditional Democratic New Deal liberalism or Republican hostility to welfare-state measures and governmental activity in a broad range of programs are both relatively meaningless to these new suburbanites. Their primary concerns are with administrative, not political, matters at the local level. Taxes, sanitation, flood control, schools, zoning, and property values occupy whatever time they have to devote to public affairs. Appeals to their civic-mindedness on an ideological basis fall on deaf ears. They are practical, pragmatic, self-centered, narrowly oriented and concerned, and nonideological politically insofar as local problems and issues are concerned. As for the city which they left, the county of which they are a part, the state which spawned them legally, and the nation which guides their ultimate destinies — those are matters of relatively little concern in comparison to their immediate local problems. Their major interests are to make sure that blacks do not follow them into their new communities, and to keep their taxes down even if it means unsatisfactory and inadequate local services and facilities.

These are not Jeffersonian New England town-meeting communities governed by Anglo-Saxon ideas of what the good society should be. They are, rather, first- and second-generation Eastern and Southern Europeans, influenced by their peasant and proletarian backgrounds and dominated by still-retained prejudices and fears of the strangers beyond the fence.

In contrast, the old established cities and villages of Chicago's suburban hinterland are undergoing a significant political transformation. These communities are attracting upper-middle-class city Democrats moving in search of good schools, safe streets, clean government, and all the other trappings of the middle-class American dream.

Most of these new suburbanites are the newly-arrived middle class in America. Their fathers were laborers, small businessmen, and skilled tradesmen. They are doctors, lawyers, teachers, corporations junior executives, and successful businessmen. Their wives are college graduates and their children are born to the upper middle class. The Catholics and Jews among

them have assimilated as much as possible the dominant Protestant middle-class values of white America, in the pattern described by Will Herberg in *Protestant, Catholic, Jew*. They have not left their faiths, but they have adapted socially, culturally, and often politically to what they believe are American traditions.

Unlike the city emigrants to the development suburbs, they have retained their Democratic liberalism, applied it to local community problems, and combined it with their new-found Anglo-Saxon Protestant concepts of conservative, antimachine, nonpartisan, well-run local government. They are hybrids, fusing the old with the new, the untried with the true, that which they are with that which they would like to be. They are Ortega y Gassett's revolting twentieth century masses who pursue culture, politics, recreation, and community life with a passion not seen in their newly discovered conservative communities for many years.

They have left the city behind, but most of them work there, have attachments there, and are concerned with its problems, unlike the old settlers in the new communities. They will probably never go back, but they think they will. In the meantime, they are in the process of urbanizing their new communities, even while they are adapting to them. They are a disturbing force in these old communities, partially adaptive, partially disruptive, accepting the values but challenging them at the same time. They are in the process of creating a new, more partisan politics in the once tranquil, administratively oriented, nonpartisan Republican-established suburbia of Chicago. They are Democrats who have half-adopted some of the better tenets of Republicanism and are forcing their neighbor Republicans to rethink and reevaluate their own party principles and their communal values.

These suburban communities are the opposite of the development suburbs, where politics is negligible and administration is all important. In the old suburban communities, nonpartisan administrative matters are becoming increasingly political and intertwined with county, state, and national political directions and ideologies.

Downstate

Illinois, like many other American states, has traditionally been divided between a major industrial city and a rural hinterland. Like most other such American states, the marriage of the two parts has not been a union of compatible partners, but rather a shotgun wedding of contending parties.

In contrast to Catholic, ethnic, black Chicago, Downstate has traditionally been white, Protestant, small-town, Republican, and conservative. It is the land of the Lions, the home of the Kiwanis, the territory of the Elks. The sanctity and validity of traditional white, Protestant, conservative rural America guides the outlook and the aspirations of the majority of its population, except for a few industrialized small cities.

The state government at Springfield has been the private province of this part of Illinois. Chicago, the colossus of the North, with its blacks, Catholics, Jews, crime, delinquency, and corruption, has always been regarded as the Babylon of Illinois, a place to visit but not to live. In truth, there has usually been as much crime, delinquency, and corruption proportionately in the towns of downstate Illinois as in Chicago, but this fact has been conveniently overlooked by the local citizenry.

Castigating the Northern colossus has been a way of life for generations in rural Illinois. Protecting the state government from undue influence by the big city slickers has been a self-appointed holy mission. Exploiting the urban masses financially and politically in the interests of the rural section of the state has been regarded as proper. If this differentiation violated the state constitution, deprived Chicago's citizens of a fair share of the state's revenues, discriminated against Chicago's children in providing equal educational opportunity, and denied equal representation or consideration for their interests to Chicago's population, it was all being done in the name of the sanctity of the real American values which happened to coincide with the interests of the economic and political leadership of the downstate areas.

The major problem in this struggle has been a steady growth of population and political and economic power in Cook County, in Chicago, and in its suburban ring. Cook County, with over 5 million people, has a population equal to all the other 101 counties and a disproportionate share of the industry and wealth. Keeping some balance in the state's politics and economics against the growing power of the giant northern county is, of necessity, a major political consideration. The success with which downstate Illinois has accomplished this task is a testament to the tenacity, ingenuity, and dedication of downstate Illinois' political leadership.

Downstate Illinois has many problems of its own, some similar to those in Cook County and many different. Saving the towns from deterioration, keeping industry from leaving, bringing in new industry, offering young people adequate opportunity at home, trying to compete culturally with the big urban area, and maintaining and protecting a way of life and traditional values are of major concern to the residents of downstate Illinois. Like their northern counterparts in Chicago, downstate politicians not only represent but also reflect the aspirations, needs, and values of their constituents. Like their big-city counterparts, their behavior and policies are based on a mixture of self-interest and honest belief in the value of what they defend. And who is to say that they are not partially correct in what they do, that what they strive to maintain is not in the best interests of their constituents and of the state?

Conclusion

We live, in the state of Illinois, in a political community of over 10 million heterogeneous people, organized in racial, religious, ethnic, economic, and po-

SPEAKERS

SPEAKERS

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PROPOSED CONSTITUTION

OF

ALABAMA

Report of the Constitutional Commission



MAY 1, 1973

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FINAL REPORT
OF THE
ALABAMA CONSTITUTIONAL COMMISSION

TO: His Excellency, George C. Wallace, Governor of Alabama;
The Honorable Jere Beasley, President of the Senate; and
The Honorable G. Sage Lyons, Speaker of the House of Representatives:

The Alabama Constitutional Commission submits herewith its final report.

The Commission was created by Act No. 753, approved September 12, 1969 (Acts 1969-70, Vol. II, p. 1330) and continued by Act No. 95, approved May 11, 1971 (Acts 1971, Vol. I, p. 165). The original members were appointed in January, 1970. M. Leigh Harrison, former Dean, now Professor, at the University of Alabama Law School, was retained as Research Director. Other staff assistants and expert consultants have been employed from time to time.

The Commission and its staff have worked continuously since its organization. It has held regular and numerous working meetings, all of which were open to the public. Advertised public hearings were held in Decatur, Birmingham, Montgomery and Mobile. Citizen participation at those meetings has been of important assistance to the Commission.

The members of the Commission are representative of the state and its various political and economic interests. Differences among members have often been great and vigorously expressed. This report reflects, in some instances, a close majority vote, but many important decisions were reached by unanimous vote. The Commission has concluded that the 1901 constitution, with its 327 amendments, is obsolete and should be replaced with a constitution that is more adequate for the citizens of the state and for their government, both state and local.

An interim report was made by the Commission to the Governor and the Legislature on May 4, 1971. Amendments were recommended in five general areas, embodied in ten separate bills. The Senate Committee on Constitution and Elections favorably reported all of the proposed bills, some with minor amendments. The House Committee was unable to complete hearings and consideration of all of the bills, but reported the amendment providing for annual sessions of the legislature. This was passed by the legislature (Act No. 1264, Regular Session 1971), but was defeated at the general election in November 1972. The Commission renews its recommendation for annual sessions of the legislature in this report.

The Commission's statutory mission was broadly defined (Sec. 2, Acts 1969, p. 1330):

> "The Commission shall consider and investigate the necessity for and the extent and nature of desirable amendments to or general revision of the Constitution of 1901 of Alabama, and the appropriate procedures for submission and adoption of such amendments or revisions."

The Commission carefully considered both the extent of the revisions needed, and the various ways in which the changes might be accomplished.

The present constitution provides several choices with respect to the manner of accomplishing a general revision of the constitution:

1. A Constitutional Convention could be called to do the work. This is recognized as a cumbersome and expensive method. Two, possibly three, elections would be involved; one for a vote as to whether there shall be a convention; the second, an election of delegates to the convention; and third, a vote by the people on the proposals of the convention. Under the 1901 constitution this last step is not required, but it would be desirable. Other variations of the convention method would be possible. Media coverage of a convention would provide a more adequate "public education process" and therein lies an advantage of the convention method over the other options available.

2. A Commission, with the assistance of qualified consultants could propose a new constitution and submit it to a convention. The convention could make a final judgment or could submit it to the people for ratification.

3. A Commission can do the research, study and drafting, and submit its product to the legislature for its determinotion as to what further steps should be taken. The legislature is free to adopt all or any part of the proposed revision for direct submission as amendments; it could submit the entire draft of the revised constitution for ratification; or it may call a convention to review the draft with whatever changes the legislature may make.

4. A combination of the legislative and convention methods is currently being used in Texas in redrafting their constitution. A constitutional amendment was adopted, providing that a constitutional revision commission be created, which would report to the legisloture, after which the members of the legislature are to be convened as a constitutional convention, which will submit a revised constitution for ratification.

The third method is the one followed by this Commission. A vast amount of research of relevant publications has been accomplished. Members of the Commission have studied the issues and debated the questions. Proposed drafts have been written and re-written. The final report, a complete revision of the 1901 constitution with its amendments, is herewith submitted to the Alabama legislature. The legislature has several choices. The Commission's proposal may be approved, altered or rejected. The results of the study and deliberations of the legislature may be submitted to the voters of Alabama for approval in its entirety, or on an article by article basis.

The nature of the proposed constitution is such that each of tne principal articles is self-contained, and therefore could be adopted separately without affecting other articles of the present constitution.

The Commission believes that there may be doubts under Article XVIII of the present constitution whether more than

one article could properly be submitted directly by the legislature, as one amendment, or at least whether an entire new constitution could be so submitted. Any doubts as to this might be resolved by an advisory opinion of the Supreme Court, or the Commission's revision of the amending article could be submitted first as a separate amendment.

In view of the fact that a complete revision of the constitution is proposed, consideration of the proposed changes by the legislature will necessarily require a substantial amount of the time of committees and of each house. The Commission therefore suggests that a more thorough consideration could be given, without distraction from important regular legislative matters, if the draft could be considered by the legislature at a special session called solely for that purpose. The necessary amendment to the amending article, and possibly one or two independent articles, such as the judicial article, could, in the meantime, be submitted by the regular session, thus paving the way for submission of the rest of the revised constitution in whatever manner the legislature may decide.

Respectfully,

CONRAD M. FOWLER

May 1, 1973 Chairman

BASIC REASONS WHY THE CONSTITUTION OF 1901 SHOULD BE COMPLETELY REVISED

Alabama Governor, Emmet O'Neal, in an address to the Legislature on January 15, 1915, said: "Many of the provisions of our present antiquated fundamental law constitute insuperable barriers to most of the important reforms necessary to meet modern conditions and to secure greater economy and efficiency in the administration of every department of the state government.

"At that time (1901) the necessity of reforming the sufferage was the paramount issue which engaged the attention of our people and hence when the constitutional convention of 1901 assembled, little consideration was given to other matters of reform. This is conclusively shown by the fact that the Constitution of 1875, which had been framed to meet conditions which can never again recur, was practically re-adopted. No real or permanent progress is possible in Alabama, until the present fundamental law is thoroughly revised and adapted to meet present conditions."

Subsequent events have established the accuracy of the analysis by Governor O'Neal. The Alabama Constitution is the second longest in the nation. It contains in excess of ninety-five thousand words. It has been amended three hundred twenty seven times. Its terms provide undue constraints upon each of the three branches of state government and upon local government.

State legislatures were still electing United States Senators in 1901. Not until 1912 and the adoption of the 17th Amendment did voters begin the popular election of U. S. Senators. Women were not accepted into full citizenship and given the right to vote until nineteen years after the Constitution was ratified. The Model-T Ford was not yet on the drawing board when this constitution was approved.

One hundred forty amendments were adopted between 1901 and 1960. From 1960 until present date one hundred eighty

seven amendments have been approved by the voters of Alabama. That 57% of the amendments have been approved in the past thirteen years is substantial evidence that the restraints of the '01 document have become an intolerable obstruction to the operation of a modern state.

Voters of Alabama, in increasing numbers, question the logic of expensive state wide elections on amendments of purely local interest. One hundred three amendments providing for local tax increases for schools, hospitals, public buildings and other purposes have been approved. Thirty amendments provide for the utilization of county or municipal funds and credit for economic development. Thirty four amendments deal with the transition of county officials from a fee system to a salary arrangement. There are fifty eight additional amendments of local significance. Only ninety nine of the three hundred twenty seven amendments have state wide importance.

Seventeen amendment elections have been held since January, 1960. Elections are costly. The amendment election held January, 1972 cost the state and the counties $411,108.08. The election in December, 1939 cost $438,612. Had the draft now proposed by the Constitutional Commission been adopted in 1901 there would be one hundred sixty seven fewer local amendments to the Constitution and at least one half of the amendments of state wide significance would have been unnecessary.

A state constitution should set forth the limitations on and the separation of the powers of the three branches of government. Provision should be made for the appropriate distribution of authority and responsibility between the state and local government. It is evident that the 1901 Constitution reflects a distrust felt by citizens of that era. As a consequence the '01 document has many inadequacies. The Constitutional Commission proposes a document that is much more appropriate for the times in which we live.

Tremendous social, political, population, and economic changes are abroad in the land. These changes have fostered constitutional revision efforts in many states over the past three decades. Complete new constitutions have been adopted since

REASONS FOR REVISION

World War II in twelve states: Missouri, Georgia, New Jersey, Alaska, Hawaii, Michigan, Connecticut, Florida, Illinois, North Carolina, Virginia, and Montana. Maryland and Pennsylvania are in process of adopting complete revisions, article by article. Similar revisions have been proposed or are under study in Louisiana and Texas.

THE PRINCIPLES ON WHICH THE PROPOSED REVISION ARE BASED

The Commission has approached the recognized necessity for a general revision of the constitution with some basic principles in mind.

First, the fundamental and historic assurances of individual liberty and limitations on state power reflected in the Bill of Rights should be preserved, and in places strengthened.

Second, the basic structure of the state government, embodying the principle of separation of powers, should be preserved.

Third, undue and unnecessary restrictions on the power and discretion of the legislature to deal with changing conditions and needs should be removed.

Fourth, the greatly increased responsibilities of the governor as chief executive of the administrative branch should be recognized and supported by adequate authority.

Fifth, the responsibility and authority of the courts, constituting one of the three independent branches of government, must be restated and strengthened.

Sixth, more authority, flexibility and initiative should be granted to local government. Home rule should be encouraged under the general control of the legislature.

Seventh, detailed provisions, legislative in character, should be omitted. The constitution should be limited to a declaration in plain and simple language providing for the basic principles and the structure of state and local governments.

ALABAMA CONSTITUTIONAL COMMISSION

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Mr. Goodwyn, as President of the Senate, and Mr. Fite, as Speaker of the House, served until January 12, 1971 on which date they were succeeded by Lieutenant Governor Beasley and Speaker Lyons.

Mr. Stakely resigned from the Commission on March 22, 1971, Judge Hand on September 27, 1971. Representative Ellis was appointed to succeed Mr. Stakely on August 1, 1972 and Judge Hodnette was appointed to succeed Judge Hand on August 15, 1972.

CONSTITUTIONAL COMMISSION ACKNOWLEDGEMENTS

The following were appointed to the Commission in June of 1971: Senator Pierce, Senator Foshee, Representative O'Daniel and Representative St. John.

ACKNOWLEDGEMENTS

The Commission acknowledges the valuable assistance given by the following who were members of the staff and assisted in the preparation of the Interim Report filed with the Legislature on May 4, 1971:

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A number of people have appeared before the Commission to give advice and information. We cannot list all who have made a contribution but the Commission would like to thank in particular the following:

Robert B. Highsaw, Director, Bureau of Public Administration, University of Alabama

James D. Thomas, Professor, Department of Political Science, University of Alabama

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David B. Walker, Assistant Director, Advisory Commission on Intergovernmental Relations, Washington, D. C.

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Research Director M. Leigh Harrison has done a monumental work in gathering information, analyzing data, and preparing drafts for the consideration of the Commission. Our esteem for Mr. Harrison, always high, has been enhanced.

Joseph F. Johnston has performed service above and beyond the call of duty. He has spent many hours in the preparation of this final report. He deserves a particular expression of thanks.

SUMMARY OF PRINCIPAL CHANGES EMBODIED IN THE PROPOSED CONSTITUTION

This summary points out in brief and non-technical terms the important changes and new provisions included in the revised constitution. It will not attempt to describe every change in language, nor the numerous relatively unimportant or essentially legislative provisions of the present constitution which would be deleted. These will be discussed in the commentaries on the draft of the revised constitution.

ARTICLE I

DECLARATION OF RIGHTS

This part of the 1901 Constitution has been generally regarded as unduly verbose, containing many things not properly a part of a Bill of Rights. The Article has been considerably shortened, and a number of unnecessary sections are deleted. All of the historic and basic rights of individuals and limitations on governmental power are retained and several relatively substantial new protections and safeguards are proposed.

The due process clause (present Sec. 6) is now applicable by its terms only to defendants in criminal prosecutions. The draft broadens this to say that "no person" shall be deprived of life, liberty or property without due process of law, adopting the phraseology of the United States Constitution, with its substantive as well as procedural applications.

The present constitution prohibits waiver of indictment by a person charged with crime, except by a plea of guilty. The draft would authorize the legislature to permit waiver of grand jury action.

Another change is the addition of an equal protection clause, not contained in the present constitution.

The provisions of present section 6 as to venue in criminal

cases have been eliminated as unnecessary. The legislature may provide by law for a change of venue on motion of the state or the defendant.

The provision for mandatory bail in present section 16 has been broadened to allow courts to dispense with bail if reasonably satisfied that the defendant will appear.

A new provision has been added, conforming to the holding of recent U. S. Supreme Court decisions, requiring jury trials in all cases where imprisonment for more than six months may be imposed.

The legislature is authorized to provide for six-man juries in both civil and criminal cases and to provide for less than unanimous verdicts in civil cases.

The present prohibition of suits against the state is dropped, and the legislature is authorized to provide for suits against the state and its political subdivisions.

The eminent domain provisions are revised. The right of property owners to collect consequential damages from municipalities and corporations having the power of eminent domain, now recognized under present section 235, is extended to provide for such recovery from the state.

ARTICLE II

DISTRIBUTION OF POWERS OF GOVERNMENT

The substance of the present provisions for separation of powers into legislative, executive and judicial branches is retained.

ARTICLE III

LEGISLATIVE DEPARTMENT

Several substantial changes are proposed with respect to the legislature.

SUMMARY OF CHANGES

The most fundamental change, providing for regular annual sessions, was recommended by the Commission in its 1971 interim report, and approved by the legislature (Act No. 1264). This proposal was rejected by the voters at the general election in November 1972. After full and careful consideration of the arguments advanced against this amendment, the Commission decided to renew its recommendation. It is confident that upon reconsideration, especially in the light of the entire revised legislative article, which was not presented with the narrow proposal for annual sessions and a legislative salary commission, the people of Alabama will recognize the desirability, even the necessity, of the change.

It is proposed that regular sessions be held annually. These sessions would be limited to thirty legislative days, instead of the present thirty-six, within ninety calendar days. Special sessions would be reduced from thirty to twenty days within forty-five calendar days. The beginning date of regular sessions would be moved up from May to the first Tuesday in February.

With annual sessions it is proposed that members of the legislature be placed on an annual salary, to be recommended by an independent commission, eliminating the present unsatisfactory system which imposes on the legislature the burden of fixing its own compensation in the form of per diem, travel and expense allowance. The commission's recommendations would be effective unless changed or rejected by the legislature. Changes in pay could not apply to any legislator during the term for which he was elected.

Several revisions are proposed in the procedures for enactment of bills, in the interest of efficiency and expedition. The requirement that the presiding officer of each house sign all bills, after they have been read at length, is eliminated, and the secretary or clerk of the originating house would certify bills to the governor. New provisions are added prohibiting the passage of any other legislation in the last three days of a session until the general appropriation bill has been enacted, and for carry-over of general appropriation acts if new ones are not enacted.

An important technical change is proposed in the definition of general laws, which would be defined as laws applicable to the whole state or to all counties, municipalities or other units in a class. The legislature would be authorized to classify areas or districts including at least two counties or municipalities, but could not establish more than eight classes based on population.

The purpose of this is to eliminate the use of so-called general laws of local application for the purpose of avoiding the notice and other requirements for local legislation. Local acts would be facilitated by reducing the required publication of notice from four weeks to two.

A related change is designed to prevent the enactment of local laws dealing with a subject covered by a general law, with the resulting confusion and uncertainty as to legislative policy.

The legislature would be required to adopt a code of ethics governing conflicts of interest for legislators, state employees and non-judicial officers.

ARTICLE IV

REPRESENTATION

Important changes are proposed as to apportionment for election of the legislature, and as to congressional redistricting. The state would be divided into districts for both the House and Senate, and each district would have to consist of "compact and adjoining" territory, with the ratio of the number of legislators to population as nearly equal as practicable.

A commission on reapportionment is established and directed to submit plans for both reapportionment and redistricting to the legislature promptly after each decennial census. These plans would automatically become law if the legislature fails to adopt a plan at its next session. The supreme court would be authorized to review the reapportionment or redistricting plan on the petition of any voter.

SUMMARY OF CHANGES

ARTICLE V

EXECUTIVE DEPARTMENT

There is a considerable stream-lining and updating of this article, including a number of changes in the procedures of the governor's office.

The non-policy making offices (state auditor, secretary of state, state treasurer, commissioner of agriculture and industries, and sheriffs) are eliminated from constitutional status, but no change is automatically made in their method of election or functions, which are fixed by statute. The constitutional officers in the executive department would consist only of the governor, the lieutenant governor and the attorney general. Each would be allowed to succeed himself for one term.

Qualifications for the three executive officers are changed from seven years residence to three years as qualified voters, and the minimum age lowered from thirty to twenty-five.

The governor is given authority to reorganize executive departments and agencies whose heads are appointed by him, subject to legislative rejection or modification. He is also given new authority to bring actions for judicial enforcement of compliance with the constitution and laws, and to fill vacancies in state offices when not otherwise provided by law.

A provision, now contained in a statute, is added requiring the governor to submit a budget at the beginning of each regular session of the legislature.

Changes are made in the times for executive consideration of bills. The governor would have seven calendar days to act, while the legislature is in session, and twenty days if the legislature adjourns within the seven days.

Pocket vetoes are eliminated.

If an executive amendment is rejected, instead of the present resulting veto, the bill would go back to the governor for approval or veto, but no further executive admendments would be permitted.

Substantial changes are made in the provisions for succession of governor and lieutenant governor. Non-policy making officers are eliminated from the line of succession. The automatic succession upon twenty days' absence is eliminated, and a procedure established for determining the inability of the governor to perform his duties because of physical or mental disability or absence from the state. It is provided that the governor may himself declare his physical disability.

ARTICLE VI

JUDICIAL DEPARTMENT

The proposed judicial article makes substantial changes in the field of court administration, the selection and tenure of judges, and in the system of inferior courts.

The article gives constitutional sanction and permanence to the actions of the 1971 legislature in authorizing the Supreme Court to make rules for appellate and trial courts in civil cases, and in providing for centralized court administration. The article would extend the Court's rule making power to criminal procedure.

The article provides for a unified judicial system in line with most recent constitutions, but retains the present system of probate courts.

No material changes are made in the present jurisdiction of the Supreme Court and Court of Appeals as now constituted. The original jurisdiction of the Supreme Court is enlarged to include questions of state law certified by federal courts.

A substantial change is proposed with respect to inferior courts. The article would abolish all inferior and special courts after a period of three years, and substitute one unified court of limited jurisdiction to be known as the District Court. The legislature is authorized to designate the geographical and substantive jurisdiction of this court on a uniform basis. It is prohibited from the exercise of equity jurisdiction.

SUMMARY OF CHANGES

In addition to the abolition of Justices of the Peace effected by Amendment No. 323 (January 1972), the new article would transfer and absorb into the unified system all the various special and limited jurisdiction courts which have been created by local acts, including Juvenile Courts. The Commission concluded that where there is a need for a specialized court such as Juvenile or Family, it would be better to establish it as a department or division of either the District or Circuit Court, keeping it within the unified system for all purposes.

New administrative provisions would prohibit the judges of any court in the state, including the inferior (district) judges from engaging in the practice of law; establish a judicial compensation commission to recommend compensation of all judges to the legislature, and provide for the administration of the system by the Chief Justice.

Judges would continue to be elected. The Commission submits an alternative proposal which would require that all judicial elections be on a non-partisan basis. Incumbent judges would be permitted to go on the ballot by filing a declaration of candidacy.

Vacancies in all courts would be filled by appointment from panels selected by independent commissions. Judicial nominating commissions are established for the appellate courts and in each circuit for the circuit and district courts. Probate Judges are not affected. A judge appointed to fill a vacancy would serve until the January following the next general election held after he has completed one year in office. At that time there would be an open election for a full term.

The term of office for all judges is fixed at six years.

The article directs the legislature to provide a retirement and pension system for judges, and prohibits the election or appointment of any person to judicial office after reaching the age of seventy, except supernumerary judges who are not entitled to a pension.

Finally, a system for determining questions of disability, violation of canons of ethics, or other disqualification is estab-

lished with a Judicial Inquiry Commission to conduct investigations and a special "Court of the Judiciary" to hear complaints filed by the Commission. This procedure was established by Amendment No. 317, adopted in January 1972. The draft would revise that amendment so as to separate the investigatory and prosecuting functions from the adjudicatory responsibilities.

ARTICLE VII

SUFFRAGE AND ELECTIONS

The lengthy, involved and largely obsolete provisions of this article of the 1901 constitution (many have been held to be in violation of the U. S. Constitution) have been greatly reduced and simplified. The voting age is fixed at eighteen, and residence and registration requirements, spelled out at great length in the present constitution, would be left up to the legislature. The present list of thirty-three disqualifying crimes is eliminated for every "felony involving moral turpitude," or mental incompetence. The right to vote would be restored upon restoration of civil and political rights.

ARTICLE VIII

TAXATION AND DEBT LIMITATION

Extensive changes are proposed both as to state and local taxes and debts.

The present prohibition against the use of taxes by state and local governments for "works of internal improvement" is abolished, and the state and its subdivisions would be authorized to use the taxing and borrowing power for public purposes. Their use for industrial development would be subject to special limitations.

"Earmarking" or permanent appropriation of new or increased state taxes for any purpose would be prohibited, and the legislature authorized to terminate existing earmarkings.

SUMMARY OF CHANGES

The provisions of the ad valorem tax amendment (No. 325) adopted in May 1972 are carried forwa. d, except the limitation of all ad valorem taxes to one and one-half percent of the market value of property taxed, which would be repealed. The Commission concluded that this limitation is impractical. The provision of present section 214, limiti.g state ad valorem taxes to 6.5 mills, would be retained.

The 1972 changes provide for classification of property for ad valorem taxation into three classes (1) utilities, (2) unclassified, and (3) agricultural, forest and residential. Tax rates are required to be uniform in each county and municipality, but the ratio of assessed to market value is fixed at 30% for utilities, 25% for property generally and 15% for agricultural, forest and residential property. The legislature is authorized to change these ratios for any class and for any county, within the range of 15% to 35%.

In order to simplify income tax returns, the legislature would be authorized to define income by reference to Federal tax laws.

Constitutional limits on the rate of local taxes would be abolished. All authorizations of tax rates allowed to local governments by the 1901 constitution and its amendments would be continued. Local taxes in excess of present authorizations would be permitted without limit, provided that a four step procedure is followed:

(1) A public hearing must first be held,

(2) followed by proposal of the tax by the local governments,

(3) which would be approved by an act of the legislature, and

(4) finally approved by the voters in the area. This provision was a part of the 1972 Amendment.

The present debt limitation provisions are substantially changed.

So-called special revenue bonds are eliminated and the full

faith and credit of the state required to be committed to all state debts.

Temporary borrowing by the state in anticipation of current revenues is permitted, not to exceed one-tenth of five-year average tax receipts.

The legislature could authorize bonds to finance capital projects or to refund obligations, not exceeding a total of 1¾ times the five-year average tax receipts. In addition, the legislature could authorize bonds, to which the full faith and credit of the state would be committed, for revenue producing capital projects up to the amount of five-year average annual tax receipts, provided that the revenues are pledged, and that prior to enactment the governor file with the legislature engineering estimates that revenues will be sufficient to amortize the debt. Such acts would require a two-thirds vote of each house.

The legislature would be authorized, by a 60% vote of all members, to create debt in excess of the normal limit of 1¾ times annual tax revenue, subject to approval by the voters of the state.

All bonds would be required to be retired on a schedule not exceeding thirty years beginning not later than three years after issue.

These provisions are designed not only to eliminate the necessity for frequent constitutional amendments but to strengthen materially the state's credit.

The present county debt limitation of 3½% of assessed value, and the municipal limit of 20%, would be eliminated. Counties and municipalities would be allowed to incur debts which are general obligations or are payable in whole or in part from taxes only for capital purposes. The debts would have to be payable in not over 30 years, and be approved by the voters. This provision is designed to prevent the present practice of financing by warrants without a vote of the people.

The legislature would, however, retain its present authority to permit counties and cities to borrow up to the anticipated

annual revenues without a vote for current operating expenses in anticipation of current taxes, and a vote is not required in specified cases, viz., loans payable within a year in an amount not exceeding one-fourth of five year average revenues, refunding bonds, special assessment bonds, and special revenue bonds payable solely from an industrial project.

All present amendments permitting the pledge of the public credit of particular counties or municipalities to industrial development bonds would be repealed at the end of five years, to avoid preferring one locality over another. Further constitutional amendments for this purpose would be eliminated and the legislature empowered to authorize counties and municipalities to incur debt in aid of industrial or commercial development subject to these safeguards:

1. The bond issue must be approved by a vote of its qualified electors; and

2. At the same time the voters must approve a special tax reasonably estimated to be sufficient to pay the principal and interest on the bonds in the event that the proceeds of the industrial project are insufficient.

A special exception from the election requirement would be provided in the case of relatively small bond issues by a county or a municipality for particular capital improvements subject to these safeguards:

(a) The issue shall not exceed one-fifth of the five year average annual tax revenue of the county or municipality;

(b) The bond issue shall have been approved by a three-fifths vote of the governing body after a public hearing, of which notice shall have been published;

(c) After the publication of an additional notice that the bond issue has been approved, the voters shall have a limited time (30 days) within which to file a petition asking for an election. If as many as five percent of the qualified electors sign the petition, then the bond issue would require the approval of the qualified electors;

(d) The total limit on bonds issued without an election under this amendment would be one percent of the assessed value of taxable property.

ARTICLE IX

LOCAL GOVERNMENT

In this article, as in other parts of the draft, substantial changes are proposed in the direction of more authority and responsibility in local government.

The present procedures for changing county boundaries would be modified to require the legislature to provide uniform procedures for such changes with the consent of the people involved, and for changes by local law published in each county affected.

The legislature is directed to provide optional plans of local government for both counties and municipalities.

Home rule charters could be adopted by counties and cities after two years from the adoption of the article, in accordance with procedures established in the article.

Under the present constitution counties and cities have only the powers and functions specifically allowed them by legislative act. It is proposed to reverse this as to local governments which adopt a home rule charter or other plan of local government prescribed by the legislature. Under these conditions, those local governments would be allowed to exercise full legislative power to the extent permitted by their charters and not inconsistent with the general law of the state.

ARTICLE X

EDUCATION

The present general mandate to the legislature to provide for public schools and institutions of higher learning is con-

tinued. A state board of education is given general supervision of public schools. The board is to be elected as the legislature determines. The board is to appoint the superintendent and may be authorized by the legislature to fix his compensation.

A new section is added, prohibiting members of the legislature from serving on the board of trustees of any state college or university.

It is proposed to give constitutional status to the Commission on Higher Education, which was established by statute in 1969. It would be responsible for advising the governor and the legislature on all education beyond the secondary level. The composition of the Commission, and its functions and authority, would be left to the legislature.

ARTICLE XI

PUBLIC OFFICERS

Several changes are proposed in the provisions as to public officers.

Present Section 280, prohibiting dual office holding, is revised to omit the exemptions for postmasters, justices of the peace, constables, and commissioners of deeds. Exemption is added for delegates to constitutional conventions and members of statutory bodies having only advisory powers. The legislature would be authorized also to exempt military personnel from the prohibition.

The present list of disqualifying crimes (Section 60) is replaced by a general disqualification of these convicted of a felony involving moral turpitude.

The prohibition against changes in compensation during term of office is retained, but an exception is allowed for provision by general law for adjustments based on cost of living.

The legislature would be authorized to change the basis of compensation of county officers from fees to salary, with the approval of the voters in the county.

ARTICLE XII

IMPEACHMENTS

Several changes are made in the procedures for impeachment of public officers. Judges are exempted from legislative impeachment because they are subject to removal under the judicial article. A two-thirds vote of the Senate would be required for conviction. Only a majority is now required. The legislature would be authorized to provide for the trial of impeachments by a special tribunal. Officers impeached by the House would be disqualified from acting until acquitted. The disqualification from office upon impeachment, now limited to the term for which the officer was serving, would be broadened to prohibit the person convicted from ever holding any public office.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

This article carries forward, in revised and simplified language, the present provisions as to condemnation of property, and a much shortened version of the homestead exemption provisions.

A new section is added, declaring that it is the policy of the state to conserve and protect its "natural resources and scenic beauty." It directs the legislature to provide for the abatement of air and water pollution, and unnecessary noise.

ARTICLE XIV

AMENDMENTS

Substantial changes are proposed in the machinery for constitutional amendments.

The present requirements of a three-fifths vote of the members of each house is retained, but the requirement of

reading at length on three separate days in each house is reduced to one.

In order to avoid the heavy cost of special elections, amendments would be required to be submitted at general elections, unless the legislature by separate bill declares that an emergency requires a special election.

Ballots on amendments would be required to contain a short statement of the effect of the amendment, to be prepared by the attorney general, instead of the present requirement that ballots contain statements of the "substance or subject matter."

The notice requirement is shortened from four weeks to one publication in a newspaper of general circulation in each county, and, in addition, the short ballot statement would be published once in every newspaper in the state. The legislature is authorized also to provide for publications of proposed amendments or summaries by radio and television.

The procedures for constitutional conventions would be radically revised. The legislature would be authorized to limit a convention to specific sections or subjects, and to limit the duration of a convention. A convention's proposals would have to be approved by the voters.

SECTIONS OF 1901 CONSTITUTION OMITTED

A large number of provisions in the 1901 Constitution have been omitted from the revision. The substance of many other sections has been carried forward in modified or amended form. Provisions which have been left out entirely are either clearly obsolete, essentially legislative in character, or both, and serve only as obstacles to the ability of the legislature to deal with new problems and changing conditions. Practically all of these legislative or regulatory provisions are duplicated by Code provisions, so that omission from the new constitution would not leave any important regulatory gaps requiring immediate attention.

PROPOSED CONSTITUTION

PREAMBLE

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God do ordain and establish the following Constitution and form of government for the State of Alabama.

ARTICLE I

Declaration of Rights

That the great, general, and essential principles of liberty and free government may be recognized and established, we declare that:

Section 1.01. The Equality and Rights of Man.

All men are equally free and independent; they are endowed by their Creator with certain inalienable rights; among these are life, liberty and the pursuit of happiness.

Section 1.02 Freedoms of Religion, Speech, Press, Assembly and Petition.

No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievance.

Section 1.03 Due Process and Equal Protection.

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws.

Section 1.04 Searches and Seizures.

The people shall be secure in their persons, houses, papers,

and possessions from unreasonable seizure or searches, and no warrants shall be issued to search any place or to seize any person or thing without probable cause, supported by oath or or affirmation.

Section 1.05 Rights of the Accused.

(a) **In general.** In all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to be informed of the accusation, and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have a speedy, public trial; to testify in all cases, on his own behalf, if he elects to do so; and he shall not be compelled to give evidence against himself.

(b) **Indictment.** No person shall be held to answer for a felony unless on the presentment or indictment of a grand jury, provided, however, that the legislature may by law dispense with a grand jury in any but offenses punishable by death or life imprisonment, if the defendant waives his right to an indictment.

(c) **Bail.** Excessive bail shall not be required and all persons before conviction shall be bailable by sufficient sureties, except for offenses punishable by death or life imprisonment in which the proof is evident or the presumption great. The court may dispense with bail and prescribe other reasonable conditions for release pending trial, if reasonably satisfied that the defendant will appear when directed.

(d) **Trial by Jury.** A right of trial by an impartial jury of the county or district in which the offense was committed shall exist in all cases of felony and offenses punishable by imprisonment for more than six months, provided the legislature may provide for a change of renue on motion of the state or the defendant. The accused may expressly waive his right to trial by jury with the consent of the state and the court.

(e) **Punishment.** Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted.

(f) Former Jeopardy. No person shall, for the same offense, be twice put in jeopardy of conviction; but courts may, for reasons fixed by law, discharge juries from consideration of any case, and no person shall gain an advantage by reason of such discharge of the jury.

Section 1.06. Right of Trial by Jury.

The right of trial by jury as heretofore enjoyed in civil cases shall remain inviolate. In both civil and criminal cases, qualifications and number of jurors, not fewer than six, shall be fixed by law. In civil cases, the legislature may provide by law for a less than unanimous verdict.

Section 1.07 Habeas Corpus.

The privilege of the writ of habeas corpus shall not be suspended.

Section 1.08 Imprisonment for Debt.

No person shall be imprisoned for debt.

Section 1.09 Treason.

Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

Section 1.10 Civil Actions.

(1) No person shall be barried from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party.

(2) All courts shall be open; and every person, for any injury done him, in his lands, goods, person or reputation, shall have a remedy by due process of law, and right and justice shall be administered without sale, denial or delay.

Section 1.11. Right to Sue the State.

The legislature may by law direct in what manner, in what courts, and in what cases suits may be brought against the state and its political subdivisions.

Section 1.12 Right to Bear Arms.

Every citizen has a right to bear arms in defense of himself and the state.

Section 1.13 Forbidden Legislation.

No ex post facto law, nor any law impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature.

Section 1.14 Eminent Domain.

Private property shall not be taken or damaged except for public use, or to secure to persons or corporations the right of way over the lands of others pursuant to general law, and unless just compensation is first made therefor.

Section 1.15 Suspension of Laws.

No power of suspending laws shall be exercised except by the legislature.

Section 1.16 Subordination of Military Power.

The military shall be held in strict subordination to the civil power.

ARTICLE II

Distribution of Powers of Government

Section 2.01. Powers of Government.

The powers of the government of the state shall be divided

into three departments: the legislative, the executive, and the judicial. No department shall exercise powers properly belonging to another.

ARTICLE III

The Legislative Department

Section 3.01. Legislative Power.

The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives.

Section 3.02. Election and Terms of Office of Senators and Representatives.

Senators and representatives shall be elected for a four-year term on the Tuesday succeeding the first Monday in November. The legislature may change the time of holding elections. The terms of office of the senators and representatives shall commence on the day after their election.

Section 3.03. Election to Fill Vacancy in Senate or House of Representatives.

Whenever a vacancy occurs in either house of the legislature the governor shall issue a writ of election to fill such vacancy for the remainder of the term. All expenses of the election shall be paid by the state. If a legally qualified candidate for election to the vacancy is unopposed when the last date for filing for places on the ballot has passed, the the election shall not be held, and a certificate of election shall be issued in the manner provided by law.

Section 3.04. Qualifications of Senators and Representatives.

Senators shall be at least twenty-five years of age, and representatives twenty-one years of age at the time of their election. They shall have been citizens of this state and resi-

dents of their respective districts for one year next before their election. They shall reside in their respective districts during their terms of office.

Section 3.05. Appointment to Office of Profit.

No senator or representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this state, which shall have been created or the emoluments of which shall have been increased by the legislature during such term. A cost of living adjustment of the salary attached to an office, permitted by the provisions of this constitution, shall not be considered an increase in the emoluments of such office.

Section 3.06. Organizational Session.

The legislature shall convene on the second Tuesday in January next succeeding their election ar ' shall remain in session for not longer than ten consecutive days, unless a longer period is required for the determination of contested elections. No business shall be transacted at such sessions except the organization of the legislature, the election of officers, the appointment of committees, the introduction of bills, the ascertainment and decluaration of the results of the election of state officers, the determination of contested elections for such offices, and the judging of the election and qualifications of the members of the legislature.

Section 3.07. Election of Presiding Officers and Determination of Qualification of Members.

The senate, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of members president pro tempore thereof, to preside over its deliberations in the absence of the lieutenant-governor; and the house of representatives, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of its members as speaker; and the president pro tempore of the senate and the speaker of the house of representativs shall hold their offices respectively until their successors are elected

and qualified. Each house shall choose its ow officers and shall judge of the election and qualification of its nbers.

Section 3.08. Procedure for Election by Legislature.

In all elections by the legislature the members shall vote publicly, and the votes shall be entered on the journal.

Section 3.09. Time and Length of Legislative Sessions.

Regular sessions of the legislature shall be held annually and shall be limited to thirty legislative days within a period of ninety calendar days. The legislature shall convene in regular sessions on the first Tuesday in February, unless the day of meeting is changed by law. Special sessions of the legislature convened in the manner provided by this Constitution shall be limited to twenty legislative days within a period of not more than forty-five calendar days.

Section 3.10. Legislation in Special Session.

When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house.

Section 3.11. Compensation Commission for the Members of the Legislature.

(a) Members of the legislature shall receive an annual salary to be determined in accordance with the provisions of this section. No change in the compensation or expense allowance of members of the legislature shall be made except in accordance with the provisions of this section.

(b) A state compensation commission is hereby created which shall recommend the salary, expense allowance, and other compensation of the members of the legislature. The commission shall consist of five members. The governor, president of the senate, speaker of the house, attorney general, and chief justice of the supreme court shall each appoint one member.

(c) The terms of the commissioners shall be five years. Of

the initial appointees, the governor and attorney general shall each appoint one for two years; the president of the senate and speaker of the house shall each appoint one for four years; and the chief justice shall appoint one for five years. No member of the commission shall hold ony other public office.

(d) The members of the commission shall elect one of their number as chairman at their first meeting and every four years thereafter. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(e) The commission shall submit a report to the legislature on the first day of the regular session which convenes in the odd-numbered years preceding the quadrennial election of members of the legislature. The recommendations of the commission shall become law unless rejected or altered by act of the legislature within fifteen legislative days after submission.

(f) No change in salary, expense allowance or other compensation shall apply to any legislator during the term for which he was elected.

Section 3.12. Compensation of Officers and Employees.

The legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house, and no payment shall be made from the state treasury or be in any way authorized to any person except to an acting officer or employee elected or appointed in pursuance of law.

Section 3.13. Quorum and Adjournment.

A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each house may provide. Neither house shall, without the consent of the other, adjourn for more than three days.

Section 3.14. Powers of Each House to Make Rules.

Each house shall have power to determine the rules of its

proceedings and to punish its members and other persons for contempt or disorderly behavior in its presence; to enforce obedience to its rules and processes; to protect its members against violence or offers of bribes or corrupt solicitation; and with the concurrence of two-thirds of the house, to expel a member, but not a second time for the same offense. A member expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar prosecution for the same offense.

Section 3.15. Privileges of Members of Legislature.

Members of the legislature shall, in all cases except treason, felony, violation of their oath of office, or breach of peace be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house shall not be questioned in any other place.

Section 3.16. Form of Bills.

(a) Every bill, except general appropriation bills, general revenue bills, and bills adopting a code or revision of statutes, shall be confined to one subject and matter properly connected therewith, and the subject shall be briefly and clearly expressed in the title.

(b) No law shall be revived or amended by reference to its title only, but the oct revived or the section amended shall be re-enacted and published at length.

Section 3.17. Journal of Proceedings.

Each house shall keep a journal of its proceedings and cause the same to be published as soon as practicable. A record vote, with the yeas and nays entered on the journal, shall be taken on any question on the demand of one-tenth of the members present. Any member of either house shall have the right to protest against any act or resolution and have the reason for his protest entered on the journal.

Section 3.18. Enactment of Laws.

No law shall be enacted except by bill, and no bill shall become a law unless, prior to its passage:

(a) It has been referred to a standing committee of each house, acted upon by such committee in session, and reported, which facts shall affirmatively appear upon the journal of each house. A majority of either house may discharge a committee from the consideration of a bill and consider the same is if reported.

(b) It has been read by its title on three different days in each house and on its final passage it has been read at length in each house.

(c) A vote has been taken on it in each house, the name of each member voting for and against recorded in the journal, and except as otherwise provided in this Constitution, a majority of each house be recorded as voting in its favor.

Section 3.19. Amendments and Conference Reports.

No bill shall be so altered or amended on its passage through either house as to change its original purpose. No amendment to a bill or report of a committee of conference, shall be adopted by either house, except in the manner required in subparagraph (c) of section 3.18.

Section 3.20. Duty to Deliver Bills.

When a bill has been passed by the house in which it originated, it shall be the duty of the secretary or clerk of that house to deliver such bill immediately, and in no case later than twenty-four hours, to the other house where it shall receive first reading not later than the next legislative day after delivery. When a bill has been passed by both houses, it shall be returned immediately by the secretary or the clerk of the originating house. The secretary or clerk of the house in which the bill originated shall attest its passage and forthwith, and in no case later than six days, deliver the bill to the governor and enter the fact upon the journal.

Section 3.21. Revenue Bills.

All bills for raising revenue shall originate in the house of representatives, but may be altered, amended, or rejected by the senate.

Section 3.22. Appropriation Bills.

(a) The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for the public debt, and for the public schools and educational institutions. The salary of no officer or employee shall be increased in any such bill, nor shall any appropriations be made therein for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

(b) If general appropriation bills for each of the expenses stated in paragraph (a) of this section have not been passed before the last three legislative days of a regular session, no other legislation shall be finally passed until such appropriation bills have been passed.

(c) If the legislature at any regular session fails to pass general appropriation bills as defined in paragraph (a), the appropriations for the next succeeding fiscal year for such expenses shall be the same as the appropriations in effect at the end of the legislative session, unless thereafter changed by act of the legislature.

Section 3.23. Payment of Appropriations.

No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in the manner provided by law.

Section 3.24. Appropriations to Charitable Institutions.

No appropriations shall be made to any charitable or educa-

tional institution not under the absolute control of the state, except by a vote of two-thirds of all members elected to each house.

Section 3.25. Private Pension Laws.

The legislature shall not enact any special or private law granting any pension.

Section 3.26. Releasing Obligation Owed to State, County or Municipality.

No obligation or liability of any person, association, or corporation held or owned by this state or by any county or other municipality thereof, shall ever be remitted, released, or postponed or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims.

Section 3.27. Corporations.

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws, provided, however, that public corporations wholly owned and controlled by the state may be created and dissolved, or their charter amended, by special act.

Section 3.28. General Laws Defined.

A general law within the meaning of this constitution is a law which in its terms and effect applies either to the whole state, without excepting any county, political subdivision or geographical district, or to all such subdivisions of the state in a class. In the enactment of general laws, the legislature may classify geographical areas or districts involving two or more counties or municipalities on the basis of criteria reasonably related to the subject of the law. The legislature shall establish classes of counties and muncipalities based on population, but

not more than eight classes of each shall be in effect at any one time. No county or municipality shall be exempt from any general law applicable to counties or municipalities in its class.

Section 3.29. Limitation on Enactment of Local Laws.

No special, private, or local law sholl be enacted concerning any matter when a general act deals with the same subject matter and is applicable, even though such special, private, or local law may differ from the applicable general law. No special, private or local law shall be enacted in any case when the relief sought can be given by any court of this state. The courts, and not the legislature, shall judge whether the matter of such law i dealt with by an applicable general act, or whether the relief sought can be given by any court. The legislature shall not indirectly enact any such special, private, or local law by the partial repeal of a general law.

Section 3.30. Procedure for Enacting Local Laws.

No special, private, or local law shall be enacted unless a notice setting forth the intention to introduce it and the substance of the contemplated law shall have been published once a week for two weeks in the county or counties where the law is to be applicable in the manner provided by law prior to the introduction of the bill. Proof by affidavit of publication of such notice with a copy of the text thereof shall be filed with the legislature upon the introduction of the bill and, after passage of the bill, set forth in the journal.

Section 3.31. Conflict of Interest.

A code of ethics, which shall include penalties for violation, prohibiting conflict between public duty and private interest, shall be prescribed by law for all members of the legislature, state employees and non-judicial officers.

Section 3.32. Continuity of Government in Emergencies.

In order to insure continuity of state and local government operations in periods of emergency only, resulting from disasters occurring in this state, the legislature may provide by law for

prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any vacancies in elective offices temporarily occupied under any legislation enacted pursuant to the provisions of this section.

ARTICLE IV

Representation

Section 4.01. Composition of Senate and House of Representatives.

The number of senators shall be not more than thirty-five and the number of representatives shall be not more than one hundred six.

Section 4.02. Legislative Districts.

The state shall be divided by law into districts for the election of members of the Senate and into districts for the election of members of the House of Representatives. Each district shall consist of compact and adjoining territory, and the ratio of the number of legislators in each district to the population of such district shall be as nearly equal among districts as practicable.

Section 4.03. Legislative Reapportionment Procedure.

(a) Reapportionment of senatorial and house of representative districts shall be accomplished as soon as practical after official publication of each decennial census of the United States. A commission on legislative reapportionment, consisting of five members, shall be established no later than the first day of February in each year following the year in which the decennial census of the United States is officially reported. The lieutenant

governor, attorney general, and chief justice of the Alabama Supreme Court shall, by a majority vote, appoint all members of the commission and shall certify their names to the officer designated by law.

(b) No commission member shall hold an elected office in the state. Not more than one member of the commission shall be appointed from any congressional district. The members of the commission shall select one of their number as chairman. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) It shall be the duty of the legislature to appropriate sufficient funds for the compensation and expenses of the commission and staff oppointed by the Commission.

(d) No later than ninety days after the commission has been certified, or the population data for the state as determined by the census has become available, whichever is later, the commission, by a majority vote of its membership, shall adopt a reapportionment plan for the senate and house and shall submit it to the governor, the lieutenant governor and speaker of the house. If the commission plan is reported to such officials before the expiration of the first ten legislative days of the first regular session of the legislature held after the appointment of the commission, such plan shall become law if the legislature does not adopt a reapportionment plan at such session. If the commission plan is not reported until after the expiration of the first ten legislative days of such legislative session, and if the legislature does not adopt a reapportionment plan at such session, the governor shall, as soon as practicable after the commission plan has been reported, call a special session of the legislature to adopt a reapportionment plan. If the legislature does not adopt a reapportionment plan at such special session, the commission plan shall become law.

(e) The supreme court shall have original jurisdiction, upon the petition of any qualified voter of the state, to review the new reapportionment law. If the supreme court holds invalid a reapportionment plan enacted by the legislature, then the com-

mission plan shall become law if it complies with the requirements of this constitution. If the supreme court finds the commission plan invalid, the court shall issue an order remanding the plan to the commission and directing the commission to reapportion the state in a manner not inconsistent with such order. When the court finally approves a reapportionment plan, such plan shall remain in effect until the adoption under this section of a reapportionment plan after the next United States decennial census.

Section 4.04. Congressional Redistricting.

The state shall be divided by law into congressional districts for the election of the members of the United States House of Representatives under the same procedure, under the same commission, and according to the mandate of the preceding section prescribing the manner of reapportioning senate and house representative districts.

ARTICLE V

Executive Department

Section 5.01. Executive Power and the Executive Department.

The principal executive power of this state shall be vested in a governor. The executive department shall include the governor, a lieutenant governor and an attorney general.

Section 5.02. Election and Term of Office of Executive Officers.

The governor, lieutenant governor and attorney general shall be elected by the electors of the state at the same time and places appointed for the election of members of the legislature. The governor, lieutenant governor, and attorney general shall hold their respective offices for a term of four years, commencing on the first Monday after the second Tuesday in January next succeeding their election and until their successors

shall be elected and qualified. Each of said officers shall be eligible to succeed himself in office, but no person shall be eligible to succeed himself for more than one additional term.

Section 5.03. Election Returns.

The returns of every election for governor, lieutenant governor and attorney general shall be sealed and transmitted by the returning officers to the seat of government and directed to the speaker of the house of representatives, who shall open and publish the votes in the manner prescribed by law. The person having the higest number of votes for any one of said offices shall be declared elected; but tf iwo or more shall have the highest and an equal number of votes, the legislature by joint vote shall choose one of said persons without delay. Contested elections shall be determined by both houses in the manner prescribed by law.

Section 5.04. Qualifications of Governor and Lieutenant Governor.

The governor and lieutenant governor shall be at least twenty-five years of age when elected and shall have been qualified voters in this state for three years prior to their election.

Section 5.05. Compensation and Place of Residence of Governor.

The governor shall receive a salary to be prescribed by law and shall reside in the state capital.

Section 5.06. Legislative Responsibilities of Governor.

(a) **Special sessions.** The governor may by proclamation on extraordinary occasions convene the legislature at the seat of government or at a different place if the seat of government shall become dangerous. He shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

(b) **Messages to the Legislature.** The governor shall from time to time give to the legislature information of the state

of the government. Within five days after the convening of each regular session of the legislature, he shall transmit to it a budget setting forth his financial program for each of the fiscal years which will have begun before the next regular session. The governor shall also account to the legislature, as may be prescribed by law, for all money received and paid out by him or by his order; and at the commencement of each regular session he shall present to the legislature estimates of the amount of money required to be raised by taxation for all purposes.

(c) **Veto.** Every bill passed by the legislature shall, before it becomes a law, be presented to the governor unless otherwise provided by this Constitution. If the legislature is in session the bill shall become law if the governor signs or fails to veto it within seven calendar days of presentation. If the legislature adjourns sine die before presentation or during such seven day period, the bill shall become law if the governor signs or fails to veto it within twenty calendar days of presentation. When the governor vetoes a bill, he shall, within seven calendar days of presentation, return it to the secretary or clerk of the house in which the bill originated, unless the legislature shall, by final adjournment, prevent such return. The bill shall be reconsidered and if a majority of the members elected to each house vote for the passage of the bill it sholl become law.

(d) **Executive amendments.** The governor may, within seven calendar days after a bill has been presented to him return such bill to the house in which it originated, with recommendations for its amendment. If both houses approve such amendment, the bill as amended shall become law. If either house refuses to approve such amendment, or fails to act thereon before the end of the session, then the bill shall again be sent to the governor and acted on by him as if it were before him for for the first time, but no further amendment to such bill can be recommended by the governor. In all cases above set forth, the names of the members voting for and against the bill, or amendments thereto, shall be entered on the journal.

(e) **Appropriation bills.** The governor shall have power to approve or disapprove any item or items of any appro-

priation bill embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of bills over the executive veto; and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the governor's objection.

Section 5.07. Executive and Administrative Powers of the Governor.

(a) Execution of laws. The governor shall be responsible for the faithful execution of the laws. He may by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceeding against the legislature.

(b) **Information.** The governor may require information in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, on any subject relating to the duties of their respective offices or the condition, management and expenses of their respective departments or institutions. Any such officer or manager who makes a wilfully false report or fails without sufficient excuse to make a required report on demand, is guilty of an offense for which he may be removed.

(c) **Executive reorganization.** Except for organizational arrangements specified in this Constitution, the governor may make such changes in the organization of the executive department or in the assignment of functions among its units as he considers necessary for efficient administration. If such changes affect existing satutory law, they shall be set forth in executive orders, which must be submitted to the legislature within the first ten calendar days of a regular or special session, and shall become effective, and shall have the force of law at the end of such regular or special session unless specifically modified

or disapproved by a majority elected to each house. The governor shall not, however, make changes which would become effective later than ninety days before the end of his administration. For the purpose of this subsection the term "executive department" shall include only those departments, bureaus, and agencies whose director or head is appointed by, and serves at the pleasure of, the governor.

(d) **Commander-in-chief.** The governor shall be commander-in-chief of the armed forces of this state, except when they are called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

(e) **Power to fill vacancies.** The governor shall have power to fill vacancies in all offices of the state for the filling of which the Constitution or laws make no other provision.

Section 5.08. Executive Clemency.

The governor shall have power to grant reprieves and commutations to persons under sentence of death. The legislature may provide for and regulate the administration of pardons, paroles, remission of fines and forfeitures, and may authorize the courts having criminal jurisdiction to suspend sentence and to order probation. A pardon shall relieve from civil and political disabilities unless specifically provided otherwise therein.

Section 5.09. Succession to the Office of Governor.

(a) **Removal, death or resignation of governor.** In case of the governor's removal from office, death, or resignation, the lieutenant governor shall become governor.

(b) **Removal, death, or resignation of governor and lieutenant governor.** If both the governor and lieutenant governor be removed from office, die or resign, the unexpired term of the governor and lieutenant governor shall be filled by a special election, except when such unexpired term is less than one year in which case a new governor and lieutenant governor shall not be elected until the next regular gubernatorial election. In the event of such vacancy the office of governor shall be held and

administered by the speaker of the house of representatives, the president pro tempore of the senate or the attorney general, in that order, until the new governor is elected and qualified.

(c) **Vacancies due to disability or absence.** When the governor is unable to discharge the duties of his office by reason of physical or mental disability, or when the duties are not being discharged by reason of his absence from the state, the power and authority of the office shall, until the governor returns to the state or is restored to his mind, or relieved from other disability, devolve in the order herein named upon the lieutenant governor, the speaker of the house of representatives, the president pro tempore of the senate or the attorney general. If any of the officers in the line of succession be under any of the disabilities herein specified, the office of the governor shall be administered in the order named by such of these officers as may be free from such disability. If the governor's disability or absence does not terminate within six months the office of governor shall be vacant as if the governor had died.

(d) **Failure of governor to qualify.** If the governor-elect fails to qualify, the lieutenant governor-elect shall qualify and exercise the duties of governor until the governor-elect qualifies. In the event that both the governor-elect and the lieutenant governor-elect fail to qualify, the speaker of the house, the president pro tempore of the senate or the attorney general shall, in the order named, administer the office until the governor-elect or the lieutenant governor-elect qualifies, or until the office of governor has been filled by an election and the newly elected governor has qualified. If both the governor-elect and the lieutenant governor-elect fail to qualify within six months of the beginning of their terms of office, the unexpired terms of the governor-elect and the lieutenant governor-elect shall be filled by a special election.

Section 5.10. Procedure for Determination of Incapacity of Governor.

(a) If the governor or acting governor shall appear to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the

supreme court upon the request in writing by the attorney general, the president pro tempore of the senate, and the speaker of the house, or any one of them, not next in succession to the office of governor, to ascertain the truth of the charges. If he is adjudged to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the officer next in succession to perform the duties of the office until the disability is removed or until the governor returns to state. If the incumbent denies that the disability of the governor, or other person entitled to administer the office, has been removed, the supreme court shall ascertain the truth concerning the same. If the disability has not continued for more than six months, and has been removed, the court shall so decree, and the office shall be restored to him. The supreme court shall prescribe the method of taking testimony and the rules of practice in such proceedings.

(b) The physical disability of the governor to perform his his duties may also be established by his written declaration to that effect transmitted to the officer next in line of succession and to the attorney general. If the physical disability of the governor is removed within six months, he may resume his office by notifying the acting governor and the attorney general. Any question concerning the governor's ability to resume his office shall be decided by the supreme court.

Section 5.11. Compensation of Acting Governor.

The lieutenant governor, speaker of the house, president pro tempore of the senate or attorney general, while administering the office of governor, shall receive the same compensation as that prescribed by law for the governor and no other.

Section 5.12. Lieutenant Governor.

(a) **Duties.** Lieutenant Governor shall be ex officio president of the senate, but shall have no right to vote except in case of a tie.

(b) **Salary.** The salary of the lieutenant governor shall be as prescribed by law.

(c) **Removal for insanity.** In case the lieutenant governor shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Section 5.13. Attorney General.

(a) **Qualifications.** The attorney general shall be at least twenty-five years of age. He shall have been a qualified voter, and licensed to practice law, in this state for three years prior to his election.

(b) **Removal for insanity.** In case the attorney general shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Section 5.14. State Seal.

There shall be a seal of the state, which shall be used officially by the governor, and the seal now in use shall continue to be used until another shall have been adopted by the legislature. The seal shall be called, "The Great Seal of the State of Alabama."

ARTICLE VI

The Judicial Department

Section 6.01. Judicial Power.

(a) Except as otherwise provided by this constitution, the judicial power of the state shall be vested exclusively in a unified judicial system which shall consist of a supreme court, a court of appeals, a trial court of general jurisdiction known as the circuit court, a trial court of limited jurisdiction known as the district court, and a probate court.

(b) The legislature may create judicial officers with authority to issue warrants and may vest in administrative agencies established by law such judicial powers as may be reasonably

necessary as an incident to the accomplishment of the purposes for which the agencies are created.

Section 6.02. The Supreme Court.

(a) The supreme court shall be the highest court of the state and shall consist of one chief justice and such number of associate justices as may be prescribed by law.

(b) The supreme court shall have original jurisdiction (1) of cases and controversies as provided by this Constitution, (2) to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction, and (3) to answer questions of state law certified by a court of the United States.

(c) The supreme court shall have such appellate jurisdiction as may be provided by law.

Section 6.03. Court of Appeals.

The court of appeals shall consist of such number of judges and division as may be provided by law. It shall exercise appellate jurisdiction under such terms and conditions as shall be provided by law and by rules of the supreme court. The court of appeals shall have no original jurisdiction except that it shall have power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

Section 6.04. Circuit Court.

(a) The state shall be divided into judicial circuits. For each circuit, there shall be one circuit court having such divisions and consisting of such number of judges as shall be provided by law.

(b) The circuit court shall exercise original general jurisdiction in all cases except as may otherwise be provided by law. The circuit court may be authorized by law to review decisions of state administrative agencies and decisions of inferior courts. It shall have authority to issue such writs as may be necessary or appropriate to effectuate its powers, and shall have such other powers as may be provided by law.

Section 6.05. District Courts.

The district court shall be a court of limited jurisdiction and shall exercise uniform original jurisdiction in such cases, and within such geographical boundaries, as shall be prescribed by law.

Section 6.06. Probate Court.

There shall be a probate court in each county which shall have such jurisdiction as may be provided by law.

Section 6.07. Qualifications of Judges.

Judges of the supreme court, court of appeals, circuit court and district court shall be licensed to practice law in this state and have such other qualifications as the legislature may prescribe. Judges of the probate court shall have such qualifications as may be provided by law.

Section 6.08. Prohibited Activities.

(a) No judge of any court of this state shall, during his continuance in office, engage in the practice of law or recieve any remuneration for his judicial service except the salary and allowances authorized by law.

(b) No judge, except a judge of a probate court, shall seek or accept any non-judicial elective office, or hold any other office of public trust, or make any contribution to or hold any office in a political party or organization, or campaign for any candidate, except himself, for political office.

(c) The supreme court shall adopt rules of conduct and canons of ethics, not inconsistent with the provisions of this constitution, for the judges of all courts of this state.

Section 6.09. Judicial Compensation.

(a) A state judicial compensation commission is hereby created which shall recommend the salary and expense allowances for all the judges of this state except for judges of the probate court. The commission shall consist of five members;

one shall be appointed by the governor, one by the president of the senate, one by the speaker of the house, and two by the governing body of the Alabama state bar.

(b) Members of the judicial compensation commission shall serve for terms of four years. Any vacancy on the commission shall be filled in the same manner in which such position was originally filled. The legislature shall appropriate sufficient funds for the expenses of the Commission.

(c) No member of the commission shall hold any other publice office, or office in any political party, and no member of the commission shall be eligible for appointment to a state judicial office so long as he is a member of the commission and for two years thereafter.

(d) The commission may submit a report to the legislature at any time within the first five calendar days of a regular session. The recommendations of the commission shall become law unless rejected by a joint resolution or altered by act of the legislature at the session to which the report is submitted. No change in salary or expense allowance shall apply to any judge during the term for which he was elected or appointed except as permitted by this constitution.

Section 6.10. Administration.

The chief justice of the supreme court shall be the administrative head of the judicial system. He shall submit budget recommendations to the governor and the legislature for state appropriations for the entire unified judicial system, exclusive of the probate courts. He may appoint an administrative director to serve at his pleasure and to supervise the administrative operation of the judicial system. The chief justice may assign appellate and trial judges for temporary service in any court.

Section 6.11. Power to Make Rules.

The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts. These rules may be changed by an

act of the legislature adopted by a two-thirds vote of each house.

Section 6.12. Number of Circuit and District Judges.

(a) The supreme court shall establish criteria for determining the number and boundaries of judicial circuits and districts, and the number of judges needed in each circuit and district. If the supreme court finds that a need exists for increasing or decreasing the number of circuit or district judges, or for changing the boundaries of judicial circuits or districts, it shall, at the beginning of any session of the legislature, certify its findings and recommendations to the legislature.

(b) If a bill is introduced at any session of the legislature to increase or decrease the number of circuit or district judges, or to change the boundaries of any judicial circuit or district, the supreme court shall, within three weeks, report to the legislature its recommendations on the proposed change. No change shall be made in the number of circuit or district judges, or the boundaries of any judicial circuit or district unless authorized by an act adopted after the recommendation of the supreme court on such proposal has been filed with the legislature.

(c) An act decreasing the number of circuit or district judges shall not affect the right of any judge to hold his office for his full term.

Section 6.13. Selection of Judges.

(a) All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts.

Alternative Subsection (a):

All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts. The legislature shall provide for the election of all judges except probate judges on a non-partisan basis, without designation of any political affiliation. Nominations for judicial office shall be in the manner prescribed by law. Any incumbent judge may become a candidate for re-election by filing a declaration of candidacy at the time and in the manner prescribed by law.

(b) The office of a judge shall be vacant if he dies, resigns, retires, or is removed. Vacancies in any judicial office except probate judge shall be filled by appointment by the governor from a list of three nominees submitted by the appropriate judicial nominating commission. If the governor fails to appoint any of the nominees within thirty days after the list of nominees is submitted, the commission which selected the nominees shall appoint one of the nominees to fill the vacancy. Vacancies occurring in the office of judge of the probate court shall be filled by appointment or election as provided by law.

Section 6.14. Judicial Nominating Commissions.

(a) An appellate court nominating commission is hereby established to nominate and submit to the governor names of persons for appointment to vacancies in the supreme court and court of appeals. The commission shall consist of seven members, one of whom shall be the chief justice or acting chief justice of the supreme court, who shall serve as chairman, three shall be members of the state bar appointed by the governing body of the Alabama State Bar, two shall be citizens who are not lawyers appointed by the governor, and one a citizen who is not a lawyer appointed by the attorney general.

(b) There shall be one nominating commission for each judicial circuit. In circuits consisting of one county, the commission shall consist of five members, two of whom shall be appointed by the members of the bar residing in the county, two by the governing body of the county, and one who shall be the chairman, by the chief justice or acting chief justice of the supreme court. In circuits consisting of more than one county, the commission shall consist of five or more members, the chairman of which shall be appointed by the chief justice or acting chief justice of the supreme court, and one member of which shall be appointed by the governing body of each county and one member by the bar of each county in the circuit.

(c) The terms of the members of the judicial nominating commission shall be concurrent with the term of the chief justice of the supreme court. Any vacancy on a commission shall be filled in the same manner in which the position was

originally filled Members of all judicial nominating commissions shall be appointed within ninety days after the adoption of this section of the constitution.

(d) No member of any nominating commission shall receive any compensation for his services, but shall be allowed necessary travel expenses incurred in the performance of duty. No member of any commission except the chief justice shall hold any other public office, or office in any political party, and no member of any commission shall be a nominee of a commission so long as he is a member and for two years thereafter.

Section 6.15. Tenure of Office.

(a) The term of office of each judge of a court of the judicial system of this state shall be six years.

(b) A judge appointed to fill a vacancy under the provisions of Section 6.13(b) shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he has completed one year in office. At such election such judicial office shall be filled for a full term of office beginning at the end of the appointed term.

(c) A law reducing the number of judges of the supreme court or court of appeals shall be without prejudice to the right of the judges affected to seek retention in office. The reduction shall become effective when a vacancy in the affected court occurs.

Section 6.16. Retirement.

The legislature shall provide by law for the retirement of judges, including supernumerary judges, with such conditions, retirement benefits, and pensions for them and their dependents as it may prescribe. No person shall be elected or appointed to a judicial office after reaching the age of seventy years, provided that a judge over the age of seventy may be appointed to the office of supernumerary judge if he is not eligible to receive state judicial retirement benefits.

Section 6.17. Judicial Inquiry Commission.

(a) A judicial inquiry commission is created consisting of

seven members. The supreme court shall appoint one supreme court or court of appeals judge and two judges of the circuit court as members of the commission The governor shall appoint two persons who are not lawyers and the governing body of the Alabama state bar shall appoint two members of the state bar to serve as members of the commission.. The commission shall select its own chairman. The terms of the members of the commission shall be four years. A vacancy on the commission shall be filled for a full term in the manner the original appointment was made.

(b) The commission shall be convened permanently with authority to conduct investigations, receive or initiate complaints concerning any judge of a court of the judicial system of this state. The commission shall file a complaint with the court of the judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the judge is physically or mentally unable to perform his duties. All proceedings of the commission shall be confidential except the filing of a complaint with the court of the judiciary. The commission shall prosecute the complaints.

(c) The supreme court shall adopt rules governing the procedures of the commission.

(d) The commission shall have subpoena power and authority to appoint and direct its staff. Members of the commission who are not judges shall receive per diem compensation and necessary expenses only. The legislature shall appropriate funds for the operation of the commission.

Section 6.18. Court of the Judiciary.

(a) The court of the judiciary is created consisting of one judge of the supreme court or court of appeals, who shall be selected by the supreme court, and shall serve as chief judge of the court of the judiciary, two judges of the circuit court, who shall be selected by the supreme court, and two members of the

state bar, who shall be selected by the governing body of the Alabama state bar. The court shall be convened to hear complaints filed by the judicial inquiry commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts.

(c) The supreme court shall adopt rules governing the procedures of the court of the judiciary.

(d) The court of the judiciary shall have power to issue subpoenas. The legislature shall provide by law for the expenses of the court.

Section 6.19. Disqualification.

A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Section 6.20. Continuation of Courts.

All courts in existence at the time this article of the constitution becomes effective shall retain their powers for three years, unless sooner terminated by act of the legislature.

ARTICLE VII

Suffrage and Elections

Section 7.01. Qualifications for Voting.

Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his residence. The legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting.

Section 7.02. Disqualifications.

No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

Section 7.03. Regulation of Elections.

The legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

ARTICLE VIII

Taxation and Debt Limitation

Section 8.01. Limit on Powers to Tax and Lend Credit.

The State of Alabama and its political subdivisions shall use their power to tax and lend their credit only for public purposes, except as otherwise permitted by amendments to the Constitution of 1901 at the time this section is adopted or as herein otherwise permitted.

Section 8.02. Delegation of Taxing Power.

The power to levy taxes shall not be delegated to individuals or private corporations or associations.

state bar, who shall be selected by the governing body of the Alabama state bar. The court shall be convened to hear complaints filed by the judicial inquiry commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts.

(c) The supreme court shall adopt rules governing the procedures of the court of the judiciary.

(d) The court of the judiciary shall have power to issue subpoenas. The legislature shall provide by law for the expenses of the court.

Section 6.19. Disqualification.

A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Section 6.20. Continuation of Courts.

All courts in existence at the time this article of the constitution becomes effective shall retain their powers for three years, unless sooner terminated by act of the legislature.

Section 8.03. State Taxes on Income.

(a) A state tax on income shall be levied only on net income and shall not exceed the rate of five per cent.

(b) A resident individual or a corporation organized under the law of this state shall be allowed to deduct from gross income the amount of federal income tax paid or accrued within the taxable year. A nonresident individual or foreign corporation shall be allowed to deduct only that amount of federal income tax paid or accrued in the taxable year on income received from sources within the state to be determined in accordance with such laws as the legislature may enact.

Section 8.04. Imposition of Income Tax with Reference to Federal Law.

Except as prohibited by this Constitution, the legislature in enacting laws taxing income, may define income by reference to provisions of the laws of the United States as they then exist or may prospectively be enacted, with such modification as may be prescribed by the law of this state.

Section 8.05. State Inheritance and Estate Taxes.

The legislature may provide for the assessment, levy and collection of a tax upon inheritances and for the levying of estate taxes not to exceed in the aggregate the amounts which may by any law of the United States be allowed to be created against or deducted from any similar tax upon inheritances or taxes on estates assessed or levied by the United States on the same subject.

Section 8.06. Dedicated Funds.

No proceeds of any state tax hereafter levied by the legislature, or derived from an increase in the rate of taxes now imposed, shall be dedicated to any special purpose, except when required by the federal government for state participation in federal programs. Any dedication of taxes for special purposes existing at the time of the ratification of this section shall continue until terminated by act of the legislature.

Section 8.07. Limitation on State Ad Valorem Toxation.

State ad valorem taxes shall not be levied in excess of six and one-half mills on the assessed value of property in any one taxable year, except for taxes required to pay bonds issued after the ratification of section 8.11 of this article.

Section 8.08. Assessment and Classification of Property for Ad Valorem Taxation.

(a) All taxable property within this state, not exempt by law, shall be divided into the following classes for the purposes of ad valorem taxation:

Class I. All property of utilities used in the business of such utilities.

Class II. All property not otherwise classified.

Class III. All agricultural, forest and residential property.

(b) With respect to ad valorem taxes levied by the state, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes thereof as herein defined at the following ratios of assessed value to the fair and reasonable market value of such property:

Class I. 30 percentum.

Class II. 25 percentum.

Class III. 15 percentum.

(c) With respect to ad valorem taxes levied by counties, incorporated cities or towns, or other taxing authority, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes of property defined in paragraph (a) herein and at the same ratios of assessed value to the fair and reasonable market value thereof as fixed in paragraph (b) herein, provided, however, that the legislature may vary the ratio of assessed value to the fair and reasonable market value as to any class of property as defined in paragraph (b) herein, and provided, further, that the legislature may fix a uniform ratio of assessment

of all property within a county defined in paragraph (a) herein as Class II and III and may fix a different ratio of assessment for property defined in paragraph (a) as Class I. Such ratios as herein authorized may vary among counties so long as each such ratio is uniform within a county.

No class of property shall have a ratio of assessed value to fair and reasonable market value of less than 15 percentum nor more than 35 percentum.

(d) Wherever any constitutional provision or statute provides for, limits or measures the power or authority of any county, incorporated city or town, or other taxing authority to levy taxes, borrow money, or incur indebtedness in relation to the assessment of property therein for state taxes or for state and county taxes such provision shall mean as assessed for county or incorporated city or town taxes as the case may be.

Section 8.09 Exemptions from Ad Valorem Taxation.

(a) The following property shall be exempt from all ad valorem taxation: the real and personal property of the state, counties, incorporated cities or towns, and property devoted exclusively to religious, educational or charitable purposes.

(b) The legislature may provide for other exemptions from ad valorem taxation.

Section 8.10. Taxation.

Except for taxes levied by the States, taxes presently permitted by the constitution of 1901 as amended, and taxes required for the payment of bonds issued after the ratification of section 8.12 of this article, no ad valorem taxes on real or personal property shall be levied unless the tax shall have been (1) approved by the authority having power to levy the tax after a public hearing on the proposal, (2) thereafter approved by an act of the legislature, and (3) subsequently approved by a majority of the electors of the area in which the tax is to be levied who vote on the proposal.

Section 8.11. State Debt Limitation.

No debt or other obligation payable in whole or in part from

taxes shall be contracted by or in behalf of the state except as provided herein and the full faith and credit of the state shall be pledged to all debt incurred under this section.

(a) **Temporary borrowing.** The legislature may authorize debts to be contracted to meet deficits in the revenue in anticipation of the collection during the then current fiscal year of state taxes and within appropriations for such fiscal year in an amount not exceeding one-tenth of the average annual tax receipts of the state for the five fiscal years immediately preceding. Such debt shall mature and be paid from such tax collections within the current fiscal year.

(b) **Debts to finance capital projects or to refund previous obligations.** The legislature may authorize debts to be contracted: (1) to finance a capital project which is to be specified in the authorizing act, or (2) to refund a previous obligation of the state. The total principal amount of debts so authorized together with all debts or obligations of the state, payable in whole or in part from taxes, shall not exceed one and three-fourths times the average annual revenue receipts of the state for the immediately preceding five fiscal years. An act authorizing such debt shall require for its passage a vote of three-fifths of the members elected to each house.

(c) **Additional debt.** The legislature may authorize debt in excess of the limit provided in paragraph (b) by an act passed by a vote of three-fifths of the members elected to each house and approved by a majority of the electors of the state voting on the question.

(d) **Bonds to finance revenue producing capital projects.** The legislature may authorize the issuance of general obligation bonds of the state to finance or refinance specified revenue producing projects (including the enlargement or improvement thereof), which are owned and controlled by the state or by one of its institutions or agencies, to an amount not exceeding the average annual tax revenues of the state for the immediately preceding five fiscal years; and such bonds shall not be included in determining the limitation on debt contained in paragraph (b), provided that:

(1) the bonds shall be secured by a pledge of the net revenues derived from rates, fees or other charges of the projects;

(2) before any such bonds shall be authorized, the governor shall file with the clerk of the house and secretary of the senate his opinion, based on responsible engineering and economic estimates attached thereto, that the anticipated net revenues to be pledged to the payment of the principal and interest on such bonds will be sufficient to meet such payments and to provide such reserves as the act authorizing such bonds may require; and

(3) the act authorizing such bonds shall be adopted by a vote of two-thirds of the members elected to each house.

(e) **Retiring debt.** All bonds authorized under paragraphs (b), (c), or (d) above shall mature serially in annual or more frequent installments, beginning not later than three years from the date of issue and ending within the estimated useful life of the project as stated in the authorizing act or thirty years from date of issue, whichever is shorter The principal and interest on all such bonds shall be a first charge on the general revenues of the state and, unless sufficient funds are appropriated in each fiscal year for the payment of such principal and interest, there shall be set aside from the first tax revenues received during each fiscal year and each succeeding fiscal year a sum sufficient to pay such principal and interest.

Section 8.12. Procedure for Incurring County and Municipal Debt

(a) Except as hereinafter permitted, no county or incorporated city or town shall contract or incur any debt or obligation pledging its full faith and credit, or payable in whole or part from taxes unless (1) such debt or obligation shall be incurred or contracted for the purpose of making one or more capital improvements, (2) shall mature within the estimated useful life of such capital improvements or thirty years whichever is the shorter and (3) shall have been approved by a majority vote of

the electors of such county or incorporated city or town voting at an election held in the manner prescribed by law.

(b) The limitation on incurring a debt or obligation provided by subdivision (a) hereof shall not apply to the following:

(1) Obligations incurred for current operating expenses in any fiscal year which do not exceed the anticipated income of that year available for such purposes.

(2) Temporary loans to be paid within one year, made in anticipation of the collection of taxes, not exceeding one-fourth of the average annual general revenues (exc'uding state and federal grants) of such county, incorporated city or town, for the preceding five fiscal years.

(3) The renewal, refunding or reissue of obligations lawfully issued.

(4) Obligation to procure funds to pay for public improvements, the cost of which is to be assessed, in whole or in part, against the property abutting on or served by such improvements.

(5) Obligations of a public corporation created by any county or incorporated city or town, even though property, whether or not capable of producing income, may have been transferred to such public corporation by a county or an incorporated city or town with or without consideration.

Section 8.13. Exception to Election Requirements for Obligations to Finance Small Capital Projects.

(a) Notwithstanding the provisions of the constitution requiring an election for incurring debts or obligations, a county or an incorporated city or town may incur a debt or obligation without an election in an amount not exceeding one-fifth of its average annual tax revenue paid into its general fund, and, in the case of a county, also its public building, road and bridge fund, for the last five preceding fiscal years, to finance a capital project, if approved by three-fifths of the members of its governing body after a public hearing, of which at least ten days notice has been given by publication. Notice of approval by the

governing body shall be published within seven days after approval.

(b) In the event that five percent of the number of electors who were qualified to vote in such county in the last general election, or in such incorporated city or town in the last municipal election, within thirty days following publication of the notice of approval, file a written petition with the governing body for an election, the debt or obligation shall not be incurred unless approved by a majority of the electors voting on the question at an election.

(c) The total principal amount of all debts or obligations incurred without an election and outstanding under this section shall never exceed one percent of the assessed value of taxable property in the county or incorporated city or town.

Section 8.14. General Obligation Indebtedness of Counties and Municipalities for Industrial Development.

(a) No county or incorporated city or town authorized by any amendment to the constitution of 1901 to incur obligations, payable in whole or in part from taxes, for industrial or commercial development shall incur obligations under such authority later than five years after the adoption of this amendment.

(b) The legislature may authorize any county, incorporated city or town, or other subdivision to incur obligations, payable in whole or in part from taxes, for industrial or commercial development, provided that: (1) the obligations shall be approved by a vote of a majority of the electors of the county, incorporated city or town, or other subdivision voting in on election thereon; and (2) the electors simultaneously authorize the levying of a special tax reasonably estimated to be sufficient to pay the obligations if revenues pledged are insufficient. The type of tax, its possible duration and maximum rate shall be set out on the ballot to be used at such election.

ARTICLE IX

Local Government

Section 9.01. Counties.

(a) The state shall be divided into political subdivisions called counties; and the present boundaries of the several counties shall continue until changed in accordance with the provisions of this article.

(b) The legislature shall by general law prescribe procedures for the creation, abolition, consolidation, merger, and change of boundaries of counties, and shall provide for payment or appointment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

(c) The legislature may, by local law adopted by a vote of two-thirds of each house, change the boundary between adjoining counties, provided that the change shall have been approved by the governing bodies of each county prior to the enactment of such law.

(d) No new county shall be formed with an area of less than six hundred square miles, and no county shall be reduced below that area by a change of boundaries.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or branch courthouse shall not be held at more frequent intervals than every four years.

Section 9.02. Muncipalities

The legislature shall provide by general law for the incorporation, government, merger and change of boundaries of cities and towns, and for the annexation of unincorporated territory to

incorporated cities and towns, which are referred to as municipalities in this article. When any municipality is abolished, provisions shall be made for the protection of its creditors.

Section 9.03. Optional Plans of Government for Counties and Municipalities.

The legislature shall provide by general law optional plans of local government for counties and municipalities. A county or municipality may adopt or repeal a prescribed plan of local government by referendum in accordance with such conditions and procedures as the legislature shall provide by general law.

Section 9.04. County and Municipal Home Rule Charters.

Upon the expiration of two years following the adoption of this article, a county or municipality shall have the right and power to frame, adopt, amend or repeal a home rule charter by the following procedure:

1. Upon resolution approved by the governing body of a county or municipality, or upon petition of ten per cent of the number of electors who were qualified to vote in such county in the last general election, or in such municipality in the last municipal election, filed with the governing body and a copy filed with the probate judge, the question of the creation of a commission to frame a home rule charter, or charter amendments, shall be submitted to the electorate not less than forty-five days nor more than ninety days after the filing of the petition at a general election, if one is to be held during such period but if not, at a special election. An affirmative vote of a majority of the electors voting on the question shall authorize the creation of the commission.

2. The resolution or petition to have a charter commission may include the names of seven commissioners, to be listed at the end of the ballot, so that an affirmative vote on the question is a vote to elect the persons named. Otherwise, the resolution or petition shall designate the method by which the members of the charter commission shall be chosen.

3. Any proposed charter, or charter amendment, shall be

published by the commission and submitted to the electorate not less than forty-five days nor more than ninety days after publication at a general election, if one is to be held during such period, but if not, at a special election. The procedure for publication shall be prescribed by resolution of the charter commission. The governing body of the county or municipality shall appropriate money to provide for the reasonable expenses of the commission and for the publication of its proposals.

4. Any election pursuant to the provisions of this section shall be conducted in the manner provided by law for holding other county and municipal elections. The cost of any such election shall be paid out of the general funds of the county or municipality.

5. A home rule charter or charter amendment shall become effective if approved by a majority of the electors voting thereon. The charter may provide for direct submission of charter revisions or amendments initiated by petition or by resolution of the governing body of a county or municipality.

6. An election on the issue of the creation of a charter commission shall not be held at more frequent intervals than every two years.

Section 9.05 County and Municipal Powers of Government.

Any county or municipality which adopts a home rule charter, or plan of local government prescribed by the legislature, after the ratification of this article of the constitution, may exercise all legislative power of government not inconsistent with its charter, this constitution, or the general law of the state.

Section 9.06. Conflicting County and Municipal Ordinances.

In the event of conflict between a municipal ordinance and a county ordinance, the municipal ordinance shall prevail within the municipality, unless otherwise provided by a county charter or general law.

Section 9.07. Municipal Franchises.

No franchise or license shall be granted by any municipality

for a period longer than thirty years.

Section 9.08. Responsibility for County Roads.

The county's responsibility for the construction and maintenance of county roads shall not hereafter be delegated to a state agency unless the delegation is approved by a vote of the electors of the county.

Section 9.09. Muncipal Streets.

No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any municipality for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of the municipality.

ARTICLE X

Education

Section 10.01. Maintenance and Support of Public Schools and Educational Institutions.

The legislature shall provide for the maintenance and support of public schools open to all children in the state and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable.

Section 10.02 State Board and Superintendent of Education.

(a) General supervision of the public schools in Alabama shall be vested in a state board of education, which shall be elected in such manner as the legislature may provide.

(b) The chief state school officer shall be the state superintendent of education, who shall be appointed by the state board of education and serve at its pleasure. The authority and duties of the superintendent of education shall be determined by the

state board of education according to such regulations as the legislature may prescribe.

Section 10.03. Board of Trustees for the University of Alabama.

(a) The state university shall be under the management and control of a board of trustees which shall consist of two members from the congressional district in which the university is located, one from each of the other congressional districts in the state, the superintendent of education, and the governor, who shall be ex officio president of the board. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Each elected member shall hold office for a term of twelve years.

(b) When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected.

(c) At every meeting of the legislature the superintendent of education shall certify to the senate the names of all who have been so elected since the last session of the legislature, and the senate shall confirm or reject them, as it shall determine is for the best interest of the university. If it rejects the names of any members it shall thereupon elect trustees in the stead of those rejected.

(d) In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor, who shall hold office until the next session of the legislature.

(e) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

Section 10.04. Board of Trustees for Auburn University.

(a) Auburn University shall be under the management and control of a board of trustees. The board shall consist of two members from the congressional district in which the institution is located, one from each of the other congressional districts in the state as the same were constituted on the first day of January, 1961, the state superintendent of education, and the governor, who shall be ex officio president of the board.

(b) The trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of twelve years, and until their successors be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadrennially.

(c) Vacancies occurring in the office of trustees from death or resignation shall be filled by the governor, and such appointee shall hold office until the next meeting of the legislature. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be appointed as herein required.

(d) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such. No employee of Auburn University shall be eligible to serve on its board of trustees.

Section 10.05. Members of Legislature Ineligible to Serve on Board of Trustees.

No member of the legislature shall be eligible to serve as a member of the board of trustees of any state college or university.

Section 10.06. Commission on Higher Education.

There shall be a Commission on Higher Education which shall have the responsibility of advising the governor and the legislature on education beyond the secondary level. The membership, duties, and procedures of the Commission shall be provided for by law.

Section 10.07. Exemption of Mobile County.

The provisions of this article and of any act of the legislature passed in pursuance thereof for educational purposes, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw portions of the funds to which said county shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature.

ARTICLE XI

Public Officers

Section 11.01. Dual Officeholding.

No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state; nor shall any person, except a notary public, hold two offices of profit at one and the same time under this state. Service of a delegate to a constitutional convention or as a member of a statutory body having only advisory powers shall not be considered an office of profit as the term is used in this constitution. The legislature may by general law exempt persons in the state military forces or in the military service of the United States from the provisions of this section.

Section 11.02. Disqualification by Conviction of Crime.

No person convicted of a felony involving moral turpitude whose civil and political rights have not been restored shall be eligible to hold any office of trust or profit in this state.

Section 11.03. Compensation of Public Officers.

(a) The rate of compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, who is elected or appointed for a fixed term, whether

such officer may be removed at the pleasure of the authority electing or appointing him or only upon impeachment, shall not be increased or diminished, during the term for which he shall have been elected or appointed, either by the imposition of new, different, and additional duties, or otherwise.

(b) Nor shall the expense allowance of any such officer be increased or decreased during his term except by general law applying to all similar public officers.

(c) Any increase or decrease in the compensation of officers who are members of any court, board, commission, or similar body, whose terms do not run concurrently, shall become effective as to all such members thereof immediately after the expiration of the term or terms of office of the member or members whose term or terms first expire.

(d) Notwishstanding the provisions of this section, the legislature may by general law provide for adjustments, up or down, in the compensation of such officers based on the United States Bureau of Labor Statistics Consumer Price Index or other appropriate cost-of-living criteria.

Section 11.04. Method of Changing the Basis of Compensating County Officials.

The legislature may, by general or local law, change the method or basis of compensating any officer of a county, including the judge of probate, sheriff, tax assessor, tax collector, clerk of the circuit court, and register, and may place such officers on a salary. In the event that a county officer is placed on a salary, all fees, allowances, and commissions collected by him shall be paid into the county treasury. No law shall be effective to change the method of compensating any county officer during the term for which he shall have been elected or appointed, nor shall any such law become effective in a county until it has been approved by a majority of the electors of the county who vote thereon at a referendum election held for such purpose.

Section 11.05. Civil Service.

(a) The legislature shall provide by law for appointments

and promotions in the civil service of the state according to merit, fitness, and efficiency, to be determined, so far as practicable, by competitive examination. The legislature shall provide adequate financial support for a program of personnel management in the state service.

Section 11.06. Oath of Office.

All members of the legislature, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation:

"I, . . . , solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

The oath may be administered by the presiding officer of either house of the legislature, or by any officer authorized by law to administer an oath.

ARTICLE XII

Impeachments

Section 12.01. Impeachment of State Officers.

(a) The governor, or acting governor, and all state officers, except judges, who are elected on a statewide basis, shall be subject to impeachment by the house of representatives for willful neglect of duty, corruption in office, or the commission of any offense, while in office, involving moral turpitude.

(b) Unless otherwise provided by law, impeachment by the house of representatives shall be tried by the senate. No person shall be convicted by the senate sitting as a court of impeachment without the concurrence of at least two-thirds of the members present. The legislature may provide for the trial of im-

peachments by a special tribunal of seven judges appointed by the supreme court from the judges of the state.

(c) When the governor or acting governor is impeached, the chief justice, or one of the associate justices of the supreme court, to be selected by it, shall preside over the senate when sitting as a court of impeachment.

(d) If at any time when the legislature is not in session, a majority of all the members elected to the house of representatives shall certify in writing to the speaker of the house their desire to meet to consider the impeachment of the governor or acting governor, it shall be the duty of the speaker of the house to summon the members of the house to assemble at the capitol to consider the impeachment of the governor or acting governor. If the house of representatives prefers articles of impeachment, the lieutenant governor or president pro tempore of the senate shall summon the members of the senate to assemble at the capitol for the purpose of organizing as a court of impeachment, unless the legislature has provided for the trial of such official by a special tribunal.

(e) An officer impeached by the house of representatives shall be disqualified from performing any official duties until he has been tried and acquitted. He shall be removed from office upon conviction.

Section 12.02. District Attorneys and Sheriffs.

District attorneys and sheriffs may be removed from office for any of the causes specified in section 12.01(a), by the supreme court, under such regulations as may be prescribed by law.

Section 12.03. County and City Officers.

All county officers and officers of incorporated cities and towns may be removed from office for any of the causes specified in section 12.01(a) of this article by a court having jurisdiction to try felony cases in the county or district in which such officers hold their office. The legislature shall provide by law the method of proceeding under this section, provided that the right of trial by jury and appeal in such cases shall be secured.

This section shall not apply to the judge of any court who may be removed by procedures provided by the judicial article.

Section 12.04. Penalties Upon Conviction.

Judgments in cases arising under the three preceding sections shall not extend beyond removal from office and disqualification to hold any office of honor, trust or profit under the state. But the person convicted, or acquitted, shall be subject to criminal punishment according to law.

ARTICLE XIII

Miscellaneous Provisions

Section 13.01 Eminent Domain.

In proceedings for the taking of property for public use, the right of appeal from any preliminary assessment of damages may not be denied but such appeal shall not deprive the condemnor of a right of entry, provided the amount of damages assessed shall have have been paid into court in money, and an adequate bond shall have been given, in not less than double the amount of the damages assessed, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on demand of either party be determined by a jury according to law.

Section 13.02. Protection of Environment.

It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and and water pollution and of excessive and unnecessary noise.

Section 13.03. Exemption of Homesteads.

The legislature shall provide by law for the exemption of homesteads, of a value of not less than two thousand dollars, from forced sale for the payment of debts.

PROPOSED CONSTITUTION

ARTICLE XIV

Amending the Constitution

Section 14.01. Procedure.

(a) The legislature may propose an amendment to this constitution in the manner required for the enactment of legislation if, on its final passage, the amendment is read at length in each house and three-fifths of all the members elected to each house approve it.

(b) Proposed amendments shall be submitted to the electors of the state at the next general election following the notice required by this section, provided, that the legislature may, by separate bill enacted in the manner required for proposing an amendment, call a special election for submission of an amendment. The act must declare that an emergency exists necessitating the submission prior to the next general election, and shall not be effective unless approved by the governor within seven days after it has been submitted to him. If a special election on a proposed amendment is called, other amendments may be submitted at the same election.

(c) Notice of the election on all proposed amendments shall be given by a single proclamation of the governor. The notice, with the full text of all proposed amendments shall be published once in every county, in a newspaper of general circulation, not more than thirty nor less than ten days before the day of the election. The ballot statement of each amendment shall also be published once not less than three nor more than ten days before the election in each newspaper in the state which is authorized by law to publish such notices at public expense. In addition to the required publication in newspapers, the legislature may provide for the publication of the proposed amendments or the ballot statements thereof by other means, including radio and television.

(d) Elections upon proposed amendments shall be held as provided by law. A proposed amendment shall become part of the constitution if approved by a majority of electors voting on the proposal.

(e) The revision of an entire article or articles or the addition of one or more new articles may be proposed as a single amendment.

Section 14.02 Form of the Ballot.

The ballot submitting an amendment to the constitution shall contain a summary or short statement clearly indicating its effect. It shall be the duty of the attorney general to prepare such statement in such language as shall create no prejudice for or against the proposed amendment.

Section 14.03. Constitutional Convention.

(a) The legislature may by a vote of a majority of the members elected to each house adopt an act calling for a convention to propose a general revision of, or specific amendments to this constitution. If a convention is called for the consideration of a specific amendment, or amendments, the convention shall have no power to propose amendments on other subjects. No convention shall be held unless the question of holding the same as limited by the legislature shall be first submitted to a vote of the electors of the state and approved by a majority of the electors voting on the proposal.

(b) The act calling the convention shall provide for the election of delegates and may limit the period of time during which the convention can meet, provided that the duration of the convention may be extended, by act of the legislature, adopted in the manner required for legislation, after the convention convenes.

(c) No act of the legislature calling a convention for the purpose of revising or amending the constitution shall be repealed after the electors of the state have approved the holding of a convention.

(d) The legislature shall provide for the submission of the proposal of the convention to a vote of the electors of the state. If a majority of electors voting on any such proposal vote in favor of it, the proposal thus approved shall become effective on the date designated therein.

Section 14.04. Method of Voting.

All votes of the legislature upon proposed revisions of, or amendments to this constitution and upon bills calling a convention for the purpose of altering or amending the constitution of this state, shall be taken by yeas and nays and entered on the journals. No act of the legislature passed in accordance with the provisions of this article, proposing revisions of, or amendments to this constitution, or calling a convention for the purpose of altering or amending the constitution, shall be submitted for the approval of the governor, but shall be valid without his approval.

Commentaries on the PROPOSED CONSTITUTION

PREAMBLE

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God do ordain and establish the following Constitution and form of government for the State of Alabama.

Comment: Present preamble unchanged.

ARTICLE I

Declaration of Rights

That the great, general, and essential principles of liberty and free government may be recognized and established, we declare that:

SECTION 1.01 THE EQUALITY AND RIGHTS OF MAN.

All men are equally free and independent; they are endowed by their Creator with certain inalienable rights; among these are life, liberty and the pursuit of happiness.

Comment: Present section 1. No basic change.

SECTION 1.02 FREEDOMS OF RELIGION, SPEECH, PRESS, ASSEMBLY AND PETITION.

No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievance.

Comment: Present sections 3, 4 and 25 combined, without

substantive change. The wording of the First Amendment to the U. S. Constitution has been adopted.

SECTION 1.03 DUE PROCESS AND EQUAL PROTECTION.

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws.

Comment: The due process clause is taken from present section 6. The equal protection clause is taken from the Fourteenth Amendment to the U. S. Constitution.

This broadens the due process provisions of the 1901 Constitution, in that the only use there of the term "due process" is in sections 6 and 13, both of which deal with judicial procedure. However, the Alabama Supreme Court has broadly construed the clause, applying it to civil cases and administrative proceedings, generally in conformity with judicial applications of the Fourteenth Amendment to the U. S. Constitution. See, e.g. *Pike v. Southern Bell Tel. & Tel. Co.*, 263 Ala. 59, 81 So.2d 254 (1955).

The Constitution of 1875 had an equal protection clause (Sec. 2), but this was dropped in 1901, obviously because of the discriminatory provisions as to elections and the franchise. Here again our Supreme Court has read a requirement of equal protection, or a prohibition against unreasonable discrimination, into the constitution by implication. See *McLendon v. State*, 179 Ala. 54, 60 So. 392 (1912).

Since every case under the state constitution involving asserted denial of due process or equal protection would also involve possible application of the U. S. Constitution, it is desirable to conform the language of the state to the federal constitution.

SECTION 1.04 SEARCHES AND SEIZURES.

The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or searches, and no

warrants shall be issued to search any place or to seize any person or thing without probable cause, supported by oath or affirmation.

Comment: Present section 5, unchanged.

SECTION 1.05 RIGHTS OF THE ACCUSED.

(a) IN GENERAL. In all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to be informed of the accusation, and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have a speedy, public trial; to testify in all cases, on his own behalf, if he elects to do so; and he shall not be compelled to give evidence against himself.

Comment: Present section 6. No change of substance. The venue provisions have been deleted and the jury trial clause has been transferred to section 5(d).

(b) INDICTMENT. No person shall be held to answer for a felony unless on the presentment or indictment of a grand jury, provided, however, that the legislature may by law dispense with a grand jury in any but offenses punishable by death or life imprisonment, if the defendant waives his right to an indictment.

Comment: This is a substitute for present section 8, and Amendment 37. Under amended section 8, indictment by a grand jury may not be waived except by a plea of guilty. The revision would permit waiver of indictment, and consequent trial on information or otherwise, except in capital or life imprisonment cases. The detailed provisions requiring advice of counsel and statement in open court on waiving indictment when pleading guilty found in present section 8 as amended have been omitted. These requirements are fully covered by the Code (Title 15, Secs. 260-266).

(c) BAIL. Excessive bail shall not be required and all persons before conviction shall be bailable by sufficient sureties,

except for offenses punishable by death or life imprisonment in which the proof is evident or the presumption great. The court may dispense with bail and prescribe other reasonable conditions for release pending trial, if reasonably satisfied that the defendant will appear when directed.

Comment: Present section 16 has been broadened to allow courts discretion to dispense with bail.

(d) TRIAL BY JURY. A right of trial by an impartial jury of the county or district in which the offense was committed shall exist in all cases of felony and offenses punishable by imprisonment for more than six months, provided the legislature may provide for a change of venue on motion of the state or defendant. The accused may expressly waive his right to trial by jury with the consent of the state and the court.

Comment: This is a substitute for the jury requirement provision of present section 6, and present section 11 as applied to criminal cases. These provisions have been expanded to comply with recent decisions of the United States Supreme Court holding that a jury trial must be provided in any case where imprisonment for more than six months is authorized. *Baldwin v. New York*, 399 U.S. 66 (1970); *Duncan v. Louisiana*, 391 U.S. 145 (1968).

A number of states including New York, Michigan, Ohio, Virginia, and New Mexico permit a change of venue on the motion of either party.

(e) PUNISHMENT. Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted.

Comment: Present section 15. No change.

(f) FORMER JEOPARDY. No person shall, for the same offense, be twice put in jeopardy of conviction; but courts may, for reasons fixed by law, discharge juries from consideration of any case, and no person shall gain an advantage by reason of such discharge of the jury.

Comment: Present section 9. No change.

SECTION 1.06 RIGHT OF TRIAL BY JURY.

The right of trial by jury as heretofore enjoyed in civil cases shall remain inviolate. In both civil and criminal cases, the qualifications and number of jurors, not fewer than six, shall be fixed by law. In civil cases the legislature may provide by law for a less than unanimous verdict.

Comment: Present section 11 concerning jury trials applies to both criminal and civil cases. Proposed sec. 1.05(d) applies only to criminal cases and this section continues the right of trial by jury in civil cases. The phrase "as heretofore enjoyed" is added only to indicate that the right to jury trials in civil cases is subject to traditional common law limitations. *City of Mobile v. Gulf Development Co.*, 277 Ala. 431, 171 So.2d 35 (1965); *Tillery v. Commercial National Bank of Anniston*, 241 Ala. 653, 4 So.2d 125 (1941).

The Alabama constitutional provisions concerning a jury trial have been interpreted to require a jury of twelve and a unanimous verdict. *Kirk v. State*, 247 Ala. 43, 22 So.2d 431 (1945-. The draft would permit the legislature to provide by law for a less than unanimous verdict. The Federal Constitution does not require a jury of twelve, and it is permissible for a state to provide for a jury of six members. *Williams v. Florida*, 399 U. S. 78 (1970).

SECTION 1.07 HABEAS CORPUS.

The privilege of the writ of habeas corpus shall not be suspended.

Comment: Present section 17, with an unnecessary clause eliminated.

SECTION 1.08 IMPRISONMENT FOR DEBT.

No person shall be imprisoned for debt.

Comment: Present section 20. No change.

SECTION 1.09 TREASON.

Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

Comment: Present section 18. No change.

SECTION 1.10 CIVIL ACTIONS.

(1) No person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party.

(2) All courts shall be open; and every person, for any injury done him, in his lands, goods, person or reputation, shall have a remedy by due process of law, and right and justice shall be administered without sale, denial or delay.

Comment: Present sections 10 and 13 combined.

SECTION 1.11 RIGHT TO SUE THE STATE.

The legislature may by law direct in what manner, in what courts, and in what cases suits may be brought against the state and its political subdivisions.

Comment: This is a substitute for present section 14 which prohibits suit against the state.

SECTION 1.12 RIGHT TO BEAR ARMS.

Every citizen has a right to bear arms in defense of himself and the state.

Comment: Present section 26. No change.

SECTION 1.13 FORBIDDEN LEGISLATION.

No ex post facto law, nor any law impairing the obligations of contracts, or making any irrevocable or exclusive grants of

of special privileges or immunities, shall be passed by the legislature.

Comment: This is section 22 of the present constitution omitting the last clause: "and every grant or franchise, privilege, or immunity shall forever remain subject to revocation, alteration, or amendment." The deletion of this clause leaves the section substantially as it was in the 1875 Constitution. The Alabama Supreme Court held that without the last clause the prohibition of irrevocable grants is directed only at exclusive franchises. *City of Bessemer v. Birmingham Electric Co.*, 248 Ala. 345, 27 So.2d 565 (1946). Under the draft, therefore, if a legislative franchise is not exclusive it may be made irrevocable except in limited situations under the state's police powers.

Municipal franchises are limited to thirty years by Article IX, Section 9.07 (Present sec. 228).

SECTION 1.14 EMINENT DOMAIN.

Private property shall not be taken or damaged except for public use, or to secure to persons or corporations the right of way over the lands of others pursuant to general law, and unless just compensation is first made therefor.

Comment: This section is a substitute for present section 23. Present section 235 dealing with condemnation procedures, is carried forward in Article XIII, Miscellaneous Provisions (section 13.01).

The following material contained in present section 23 has been deleted: (1) the provision forbidding discrimination between corporations and individuals. Such a rule is unnecessary because of the equal protection clause. (2) The prohibition against taxation or forced subscription for railroads or other corporations or individuals. This is covered by the restriction of taxation to public purposes in Article VIII, Sec. 8.01.

The proposed section also makes one substantive change from the present constitution. The right to collect consequen-

tial damages from municipalities and others vested with the power of eminent domain which is provided by present section 235 is brought into this section and broadened to include such recovery from the state. See *Finnell v. Pitts*, 222 Ala. 290, 132 So. 2 (1930).

Tit. 19, sec. 56-68 of the Code provides that the owner of land which is not adjacent to a public land, may acquire a right of way to the nearest public road, but no right of way can be established through any person's yard, garden or curtilage without the consent of the owner.

SECTION 1.15 SUSPENSION OF LAWS.

No power of suspending laws shall be exercised except by the legislature.

Comment: Present section 21. No change.

SECTION 1.16 SUBORDINATION OF MILITARY POWER.

The military shall be held in strict subordination to the civil power.

Comment: Present section 27. The first half of the present section, prohibiting the maintenance of a standing army, is eliminated as unnecessary.

ARTICLE II

Distribution of Powers of Government

SECTION 2.01. POWERS OF GOVERNMENT.

The powers of the government of the state shall be divided into three departments: the legislative, the executive, and the judicial. No department shall exercise powers properly belonging to another.

Comment: This is a substitute for sections 42 and 43 of the

present Constitution. No change in substance is involved.

The changes in language here and in the Judicial Article are not intended to bar the establishment of administrative boards having powers which to some extent cut across executive, legislative and judicial lines. See *Ex parte Darnell*, 262 Ala. 71, 76So2d 770 (1954). Authority to vest judicial powers in such agencies is specifically granted in the Judicial Article, VI, Sec. 6.01.

ARTICLE III

The Legislative Department

SECTION 3.01. LEGISLATIVE POWER.

The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives.

Comment: Present section 44. No change.

The Commission considered and debated at length the advisability of proposing that a unicameral legislature be substituted for the traditional two houses. There was strong minority support for the change.

Some of the principal reasons for a unicameral legislature may be briefly indicated.

The historic difference in the basis of representation in the two houses, one on the basis of local population and the other on the basis of political units, has been substantially modified by the decisions of the United States Supreme Court requiring the election of state senators as well as representatives on a population basis. *Reynolds v. Sims*, 377 U.S. 533 (1964). Although the court does permit some weight to be given to the preservation of the integrity of political subdivisions and applies a less strict standard for state legislative districts than for congressional districts, *Mahan v. Howell* U.S. (Feb. 1973), the ultimate requirement for both houses of a state

legislature is reasonable equality of population. *Swann v. Adams*, 385 U.S. 440 (1967).

A one house legislature would be much more economical, and presumably more efficient. Money spent on duplicate staffs and services could be saved in part, and used to improve the facilities and services essential to the proper and effective performance of legislative responsibility. As a consequence of the "one man one vote" rule, this economy and efficiency can now be attained without loss of the distribution of political interests and the integrity of political units which heretofore justified the two-house systems.

To the argument that two houses are needed to act as checks on each other, proponents of one house reply that the presence of two houses often serves as an excuse for avoiding responsibility, or for "passing the buck." Much wasted motion and maneuvering would be eliminated if the legislature were reduced to one house.

Although recognizing the validity of these arguments, a majority of the Commission elected to stay with the traditional bicameral organization.

SECTION 3.02. ELECTION AND TERMS OF OFFICE OF SENATORS AND REPRESENTATIVES.

Senators and representatives shall be elected for a four-year term on the Tuesday succeeding the first Monday in November. The legislature may change the time of holding elections. The terms of office of the senators and representatives shall commence on the day after their election.

Comment: Present section 46. No change in substance. Obsolete provisions have been omitted.

SECTION 3.03 ELECTION TO FILL VACANCY IN SENATE OR HOUSE OF REPRESENTATIVES.

Whenever a vacancy occurs in either house of the legislature the governor shall issue a writ of election to fill such vacancy for the remainder of the term. All expenses of the election shall

be paid by the state. If a legally qualified candidate for election to the vacancy is unopposed when the last date for filing for places on the ballot has passed, the the election shall not be held, and a certificate of election shall be issued in the manner provided by law.

Comment: Amendment 97. No change of substance.

SECTION 3.04. QUALIFICATIONS OF SENATORS AND REPRESENTATIVES.

Senators shall be at least twenty-five years of age, and representatives twenty-one years of age at the time of their election. They shall have been citizens of this state and residents of their respective districts for one year next before their election. They shall reside in their respective districts during their terms of office.

Comment: This section is substantially the same as present section 47 except that it reduces the three year state residence requirement to one year. The validity of residence qualifications for state legislative candidates is currently being questioned, and the lower Federal courts are divided. *Wallace v. Yucht*, 352 F. Supp. 85 (D.C. Del. 1972); *Green v. McKeon* 468 F. 2d 883 (CA 6, 1972).

SECTION 3.05. APPOINTMENT TO OFFICE OF PROFIT.

No senator or representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this state, which shall have been created or the emoluments of which shall have been increased by the legislature during such term. A cost of living adjustment of the salary attached to an office, permitted by the provisions of this constitution, shall not be considered an increase in the emoluments of such office.

Comment: This is a substitute for section 59 of the present constitution. The present exception of offices which "may be

filled by election by the people" has been omitted. The last sentence has been added. Section 3 of the proposed article on Public Officers permits the legislature by general law to provide for adjustments in the compensation of officers based on appropriate cost-of-living criteria.

SECTION 3.06. ORGANIZATIONAL SESSION.

The legislature shall convene on the second Tuesday in January next succeeding their election and shall remain in session for not longer than ten consecutive days, unless a longer period is required for the determination of contested elections. No business shall be transacted at such sessions except the organization of the legislature, the election of officers, the appointment of committees, the introduction of bills, the ascertainment and declaration of the results of the election of state officers, the determination of contested elections for such offices, and the judging of the election and qualifications of the members of the legislature.

Comment: Present section 48, as amended by Amendments 39 and 57. The language has been simplified, and one important change is made, in providing for the introduction of bills at the organizational session. This would enable the committees to begin work immediately on bills.

SECTION 3.07. ELECTION OF PRESIDING OFFICERS AND DETERMINATION OF QUALIFICATION OF MEMBERS.

The senate, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of its members president pro tempore thereof, to preside over its deliberations in the absence of the lieutenant-governor; and the house of representatives, at the beginning of each organizational session, and at such other times as may be necessary, shall elect one of its members as speaker; and the president pro tempore of the senate and the speaker of the house of representativs shall hold their offices respectively until their successors are elected and qualified. Each house shall choose its own officers and shall judge of the election and qualification of its members.

Comment: Section 51. No change in substance except to substitute "organizational session" for "regular session."

SECTION 3.08. PROCEDURE FOR ELECTION BY LEGISLATURE.

In all elections by the legislature the members shall vote publicly, and the votes shall be entered on the journal.

Comment: This is section 83 of the Constitution without change in substance. The word "publicly" has been substituted for the words "viva voce."

SECTION 3.09. TIME AND LENGTH OF LEGISLATURE SESSIONS.

Regular sessions of the legislature shall be held annually and shall be limited to thirty legislative days within a period of ninety calendar days. The legislature shall convene in regular sessions on the first Tuesday in February, unless the day of meeting is changed by law. Special sessions of the legislature convened in the manner provided by this Constitution shall be limited to twenty legislative days within a period of not more than forty-five calendar days.

Comment: This section would replace the portions of present sections 48 and 76 concerning legislative sessions. It provides for annual sessions of the legislature. The length of regular sessions has been changed from thirty-six legislative days to thirty legislative days within a period of ninety calendar days, and the length of special sessions has been changed from thirty legislative days to twenty legislative days within a period of not more than forty-five calendar days.

This section also changes the time for the beginning of regular sessions from the first Tuesday in May to the first Tuesday in February. This change would probably necessitate changing the time of primary elections.

This proposal for annual sessions was recommended by the Commission in its 1971 interim report, and enacted by the

legislature with minor changes, in Act No. 1264. The proposal was rejected by the voters at the general election in November, 1972. After full and careful consideration of the arguments advanced against annual sessions, the Commission decided to renew its recommendation.

Public recognition of the desirability, even the necessity of annual sessions of state legislatures is rapidly approaching unanimity. In 1942 only three states had regular annual sessions. Now 36 states have them and others are in process. Georgia adopted annual sessions in 1954, Florida and Mississippi in 1968, and Virginia, Missouri, Indiana and Nebraska in 1970.

The reasons are clear:

First—The volume of business with which the legislature is now confronted simply cannot be handled on an intermittent, every-other-year basis. At the regular session in 1971, 4180 bills were introduced, and 2305 were enacted — but even this did not meet the State's needs. In the same year there were three special sessions in which over 1700 bills were introduced, and 1200 passed. The year 1971 was a peak, but only the result of a continuous accumulation of unavoidable and ever-increasing problems. The inescapable necessity for a more or less continuous review and solution of state problems by the legislature is manifested by the fact that there have been 26 sessions of the Legislature in the last 13 years.

Second—Aside from the demands of the mere physical volume of work, the nature of the basic function and responsibility of the legislative branch requires its continuous attention. The legislature is the state's policy making body — its board of directors. The business of the state is not only growing at a tremendous rate, with a budget in excess of a billion dollars, but it is faced with social and economic problems of great complexity which require prompt legislative solutions.

Any board of directors of a business of that size, with over 22,000 employees and 80 departments and divisions, which met only every other year and attempted to plan on a two year budget, would be universally recognized as guilty of a gross neglect of duty.

Third—While it may be true that the enormous volume of proposed and enacted legislation can and should be reduced by legislative self-discipline, regular annual sessions would promote efficiency through a more orderly and restrained introduction of bills, and a corresponding improvement in the care and thoroughness of the legislative process. The present system encourages a flood of bills at regular sessions because it is not known whether or when a special session will be held, and because of the obstacles to legislation not included in the call of special sessions. The efficiency of individual members would likewise be improved by the more effective service of freshman legislators, who need one session to learn problems and procedures.

Fourth—The cost of regular annual sessions would appear to be less than the present system. One regular session would certainly be less than the cost of two or more special sessions. The need for special sessions would be substantially reduced, and the increased efficiencies inherent in the annual sessions would further reduce costs.

SECTION 3.10. LEGISLATION IN SPECIAL SESSION.

When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house.

Comment: Section 76. No change except to eliminate the last sentence which limits the length of special sessions, now covered in Section 9.

SECTION 3.11. COMPENSATION COMMISSION FOR THE MEMBERS OF THE LEGISLATURE.

(a) Members of the legislature shall receive an annual salary to be determined in accordance with the provisions of this section. No change in the compensation or expense allowance of members of the legislature shall be made except in accordance with the provisions of this section.

(b) A state compensation commission is hereby created

which shall recommend the salary, expense allowances, and other compensation of the members of the legislature. The commission shall consist of five members. The governor, president of the senate, speaker of the house, attorney general, and chief justice of the supreme court shall each appoint one member.

(c) The terms of the commissioners shall be five years. Of the initial appointees, the governor and attorney general shall each appoint one for two years; the president of the senate and speaker of the house shall each appoint one for four years; and the chief justice shall appoint one for five years. No member of the commission shall hold any ther public office.

(d) The members of the commission shall elect one of their number as chairman at their first meeting and every four years thereafter. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(e) The commission shall submit a report to the legislature on the first day of the regular session which convenes in the odd-numbered years preceding the quadrennial election of members of the legislature. The recommendations of the commission shall become law unless rejected or altered by act of the legislature within fifteen legislative days after submission.

(f) No change in salary, expense allowance or other compensation shall apply to any legislator during the term for which he was elected.

Comment: This section would replace the compensation provisions of present sections 18 and 19. The proposed change in the amount and method of fixing the compensation of the legislature would correct what is generally reognized as a very bad situation and help to assure a more professional and more competent legislature. Legislators must now have a constitutionally fixed salary, and adjust their own compensation by per diem expense and travel allowances. The amendment would provide for an independent commission, appointed for staggered terms, to recommend the compensation for succeeding legislatures. Changes in pay or allowances could not be applied during the term of legislators approving them.

SECTION 3.12. COMPENSATION OF OFFICERS AND EMPLOYEES.

The legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house, and no payment shall be made from the state treasury or be in any way authorized to any person except to an acting officer or employee elected or appointed in pursuance of law.

Comment: Present section 67 without change.

SECTION 3.13. QUORUM AND ADJOURNMENT.

A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalties as each house may provide. Neither house shall, without the consent of the other, adjourn for more than three days.

Comment: Sections 52 and 58 combined. No change.

SECTION 3.14. POWERS OF EACH HOUSE TO MAKE RULES.

Each house shall have power to determine the rules of its proceedings and to punish its members and other persons for contempt or disorderly behavior in its presence; to enforce obedience to its rules and processes; to protect its members against violence or offers of bribes or corrupt solicitation; and with the concurrence of two-thirds of the house, to expel a member, but not a second time for the same offense. A member expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar prosecution for the same offense.

Comment: Sections 53 and 54 combined. The last clause of section 53 has been omitted as unnecessary.

SECTION 3.15. PRIVILEGES OF MEMBERS OF THE LEGISLATURE.

COMMENTARY

Members of the legislature shall, in all cases except treason, felony, violation of their oath of office, or breach of peace be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house shall not be questioned in any other place.

Comment: Present section 56. No change.

SECTION 3.16. FORM OF BILLS.

(a) Every bill, except general appropriation bills, general revenue bills, and bills adopting a code or revision of statutes, shall be confined to one subject and matter properly connected therewith, and the subject shall be briefly and clearly expressed in the title.

(b) No law shall be revived or amended by reference to its title only, but the act revived or the section amended shall be re-enacted and published at length.

Comment: This is a substitution for present section 45. It makes no change in substance. The first sentence of section 45 has been omitted as unnecessary.

SECTION 3.17. JOURNAL OF PROCEEDINGS.

Each house shall keep a journal of its proceedings and cause the same to be published as soon as practicable. A record vote with the yeas and nays entered on the journal, shall be taken on any question on the demand of one-tenth of the members present. Any member of either house shall have the right to protest against any act or resolution and have the reason for his protest entered on the journal.

Comment: Present section 55. The language has been simplified with no substantive change.

SECTION 3.18. ENACTMENT OF LAWS.

No law shall be enacted except by bill, and no bill shall become a law unless, prior to its passage:

(a) It has been referred to a standing committee of each house, acted upon by such committee in session, and reported, which facts shall affirmatively appear upon the journal of each house. A majority of either house may discharge a committee from the consideration of a bill and consider the same as if reported.

(b) It has been read by its title on three different days in each house and on its final passage it has been read at length in each house.

(c) A vote has been taken on it in each house, the name of each member voting for and against recorded in the journal, and except as otherwise provided in this Constitution, a majority of each house be recorded as voting in its favor.

Comment: Sections 62 and 63 have been combined in substance. The last sentence in paragraph (a) providing for compulsory reporting of bills, has been added. Paragraph (b) reduces the present requirement for reading bills at length on three different days to once only on final passage. The exception in (c) refers to larger votes required to override vetoes (Art. V, Sec. 5.06(c-2)), to change court rules (Art. VI, Sec. 6.11), for approval of state debt (Art. VIII, Sec. 8.11), for impeachment (Art. XII, Section 12.01), and for submission of constitutional amendments or calling a convention (Art. XIV, Secs. 14.01 and 14.03.

SECTION 3.19. AMENDMENTS AND CONFERENCE REPORTS.

No bill shall be so altered or amended on its passage through either house as to change its original purpose. No amendment to a bill or report of a committee of conference, shall be adopted by either house, except in the manner required in subparagraph (c) of section 3.18.

Comment: Present sections 61 and 64 have been combined and the language simplified without substantial change.

SECTION 3.20. DUTY TO DELIVER BILLS.

When a bill has been passed by the house in which it origin-

ated, it shall be the duty of the secretary or clerk of that house to deliver such bill immediately, and in no case later than twenty-four hours, to the other house where it shall receive first reading not later than the next legislative day after delivery. When a bill has been passed by both houses, it shall be returned immediately by the secretary or the clerk to the originating house. The secretary or clerk of the house in which the bill originated shall attest its passage and forthwith, and in no case later than six days, deliver the bill to the governor and enter the fact upon the journal.

Comment: This section is a substitute for present section 66. It eliminates the constitutional requirement that the presiding officer of each house sign all bills, after they have been read at length.

SECTION 3.21. REVENUE BILLS.

All bills for raising revenue shall originate in the house of representatives, but may be altered, amended, or rejected by the senate.

Comment: Section 70 has been revised to eliminate the requirement that the governor prepare a general revenue bill and to eliminate the prohibition against passing a revenue bill during the last five days of the session.

SECTION 3.22. APPROPRIATION BILLS.

(a) The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for the public debt, and for the public schools and educational institutions. The salary of no officer or employee shall be increased in any such bill, nor shall any appropriations be made therein for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

Comment: This paragraph is substantially the same as

present section 71 except that it refers to one or more "general appropriation bills" rather than "the general appropriation bill" and it broadens "public schools" to include all educational institutions. The words "public schools" do not include colleges and universities. *In re Opinions of the Justices,* **229 Ala. 98, 155 So. 699 (1934).**

(b) If general appropriation bills for each of the expenses stated in paragraph (a) of this section have not been passed before the last three legislative days of a regular session, no other legislation shall be finally passed until such appropriation bills have been passed.

Comment: This is a new provision with the purpose of inducing the legislature to pass the general appropriation bills before the final day of the session.

(c) If the legislature at any regular session fails to pass general appropriation bills as defined in paragraph (a), the appropriations for the next succeeding fiscal year for such expenses shall be the same as the appropriations in effect at the end of the legislative session, unless thereafter changed by act of the legislature.

Comment: This is a new provision to prevent a cut-off of funds resulting from a failure to pass the general appropriation bills.

SECTION 3.23. PAYMENT OF APPROPRIATIONS.

No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in the manner provided by law.

Comment: Present section 72. No change.

SECTION 3.24. APPROPRIATIONS TO CHARITABLE INSTITUTIONS.

No appropriations shall be made to any charitable or educa-

tional institution not under the absolute control of the state, except by a vote of two-thirds of all members elected to each house.

Comment: Present section 73 has been changed to eliminate the exception in favor of "normal schools."

SECTION 3.25. PRIVATE PENSION LAWS.

The legislature shall not enact any special or private law granting any pension.

Comment: This section is a substitute for sections 97 and 98, which prohibit the legislature from retiring an officer on pay, or paying the salary of an officer after his death.

SECTION 3.26. RELEASING OBLIGATION OWED TO STATE, COUNTY OR MUNICIPALITY.

No obligation or liability of any person, association, or corporation held or owned by this state or by any county or other municipality thereof, shall ever be remitted, released, or postponed or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims.

Comment: Present section 100. No change.

SECTION 3.27. CORPORATIONS.

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws, provided, however, that public corporations wholly owned and controlled by the state may be created and dissolved, or their charter amended, by special act.

Comment: This section is proposed as a substitute for sections 229 and 238 of the present constitution. The proposed

section is the same as the Illinois Constitution, Art. XIII, sec. 6, except that the proviso concerning public corporations has been added.

SECTION 3.28. GENERAL LAWS DEFINED.

A general law within the meaning of this constitution is a law which in its terms and effect applies either to the whole state, without excepting any county, political subdivision or geographical district, or to all such subdivisions of the state in a class. In the enactment of general laws, the legislature may classify geographical areas or districts invoiving two or more counties or municipalities on the basis of criteria reasonably related to the subject of the law. The legislature shall establish classes of counties and municipalities based on population, but not more than eight classes of each shall be in effect at any one time. No county or municipality shall be exempt from any general law applicable to counties or municipalities in its class.

Comment: This section is proposed as a substitute for section 110 of the present constitution.

The principal change is the limitation of classifications based solely on population to eight classes. This is a provision not found in other state constitutions, although some do provide for a limited number of classes for laws dealing with the government and powers of counties. It is designed to prevent the much abused use of so-called "general laws of local application" based solely on population to avoid the requirements for local legislation.

The legislature is, however, free to make general laws based on any classification of two or more counties or municipalities which is logically related to the purpose of the law.

Following is an example of a possible county population classification of eight classes, based on the 1970 census:

Classification of Counties

I Class — 500,000 and above.
II Class — 250,000 - 500,000.

III	Class —	150,000 - 250,000.
IV	Class —	100,000 - 150,000.
V	Class —	75,000 - 100,000.
VI	Class —	50,000 - 75,000.
VII	Class —	25,000 - 50,000.
VIII	Class —	- 25,000.

Counties in Each Class

I	Jefferson
II	Mobile
III	Madison and Montgomery
IV	Calhoun and Tuscaloosa
V	Etowah and Morgan
VI	Baldwin, Cullman, Dale, Dallas, Houston, Lauderdale, Lee, Marshall, Talladega, Walker.
VII	Blount, Chambers, Chilton, Clarke, Coffee, Colbert, Covington, DeKalb, Elmore, Escambia, Jackson, Lawrence, Limestone Pike, Russel, St. Clair, Shelby, Tallapoosa.
VIII	All others — 31 counties.

SECTION 3.29. LIMITATION ON ENACTMENT OF LOCAL LAWS.

No special, prviate, or local law shall be created concerning any matter when a general act deals with the same subject matter and is applicable, even though such special, private, or local law may differ from the applicable general law. No special, private or local law shall be enacted in any case when the relief sought can be given by any court of this state. The courts, and not the legislature, shall judge whether the matter of such law is dealt with by an applicable general act, or whether the relief sought can be given by any court. The legislature shall not indirectly enact any such special, private, or local law by the partial repeal of a general law.

Comment: Present section 105 has been revised to prevent the enactment of local laws when the subject matter is covered by a general law. The 1901 Constitution undertook to restrict

local legislation by three provisions: Section 104, which prohibits a local law dealing with a list of 31 subjects, section 105, which forbids the enactment of a local law "in any case which is provided for by a general law," and section 106 which requires a special procedure for passing a local law. Neither section 104 nor 105, as interpreted by the Alabama Supreme Court, effectively prohibits general laws of local application. *Dearborn v. Johnson*, 234 Ala. 84, 173 So. 864 (1937). The court has held that section 105 does not prohibit enactment of a local law if it differs from a general law, even if the subject matter is the same. *State ex rel. Jones v. Steele*, 263 Ala. 16, 81 So. 2d 542 (1955). *Mathis v. State*, 280 Ala. 16, 189 So. 2d 564 (1966). See *Standard Oil Co. v. Limestone County*, 220 Ala. 231, 124 So. 423 (1929). The draft would reverse this rule.

SECTION 3.30. PROCEDURE FOR ENACTING LOCAL LAWS.

No special, private, or local law shall be enacted unless a notice setting forth the intention to introduce it and the substance of the contemplated law shall have been published once a week for two weeks in the county or counties where the law is to be applicable in the manner provided by law prior to the introduction of the bill. Proof by affidavit of publication of such notice with a copy of the text thereof shall be filed with the legislature upon the introduction of the bill and, after passage of the bill, set forth in the journal.

Comment: This section revises present section 106 to make the procedure for enacting local laws less burdensome, and thereby reduce the use of general laws of local application. The notice requirements are reduced from four publications to two.

SECTION 3.31. CONFLICT OF INTEREST.

A code of ethics, which shall include penalties for violation, prohibiting conflict between public duty and private interest, shall be prescribed by law for all members of the legislature, state employees and non-judicial officers.

COMMENTARY

Comment: This section is a substitute for the limited provision of present section 82 with respect to conflicts of interest. This problem would be covered as to judges by the canons of ethics required by the judicial article, Sec. 6.08.

SECTION 3.32. CONTINUITY OF GOVERNMENT IN EMERGENCIES.

In order to insure continuity of state and local government operations in periods of emergency only, resulting from disasters occurring in this state, the legislature may provide by law for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any vacancies in elective offices temporarily occupied under any legislation enacted pursuant to the provisions of this section.

Comment: This section has been taken from the Michigan Constitution, Art. 4, sec. 39 and is proposed as a substitute for amendment 159. The proposed section is broader than amendment 159 which provides for the continuity of the legislature only in the event of an enemy attack.

ARTICLE IV

Representation

SECTION 4.01. COMPOSITION OF SENATE AND HOUSE OF REPRESENTATIVES.

The number of senators shall be not more than thirty-five and the number of representatives shall be not more than one hundred six.

Comment: This section would replace present sections 50,

197 and 198 and would set a ceiling on the membership of each house at its present level. The Section 50 mandate requiring at least one representative for each newly created county is deleted because of its unconstitutionality under recent decisions of the Supreme Court of the United States.

SECTION 4.02. LEGISLATIVE DISTRICTS.

The state shall be divided by law into districts for the election of members of the Senate and into districts for the election of members of the House of Representatives. Each district shall consist of compact and adjoining territory, and the ratio of the number of legislators in each district to the population of such district shall be as nearly equal among districts as practicable.

Comment: This section would replace portions of present sections 199, 200 and 201. The new requirement that the ratio of the number of legislators in each district to its population be as nearly equal as practicable is the standard used by the United States Supreme Court. *Wesberry v. Sanders*, 376 U. S. 1 (1964). The new section would also allow the use of multi-member districts where permitted by Federal law.

SECTION 4.03. LEGISLATIVE REAPPORTIONMENT PROCEDURE.

(a) Reapportionment of senatorial and house of representative districts shall be accomplished as soon as practical after official publication of each decennial census of the United States. A commission on legislative reapportionment consisting of five members, shall be established no later than the first day of February in each year following the year in which the decennial census of the United States is officially reported. The lieutenant governor, attorney general, and chief justice of the Alabama Supreme Court shall, by a majority vote, appoint all members of the commission and shall certify their names to the officer designated by law.

(b) No commission member shall hold an elected office in the state. Not more than one member of the commission shall

be appointed from any congressional district. The members of the commission shall select one of their number as chairman. Any vacancy on the commission shall be filled within fifteen days in the same manner in which such position was originally filled.

(c) It shall be the duty of the legislature to appropriate sufficient funds for the compensation and expenses of the commission and staff appointed by the Commission.

(d) No later than ninety days after the commission has been certified, or the population data for the state as determined by the census has become available, whichever is later, the commission, by a majority vote of its membership, shall adopt a reapportionment plan for the senate and house and shall submit it to the governor, the lieutenant governor and speaker of the house. If the commission plan is reported to such officials before the expiration of the first ten legislative days of the first regular session of the legislature held after the appointment of the commission, such plan shall become law if the legislature does not adopt a reapportionment plan at such session. If the commission plan is not reported until after the expiration of the first ten legislative days of such legislative session, and if the legislature does not adopt a reapportionment plan at such session, the governor shall, as soon as practicable after the commission plan has been reported, call a special session of the legislature to adopt a reapportionment plan. If the legislature does not adopt a reapportionment plan at such special session, the commission plan shall become law.

(e) The supreme court shall have original jurisdiction, upon the petition of any qualified voter of the state, to review the new reapportionment law. If the supreme court holds invalid a reapportionment plan enacted by the legislature, then the commission plan shall become law if it complies with the requirements of this constitution. If the supreme court finds the commission plan invalid, the court shall issue an order remanding the plan to the commission and directing the commission to reapportion the state in a manner not inconsistent with such order. When the court finally approves a reapportionment plan, such plan shall remain in effect until the adoption under this

section of a reapportionment plan after the next United States decennial census.

Comment: This section would replace the procedural aspects of present sections 199-201. The principal change is the provision for automatic reapportionment by a commission if the legislature fails to reapportion itself.

Section 201 which provides for a state census if the federal census is unsatisfactory has been deleted.

SECTION 4.04. CONGRESSIONAL REDISTRICTING.

The state shall be divided by law into congressional districts for the election of the members of the United States House of Representatives under the same procedure, under the same commission, and according to the mandate of the preceding section prescribing the manner of reapportioning senate and house representatives districts.

Comment: This section has no counterpart in the 1901 Constitution. It applies the method of legislative reapportionment provided by the previous section to congressional redistricting.

ARTICLE V

Executive Department

SECTION 5.01. EXECUTIVE POWER AND THE EXECUTIVE DEPARTMENT.

The principal executive power of this state shall be vested in a governor. The executive department shall include the governor, a lieutenant governor and an attorney general.

Comment: Present sections 112 and 113.

The only change in present section 113 is a simplication of language.

COMMENTARY

The non-policy making officers named in section 112 would no longer be vested with constitutional status. They are the State Auditor. Secretary of State, State Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries and the Sheriffs. All of the state officers other than the sheriffs properly fall within and should be subject to the control of the executive department under the governor. The omission of these officers from the constitution would not leave any gaps of authority or function as their duties are fully provided for in the code: State Auditor, Title II, Sections 205, et seq., Secretary of State, Title 55, Sections 182, et seq., State Treasurer, Title 55, Sections 211, et seq., Superintendent of Education, Title 52, Sections 41, et seq., Commissioner of Agriculture and Industries, Title 2, Sections 14, et seq., Sheriffs, Title 54.

Present Code provision for the election of these officers, Title 17, Secs. 65, 68, would not be affected by the change, but would no longer be constitutionally required.

SECTION 5.02. ELECTION AND TERM OF OFFICE OF EXECUTIVE OFFICERS.

The governor, lieutenant governor and attorney general shall be elected by the electors of the state at the same time and places appointed for the election of members of the legislature. The governor, lieutenant governor, and attorney general shall hold their respective offices for a term of four years, commencing on the first Monday after the second Tuesday in January next succeeding their election and until their successors shall be elected and qualified. Each of said officers shall be eligible to succeed himself in office, but no person shall be eligible to suceed himself for more than one additional term.

Comment: Present sections 114 and 116 (as changed in 1968 amendment 282). Section 114 is changed only by the deletion of the nonpolicy making elected officers and removal of an obsolete provision for 1902. Section 116, as revised in 1968, is changed only by the deletion of the lesser offices.

SECTION 5.03. ELECTION RETURNS.

The returns of every election for governor, lieutenant gover-

nor and attorney general shall be sealed and transmitted by the returning officers to the seat of government and directed to the speaker of the house of representatives, who shall open and publish the votes in the manner prescribed by law. The person having the higest number of votes for any one of said offices shall be declared elected; but if two or more shall have the highest and an equal number of votes, the legislature by joint vote shall choose one of said persons without delay. Contested elections shall be determined by both houses in the manner prescribed by law.

Comment: Present Section 115. The nonpolicy making officers are deleted. The procedure for opening and counting the results is left to the legislature rather than being detailed in the Constitution.

SECTION 5.04. QUALIFICATIONS OF GOVERNOR AND LIEUTENANT GOVERNOR.

The governor and lieutenant governor shall be at least twenty-five years of age when elected and shall have been qualified voters in this state for three years prior to their election.

Comment: Present section 117. The residency requirements have been changed from "resident citizens of this state for at least seven years" to three years as qualified voters prior to the election. The minimum age has been lowered from thirty to twenty-five. The requirement of ten years of United States citizenship has been eliminated. Under Section 7.01 of the Suffrage Article, only citizens can be qualified voters.

SECTION 5.05. COMPENSATION AND PLACE OF RESIDENCE OF GOVERNOR.

The governor shall receive a salary to be prescribed by law and shall reside in the state capital.

Comment: Present Section 118. The non-policy making officers have been deleted. The requirement that the governor's salary be neither increased nor decreased during his term has

been deleted as this is prohibited by section 11.03 in the Public Officers Article. The unnecessary exception to the place of residence requirement which allowed a move during epidemics has been omitted.

SECTION 5.06. LEGISLATIVE RESPONSIBILITIES OF GOVERNOR.

(a) SPECIAL SESSIONS. The governor may by proclamation on extraordinary occasions convene the legislature at the seat of government or at a different place if the seat of government shall become dangerous. He shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

Comment: This makes no change in present section 122 except to omit the list of reasons why the seat of government might become too dangerous in which to meet.

(b) MESSAGES TO THE LEGISLATURE. The governor shall from time to time give to the legislature information of the state of the government. Within five days after the convening of each regular session of the legislature, he shall transmit to it a budget setting forth his financial program for each of the fiscal years which will have begun before the next regular session. The governor shall also account to the legislature, as may be prescribed by law, for all money received and paid out by him or by his order; and at the commencement of each regular session he shall present to the legislature estimates of the amount of money required to be raised by taxation for all purposes.

Comment: This omits the clauses in section 123 concerning the governor's recommendations of programs to the legislature and the requirement of written messages on the condition of the state at the beginning of each session and at the close of his term. The budget provision is adopted from Title 55, section 93 of the Code.

(c) VETO. Every bill passed by the legislature shall, before it becomes a law, be presented to the governor unless otherwise

provided by this Constitution. If the legislature is in session the bill shall become law if the governor signs or fails to veto it within seven calendar days of presentation. If the legislature adjourns sine die before presentation or during such seven day period, the bill shall become law if the governor signs or fails to veto it within twenty calendar days of presentation. When the governor vetoes a bill, he shall, within seven calendar days of presentation, return it to the secretary or clerk of the house in which the bill originated, unless the legislature shall, by final adjournment, prevent such return. The bill shall be reconsidered and if a majority of the members elected to each house vote for the passage of the bill it shall become law.

(d) EXECUTIVE AMENDMENTS. The governor may, within seven calendar days after a bill has been presented to him return such bill to the house in which it originated, with recommendations for its amendment. If both houses approve such amendment, the bill as amended shall become law. If either house refuses to approve such amendment, or fails to act thereon before the end of the session, then the bill shall again be sent to the governor and acted on by him as if it were before him for for the first time, but no further amendment to such bill can be recommended by the governor. In all cases above set forth, the names of the members voting for and against the bill, or amendments thereto, shall be entered on the journal.

Comment: Paragraphs (c) and (d) undertake to simplify and clarify the unnecessarily detailed procedure prescribed by present section 125 following the presentation of a bill to the governor. The following changes have been made in that section:

(1) The present section gives the governor six days to act on a bill, if the legislature is in session, unless the time is extended because the house in which the bill originated is in recess, and fifteen days in which to consider a bill it it is presented within five days of adjournment. The proposed substitute would give the governor seven calendar days to consider a bill while the legislature is in session, and twenty days from presentation if the legislature adjourns within seven days after the bill is presented to him.

COMMENTARY

(2) Under the present section, a bill presented to the governor after adjournment becomes law only if approved by the governor. The draft provides that a bill presented after adjournment becomes a law unless vetoed by the governor — eliminating the pocket veto.

(3) Under present section 125, if both houses approve the governor's amendment, the bill "shall again be sent to the governor and acted on by him as other bills." The proposed substitute provides that if both houses approve the amendment, the bill as amended becomes law.

(4) Under the present section, if the governor proposes an amendment the bill becomes law only if a majority elected to each house vote in favor of the bill with the amendment. The effect of proposing an amendment is to veto the bill unless the amendment is approved. The draft would permit the governor to consider signing the bill even though the amendment is rejected. The governor would be prohibited from recommending amendments to the bill when it is returned to him.

(e) APPROPRIATION BILLS. The governor shall have power to approve or disapprove any item or items of any appropriation bill embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of bills over the executive veto; and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the governor's objection.

Comment: This is present section 126 without change.

SECTION 5.07. EXECUTIVE AND ADMINISTRATIVE POWERS OF THE GOVERNOR.

(a) EXECUTION OF LAWS. The governor shall be responsible for the faithful execution of the laws. He may by appropriate action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative

power, duty or right by an officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceeding against the legislature.

Comment: This expands present section 120 and the power to bring an action in the name of the state to enforce compliance with any constitutional or legislative mandate. Other state Constitutions contain similar provisions, e.g., Alaska, New Jersey, Florida, Michigan. See also: Model State Constitution.

(b) INFORMATION. The governor may require information in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, on any subject relating to the duties of their respective offices or the condition, management and expenses of their respective departments or institutions. Any such officer or manager who makes a wilfully false report or fails without sufficient excuse to make a required report on demand, is guilty of an offense for which he may be removed.

Comment: This is present section 121, without change of substance.

(c) EXECUTIVE REORGANIZATION. Except for organizational arrangements specified in this Constitution, the governor may make such changes in the organization of the executive department or in the assignment of functions among its units as he considers necessary for efficient administration. If such changes affect existing satutory law, they shall be set forth in executive orders, which must be submitted to the legislature within the first ten calendar days of a regular or special session, and shall become effective, and shall have the force of law at the end of such regular or special session unless specifically modified or disapproved by a majority elected to each house. The governor shall not, however, make changes which would become effective later than ninety days before the end of his administration. For the purpose of his subsection the term "executive department" shall include only those departments, bureaus, and agencies whose director or head is appointed by, and serves at the pleasure of, the governor.

COMMENTARY

Comment: This is a new provision giving the governor the power to reorganize agencies of the executive department by executive order. Other recent state Constitutions have simila. provisions, e.g., North Carolina, Illinois and Virginia.

The last sentence limits the governor's reorganization power to departments headed by his cabinet officers. Under this definition the following existing departments and agencies would be included: Department of Finance, Department of Revenue, Bureau of Publicity and Information, Department of Insurance, Department of Conservation, Department of Labor, Department of Industrial Relations, State Highway Department, State Military Department, Department of Public Safety, Department of Civil Defense, and Alabama State Docks Department. The following departments and agencies would be among those not included: Personnel Department, Department of Agriculture and Industries, Department of Aeronautics, Banking Department, Department of Education, Department of Archives and History, Department of Public Health, Department of Mental Health, Department of Pensions and Security, Radiation Control Agency, State Agency for Social Security, Department of Veterans' Affairs, Department of Toxicology and Criminal Investigation and all commissions, boards, associations, schools colleges, etc.

(d) COMMANDER-IN-CHIEF. The governor shall be commander-in-chief of the armed forces of this state, except when they are called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection or to repel invasion.

Comment: This is adopted from present section 131 and deletes the provision that the governor need not command in person as being unnecessary.

(e) POWER TO FILL VACANCIES. The governor shall have power to fill vacancies in all offices of the state for the filling of which the Constitution or laws make no other provision.

Comment: This is proposed as a substitute for present section 136 and was adopted from the new Virginia Constitution. It grants a general power to fill vacancies the filling of

which is not covered by law or the Constitution. The present section allows the governor to fill vacancies in the elective state offices covered by Section 112, unless otherwise provided by law.

This section attempts to group all of the executive and administrative powers of the governor into one place.

SECTION 5.08. EXECUTIVE CLEMENCY.

The governor shall have power to grant reprieves and commutations to persons under sentence of death. The legislature may provide for and regulate the administration of pardons, paroles, remission of fines and forfeitures, and may authorize the courts having criminal jurisdiction to suspend sentence and to order probation. A pardon shall relieve from civil and political disabilities unless specifically provided otherwise therein.

Comment: Section 124 and Amendment 38. The last sentence reverses the present provision, which does not relieve disabilities unless expressed in the pardon.

SECTION 5.09. SUCCESSION TO THE OFFICE OF GOVERNOR.

(a) REMOVAL, DEATH, OR RESIGNATION OF GOVERNOR. In case of the governor's removal from office, death, or resignation, the lieutenant governor shall become governor.

Comment: Present section 127 has been divided into four subsections because of its length and each subsection will be discussed separately. Paragraph (a) adopts the first sentence of the present section with no change.

(b) REMOVAL, DEATH, OR RESIGNATION OF GOVERNOR AND LIEUTENANT GOVERNOR. If both the governor and lieutenant governor be removed from office, die, or resign, the unexpired term of the governor and lieutenant governor shall be filled by a special election, except when such unexpired term is less than one year in which case a new governor and lieutenant governor shall not be elected until the next regular gubernatorial election. In the event of such vacancy the office of governor

shall be held and administered by the speaker of the house of representatives, the president pro tempore of the senate or the attorney general, in that order, until the new governor is elected and qualified.

Comment: This makes three changes in present section 127. First, it substitutes the provision in the Model State Constitution calling for a special election if the unexpired term is one year or longer for the present provision for the election of a new governor if the vacancy occurs more than 60 days from the next general election. Second, the line of succession is changed to put the speaker first, before the president pro tem. Third, the non-policy making elected state officers are removed from the line of succession.

(c) VACANCY DUE TO DISABILITY OR ABSENCE. When the governor is unable to discharge the duties of his office by reason of physical or mental disability, or when the duties are not being discharged by reason of his absence from the state, the power and authority of the office shall, until the governor returns to the state or is restored to his mind, or relieved from other disability, devolve in the order herein named upon the lieutenant governor, the speaker of the house of representatives, the president pro tempore of the senate or the attorney general. If any of the officers in the line of succession be under any of the disabilities herein specified, the office of the governor shall be administered in the order named by such of these officers as may be free from such disability. If the governor's disability or absence does not terminate within six months the office of governor shall be vacant as if the governor had died.

Comment: This makes three changes in the present section 127. First, the governor may be removed only if he fails to perform his duties due to his absence, rather than the present automatic removal for an absence for twenty days. Second, a new provision is added which renders the office of governor vacant if his disability continues for six months. Third, the line of succession is switched to put the speaker first, as in paragraph (b).

(d) FAILURE OF GOVERNOR TO QUALIFY. If the governor-elect fails to qualify, the lieutenant governor-elect shall qualify and exercise the duties of governor until the governor-elect qualifies. In the event that both the governor-elect and the lieutenant governor-elect fail to qualify, the speaker of the house, the president pro tempore of the senate or the attorney general shall, in the order named, administer the office until the governor-elect or the lieutenant governor-elect qualifies, or until the office of governor has been filled by an election and the newly elected governor has qualified. If both the governor-elect and the lieutenant governor-elect fail to qualify within six months of the beginning of their terms of office, the unexpired terms of the governor-elect and the lieutenant governor-elect shall be filled by a special election.

Comment This makes three changes in Section 127. The non-policy making elected state officers are removed from the line of succession. Provision is made for filling the offices of governor and lieutenant governor by a special election, if both governor-elect and lieutenant governor-elect fail to qualify within six months. The same change has been made in the line of succession as in (b) and (c).

SECTION 5.10. PROCEDURE FOR DETERMINATION OF INCAPACITY OF GOVERNOR.

(a) If the governor or acting governor shall appear to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the supreme court upon the request in writing by the attorney general, the president pro tempore of the senate, and the speaker of the house, or any one of them, not next in succession to the office of governor, to ascertain the truth of the charges. If he is adjudged to be unable to perform his duties because of physical or mental disability, or absence from the state, it shall be the duty of the officer next in succession to perform the duties of the office until the disability is removed or until the governor returns to state. If the incumbent denies that the disability of the governor, or other person entitled to administer the office, has been removed, the supreme court shall ascertain the truth

concerning the same. If the disability has not continued for more than six months, and has been removed, the court shall so decree, and the office shall be restored to him. The supreme court shall prescribe the method of taking testimony and the rules of practice in such proceedings.

Comment: This is based on present section 128. It differs from that section in that it is not limited to mental disability. Physical disability and absence are also included.

(b) The physical disability of the governor to perform his duties may also be established by his written declaration to that effect transmitted to the officer next in line of succession and to the attorney general. If the physical disability of the governor is removed within six months, he may resume his office by notifying the acting governor and the attorney general. Any question concerning the governor's ability to resume his office shall be decided by the supreme court.

Comment: This is a new section which provides a method by which a governor may voluntarily declare his physical disability. This is provided for by several recent state Constitutions, e.g., Illinois, North Carolina, Virginia and Florida.

SECTION 5.11. COMPENSATION OF ACTING GOVERNOR.

The lieutenant governor, speaker of the house, president pro tempore of the senate or attorney general, while administering the office of governor, shall receive the same compensation as that prescribed by law for the governor and no other.

Comment: Present section 129. The proposed section changes the line of succession and deletes the offices eliminated from the constitution.

SECTION 5.12. LIEUTENANT GOVERNOR.

(a) DUTIES. Lieutenant Governor shall be ex officio president of the senate, but shall have no right to vote except in case of a tie.

(b) SALARY. The salary of the lieutenant governor shall be as prescribed by law.

(c) REMOVAL FOR INSANITY. In case the lieutenant governor shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Comment: Subsection (a) is transferred from section 117. **Subsection (b)** eliminates the present requirement of section 118 that the lieutenant governor's salary be equal to that of the speaker of the house. **Subsection (c)** is adopted from a similar provision on the attorney general found in present section 136.

SECTION 5.13. ATTORNEY GENERAL.

(a) QUALIFICATIONS. The attorney general shall be at least twenty-five years of age. He shall have been a qualified voter, and licensed to practice law, in this state for three years prior to his election.

COMMENT: This makes the following changes in the qualifications required by present section 132. First, the seven year citizenship requirement has been eliminated as unnecessary. Second, the five year residency requirement has been lowered to a requirement that the attorney general has been a qualified voter (and hence necessarily a citizen) for three years. Finally, a requirement that the attorney general has been a member of the state bar for three years has been added.

(b) REMOVAL FOR INSANITY. In case the attorney general shall become of unsound mind, such unsoundness shall be ascertained by the supreme court upon the suggestion of the governor, and if found to be insane, his office shall be vacant.

Comment: This adopts the provision in the last sentence of section 136.

SECTION 5.14. STATE SEAL.

There shall be a seal of the state, which shall be used officially by the governor, and the seal now in use shall continue

to be used until another shall have been adopted by the legislature. The seal shall be called, "The Great Seal of the State of Alabama."

Comment: Present section 133. No change.

ARTICLE VI

The Judicial Department

SECTION 6.01. JUDICIAL POWER.

(a) Except as otherwise provided by this constitution, the judicial power of the state shall be vested exclusively in a unified judicial system which shall consist of a supreme court, a court of appeals, a trial court of general jurisdiction known as the circuit court, a trial court of limited jurisdiction known as the district court, and a probate court.

(b) The legislature may create judicial officers with authority to issue warrants and may vest in administrative agencies established by law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies are created.

Comment: This is a substitute for section 139 of the present constitution as amended by Amendment 111. For the purpose of preventing the multiplication of courts of diversified jurisdiction, paragraph (a) provides that the judicial power of the state shall be vested exclusively in a unified judicial system consisting of the courts named. This section differs from the present constitution in the following respects:

(1) Under the present constitution the legislature may create "such courts of law and equity" as it may deem desirable. This section in effect prohibits the creation of courts other than those named.

(2) This section omits reference to the senate sitting as a court of impeachment. This was omitted as unnecessary

since legislative impeachment is provided for by proposed Article XII.

(3) The prohibition found in present section 139 against establishing a court of general jurisdiction in a county of less than twenty thousand has been omitted.

(4) Amendment 111 providing that the legislature shall have authority to constitute school officials as judicial officers has been omitted as it serves no useful purpose.

(5) Paragraph (b) adds a new provision to avoid any question concerning the power of the legislature to create officers with authority to issue warrants and to vest "judicial powers" in administrative agencies.

SECTION 6.02. THE SUPREME COURT.

(a) The supreme court shall be the highest court of the state and shall consist of one chief justice and such number of associate justices as may be prescribed by law.

(b) The supreme court shall have original jurisdiction (1) of cases and controversies as provided by this Constitution, (2) to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction, and (3) to answer questions of state law certified by a court of the United States.

(c) The supreme court shall have such appellate jurisdiction as may be provided by law.

Comment: Paragraph (a) of this section is in substance the same as section 151 of the present constitution.

Paragraph (b) provides for the power of the supreme court to supervise other courts in language similar to section 140 of the present constitution. In a new provision, it gives the court jurisdiction to answer questions of state law certified by a federal court. This type of procedure has been recommended by the American Law Institute and the Commissioners on Uniform State Laws, and is recognized in a number of states. It would expedite the decision of cases and

avoid unnecessary litigation when the federal courts have to deal with state law questions of first impression.

Paragraph (c) adopts present section 140 without change of substance.

SECTION 6.03. COURT OF APPEALS.

The court of appeals shall consist of such number of judges and division as may be provided by law. It shall exercise appellate jurisdiction under such terms and conditions as shall be provided by law and by rules of the supreme court. The court of appeals shall have no original jurisdiction except that it shall have power to issue all writs necessary or appropriate in aid of its appellate jurisdiction.

Comment: This is a new section providing for a court of appeals. The present constitution does not expressly mention a court of appeals but Section 139 grants power to the legislature to create "such courts of law and equity inferior to the supreme court," consisting of not more than five members, as the legislature may decide to establish.

The proposed section would authorize the legislature, and the Supreme Court, to provide for broad powers of review in the Court of Appeals, including power to issue revisory writs.

SECTION 6.04. CIRCUIT COURT.

(a) The state shall be divided into judicial circuits. For each circuit, there shall be one circuit court having such divisions and consisting of such number of judges as shall be provided by law.

(b) The circuit court shall exercise original general jurisdiction in all cases except as may otherwise be provided by law. The circuit court may be authorized by law to review decisions of state administrative agencies and decisions of inferior courts. It shall have authority to issue such writs as may be necessary or appropriate to effectuate its powers, and shall have such other powers as may be provided by law.

Comment: This is a substitute for present sections 142-148 dealing with the jurisdiction of circuit and chancery courts. The requirement of sections 142 and 145 that circuit judges have resided in the circuit for one year preceding election has been dropped. This is left to the legislature under section 6.07.

SECTION 6.05. DISTRICT COURTS.

The district court shall be a court of limited jurisdiction and shall exercise uniform original jurisdiction in such cases, and within such geographical boundaries, as shall be prescribed by law.

Comment: This is a new section providing for a new court of limited jurisdiction which would take the place of all courts, except the probate court, inferior to the circuit courts.

The present wide differences in the jurisdiction of inferior courts, as to amounts which may be sued for, criminal penalties, rules of procedure, etc., make it very difficult for the bar to deal with such matters as misdemeanor trials, collections, and other matters in more than one county or city. This section would require that the jurisdiction of all of these courts be uniform throughout the state.

SECTION 6.06. PROBATE COURT.

There shall be a probate court in each county which shall have such jurisdiction as may be provided by law.

Comment: This is a substitute for section 149 of the present constitution dealing with probate courts. The jurisdiction of probate courts is now covered by Title 13, Chap. 5 of the Code, supplemented by special acts a to some counties.

SECTION 6.07. QUALIFICATIONS OF JUDGES.

Judges of the supreme court, court of appeals, circuit court and district court shall be licensed to practice law in this state and have such other qualifications as the legislature may prescribe. Judges of the probate court shall have such qualifications as may be provided by law.

COMMENTARY

Comment; This is a substitute for present section 154. The age and residence requirements of sections 142, 145 and 154 have been omitted.

Section 154 requires that judges of all courts of record, except probate judges, "shall be learned in the law." The proposed section requires that judges of the supreme court, court of appeals, circuit and district courts "shall be licensed to practice law in this state", and leaves other qualifications, and all qualifications of probate judges, to the legislature.

SECTION 6.08. PROHIBITED ACTIVITIES.

(a) No judge of any court of this state shall, during his continuance in office, engage in the practice of law or recieve any remuneration for his judicial service except the salary and allowances authorized by law.

(b) No judge, except a judge of a probate court, shall seek or accept any non-judicial elective office, or hold any other office of public trust, or make any contribution to or hold any office in a political party or organization, or campaign for any candidate, except himself, for political office.

(c) The supreme court shall adopt rules of conduct and canons of ethics, not inconsistent with the provisions of this constitution, for the judges of all courts of this state.

Comment: Paragraph (a) is a substitute for section 162 of the present constitution, prohibiting judges from practicing law "in any courts."

The prohibition in paragraph (b) against holding any other office of public trust appears in present section 150. The remainder of (b) prohibiting political activity is based on recently adopted provisions of other state constitutions and the American Bar Association canons of judicial ethics. See, Virginia (1969) Art. VI, sec. 11; Colorado (1966) Art. VI, sec. 18; Illinois (1970) Art. VI, sec. 13; Canons of Judicial Ethics, 28 and 30.

Paragraph (c) is new. It is similar to the 1970 Illinois Constitution, Art. VI, sec. 13(a).

SECTION 6.09. JUDICIAL COMPENSATION.

(a) A state judicial compensation commission is hereby created which shall recommend the salary and expense allowances for all the judges of this state except for judges of the probate court. The commission shall consist of five members; one shall be appointed by the governor, one by the president of the senate, one by the speaker of the house, and two by the governing body of the Alabama state bar.

(b) Members of the judicial compensation commission shall serve for terms of four years. Any vacancy on the commission shall be filled in the same manner in which such position was originally filled. The legislature shall appropriate sufficient funds for the expenses of the Commission.

(c) No member of the commission shall hold any other publice office, or office in any political party, and no member of the commission shall be eligible for appointment to a state judicial office so long as he is a member of the commission and for two years thereafter.

(d) The commission may submit a report to the legislature at any time within the first five calendar days of a regular session. The recommendations of the commission shall become law unless rejected by a joint resolution or altered by act of the legislature at the session to which the report is submitted. No change in salary or expense allowance shall apply to any judge during the term for which he was elected or appointed except as permitted by this constitution.

Comment: This is a new section providing for a commission to recommend judicial salaries. There is precedent for this provision in both federal and state law. In 1967 Congress established the Commission on Executive, Legislative and Judicial Salaries and authorized it to recommend salaries which would become effective unless changed or disapproved by Congress. 2 U.S.C.A. sec. 351-361. In 1968 Michigan adopted an amendment to its constitution providing for a compensation commission to recommend salaries for members of the legislature, the governor, lieutenant governor and justices of the supreme court. Art. 4, sec. 12.

COMMENTARY

The last sentence in subsection (d) would permit change in the compensation of a judge during his term of office only as permitted by Article XI. Section 11.03 of that Article would permit changes in the compensation of members of a court serving on staggered terms, at the end of the first term to expire. This would apply to district, circuit and appellate judges.

SECTION 6.10. ADMINISTRATION.

The chief justice of the supreme court shall be the administrative head of the judicial system. He shall submit budget recommendations to the governor and the legislature for state appropriations for the entire unified judicial system, exclusive of the probate courts. He may appoint an administrative director to serve at his pleasure and to supervise the administrative operation of the judicial system. The chief justice may assign appellate and trial judges for temporary service in any court.

Comment: This is a new section but its provisions are consistent with recent statutes creating the department of court management (Tit. 13, sec. 9(10)-9(13), and granting to the chief justice administrative supervision of the judicial system (Tit. 13, sec. 38). Since the chief justice is the administrative head of the judicial system, the proposed section gives him the duty to submit a budget for all courts except the probate courts.

The provision for a judicial budget is new. It stops short of giving the judicial branch final authority over its budget, although there is much to be said for such a provision, and there is substantial modern authority for the view that courts have inherent power to see that financial support necessary to maintain the system of justice is provided. See *Inherent Powers of the Courts*, National College of the State Judiciary, Reno, Nevada (1973). A judicial budget proposed under the proposed mandate should have a strong presumption of correctness, and strengthen the independence of the judiciary.

SECTION 6.11. POWER TO MAKE RULES.

The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts. These rules may be changed by an act of the legislature adopted by a two-thirds vote of each house.

Comment: Although a recent statute grants rule-making power to the supreme court in civil cases (Tit. 13, sec. 17(1)-17(2)), it seems desirable to provide for this power as to both civil and criminal procedure by an explicit provision of the constitution. However, the second sentence of the proposed section authorizes the legislature to change a rule of procedure by a two-thirds vote of each house. Florida has a similar provision in its judicial article adopted in 1971 (Art. V, sec. 2). Some recent state constitutions have given an exclusive rule-making power to the supreme court which is immune from legislative interference. See: Arizona, Art. VI, sec. 5(5); Delaware, Art. IV, sec. 13(1); Michigan, Art. 6, sec. 5; Pennsylvania, Art. V, sec. 10(c).

SECTION 6.12. NUMBER OF CIRCUIT AND DISTRICT JUDGES.

(a) The supreme court shall establish criteria for determining the number and boundaries of judicial circuits and districts, and the number of judges needed in each circuit and district. If the supreme court finds that a need exists for increasing or decreasing the number of circuit or district judges, or for changing the boundaries of judicial circuits or districts, it shall, at the beginning of any session of the legislature, certify its findings and recommendations to the legislature.

(b) If a bill is introduced at any session of the legislature to increase or decrease the number of circuit or district judges, or to change the boundaries of any judicial circuit or district, the supreme court shall, within three weeks, report to the legislature its recommendations on the proposed change. No change shall be made in the number of circuit or district judges, or the boundaries of any judicial circuit or district unless authorized by an act adopted after the recommendation of the supreme

court on such proposal has been filed with the legislature.

(c) An act decreasing the number of circuit or district judges shall not affect the right of any judge to hold his office for his full term.

Comment: This is a new section proposed to defer legislative action to increase or decrease the number of circuit or district judges until consideration has been given to the recommendations of the supreme court on the need for such changes.

SECTION 6.13. SELECTION OF JUDGES.

(a) All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts.

ALTERNATIVE SUBSECTION (a):

All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts. The legislature shall provide for the election of all judges except probate judges on a non-partisan basis, without designation of any political affiliation. Nominations for judicial office shall be in the manner prescribed by law. Any incumbent judge may become a candidate for re-election by filing a declaration of candidacy at the time and in the manner prescribed by law.

Comment: Present section 152 provides for the election of judges of the supreme court, circuit courts and probate courts. Judges of other courts established by law may be elected or appointed as provided by the legislature (Section 153). The Commission has carefully considered the now widespread movement for modification or abandonment of the selection of judges by popular election. That system, which did not exist at the time of Independence but was introduced during the Jacksonian era, has been much criticized by prestigious organizations which have devoted many years to its study, including the American Bar Association and the American Judicature Society. In Alabama, the Citizens Conference on the Courts in 1969 recommended the adoption of the so-called Merit System of selection of judges. See SB 423 and HB 748, 1969. This plan provides

for initial appointment of judges by the governor from panels selected by commissions composed in part of laymen. The appointee, at the end of his first term, runs for re-election without opposition.

A number of states have retained the elective system, but sought to eliminate the obvious abuses of unrestrained political partisanship by providing that judges be elected on non-partisan ballots.

A majority of the Commission was unwilling to recommend abandonment of the elective system altogether, but felt that there is much merit in the attempt to eliminate political partisanship. It was therefore decided to submit in the report the above alternative provision for non-partisan elections. This would include a provision allowing incumbent judges, whether appointed or elected, to be put on the ballot for election without nomination.

(b) The office of a judge shall be vacant if he dies, resigns, retires, or is removed. Vacancies in any judicial office except probate judge shall be filled by appointment by the governor from a list of three nominees submitted by the appropriate judicial nominating commission. If the governor fails to appoint any of the nominees within thirty days after the list of nominees is submitted, the commission which selected the nominees shall appoint one of the nominees to fill the vacancy. Vacancies occurring in the office of judge of the probate court shall be filled by appointment or election as provided by law.

Comment: Vacancies in any office of a judge holding office by election are now filled by appointment by the governor (Section 158). In Jefferson County, under the provisions of Amendments 83 and 110, when a vacancy occurs in the office of judge of the Circuit Court, the governor must fill the vacancy by appointing one of three persons nominated by a commission. Paragraph (b) provides for filling vacancies in the office of judge of the supreme court, court of appeals, circuit or district court by a method similar to that used in Jefferson County at the present time.

COMMENTARY

SECTION 6.14. JUDICIAL NOMINATING COMMISSIONS.

(a) An appellate court nominating commission is hereby established to nominate and submit to the governor names of persons for appointment to vacancies in the supreme court and court of appeals. The commission shall consist of seven members, one of whom shall be the chief justice or acting chief justice of the supreme court, who shall serve as chairman, three shall be members of the state bar appointed by the governing body of the Alabama State Bar, two shall be citizens who are not lawyers appointed by the governor, and one a citizen who is not a lawyer appointed by the attorney general.

(b) There shall be one nominating commission for each judicial circuit. In circuits consisting of one county, the commission shall consist of five members, two of whom shall be appointed by the members of the bar residing in the county, two by the governing body of the county, and one, who shall be the chairman, by the chief justice or acting chief justice of the supreme court. In circuits consisting of more than one county, the commission shall consist of five or more members, the chairman of which shall be appointed by the chief justice or acting chief justice of the supreme court, and one member of which shall be appointed by the governing body of each county and one member by the bar of each county in the circuit.

(c) The terms of the members of the judicial nominating commissions shall be concurrent with the term of the chief justice of the supreme court. Any vacancy on a commission shall be filled in the same manner in which the position was originally filled Members of all judicial nominating commissions shall be appointed within ninety days after the adoption of this section of the constitution.

(d) No member of any nominating commission shall receive any compensation for his services, but shall be allowed necessary travel expenses incurred in the performance of duty. No member of any commission except the chief justice shall hold any other public office, or office in any political party, and no member of any commission shall be a nominee of a commission so long as he is a member and for two years thereafter.

Comment: Judicial nominating commissions to select nominees for appointment to judicial vacancies are provided for in the constitutions of a number of states at the present time, e.g., Alaska, Colorado, Florida, Missouri, Nebraska and Oklahoma.

SECTION 6.15. TENURE OF OFFICE.

(a) The term of office of each judge of a court of the judicial system of this state shall be six years.

(b) A judge appointed to fill a vacancy under the provisions of Section 6.13(b) shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he has completed one year in office. At such election such judicial office shall be filled for a full term of office beginning at the end of the appointed term.

(c) A law reducing the number of judges of the supreme court or court of appeals shall be without prejudice to the right of the judges affected to seek retention in office. The reduction shall become effective when a vacancy in the affected court occurs.

Comment: Paragraph (a) is a substitute for present section 155 which provides for a six year term of office for judges of the supreme court, the circuit court and the probate court.

Paragraph (b) is a new provision. At the election following the occurence of a vacancy, the judicial office would be filled for a full term and not merely for the unexpired term.

Paragraph (c) is new. It was suggested by the 1970 Illinois Constitution.

SECTION 6.16. RETIREMENT.

The legislature shall provide by law for the retirement of judges, including supernumerary judges, with such conditions, retirement benefits, and pensions for them and their dependents as it may prescribe. No person shall be elected or appointed to a judicial office after reaching the age of seventy years, provided that a judge over the age of seventy may be appointed to the

office of supernumerary judge if he is not eligible to receive state judicial retirement benefits.

Comment: Sections 97 and 98 of the present constitution apparently prohibit establishing a retirement system for state officers. These sections should be repealed.

The first sentence in this section is similar to provisions in other state constitutions, e.g., Virginia, Pennsylvania and Colorado. The last sentence, without the proviso, is similar to a provision in the Michigan constitution.

The proviso is designed to protect judges presently in supernumerary status or who may be qualified for that status, in the period between adoption of the article and the effective date of a pension system carrying them and their dependents.

SECTION 6.17. JUDICIAL INQUIRY COMMISSION.

(a) A judicial inquiry commission is created consisting of seven members. The supreme court shall appoint one supreme court or court of appels judge and two judges of the circuit court as members of the commission. The governor shall appoint two persons who are not lawyers and the governing body of the Alabama state bar shall appoint two members of the state bar to serve as members of the commission. The commission shall select its own chairman. The terms of the members of the commission shall be four years. A vacancy on the commission shall be filled for a full term in the manner the original appointment was made.

(b) The commission shall be convened permanently with authority to conduct investigations, receive or initiate complaints concerning any judge of a court of the judicial system of this state. The commission shall file a complaint with the court of the judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the judge is

physically or mentally unable to perform his duties. All proceedings of the commission shall be confidential except the filing of a complaint with the court of the judiciary. The commission shall prosecute the complaints.

(c) The supreme court shall adopt rules governing the procedures of the commission.

(d) The commission shall have subpoena power and authority to appoint and direct its staff. Members of the commission who are not judges shall receive per diem compensation and necessary expenses only. The legislature shall appropriate funds for the operation of the commission.

SECTION 6.18. COURT OF THE JUDICIARY.

(a) The court of the judiciary is created consisting of one judge of the supreme court or court of appeals, who shall be selected by the supreme court, and shall serve as chief judge of the court of the judiciary, two judges of the circuit court, who shall be selected by the supreme court, and two members of the state bar, who shall be selected by the governing body of the Alabama state bar. The court shall be convened to hear complaints filed by the judicial inquiry commission. The court shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a canon of judicial ethics, misconduct in office, failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his duties.

(b) A judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on the law and the facts.

(c) The supreme court shall adopt rules governing the procedures of the court of the judiciary.

(d) The court of the judiciary shall have power to issue sub-

poenas. The legislature shall provide by law for the expenses of the court.

Comment: Sections 17 and 18 are proposed as a substitute for Amendment 317 (January, 1972). The principal substantive difference between the amendment and these sections is that the latter establish a Judicial Inquiry Commission to investigate complaints and a separate body, the Court of the Judiciary, to hear and try the charges. On principle, and probably as a matter of constitutional right, investigatory and prosecuting functions should be separated from adjudicatory responsibilities.

SECTION 6.19. DISQUALIFICATION.

A judge shall be disqualifed from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the judicial inquiry commission with the court of the judiciary.

Comment: This section is similar to a provision of Amendment 317.

SECTION 6.20. CONTINUATION OF COURTS.

All courts in existence at the time this article of the constitution becomes effective shall retain their powers for three years, unless sooner terminated by act of the legislature.

Comment: Three years should be sufficient time for enactment of the legislation which would be required to implement the new article. This would be principally the creation of the new District Courts. If annual sessions are rejected, this provision should probably be extended to four years.

ARTICLE VII

Suffrage and Elections

SECTION 7.01. QUALIFICATIONS FOR VOTING.

Every citizen of the United States who has attained the age

of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his residence. The legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting.

Comment. This fixes voting age at eighteen, and leaves the residency requirements and other conditions for registration up to the legislature. It would replace present sections 177 and 178 (as amended by 207 and 223). These sections contain specific age (21), residence (state for one year and county six months), literacy, and poll tax requirements.

SECTION 7.02. DISQUALIFICATIONS.

No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

Comment: This would replace present section 182 which disqualifies idiots and insane persons and those persons convicted of any of the thirty-three crimes listed in the section. Restoration of civil and political rights is provided for by Code, Tit. 42, sec. 16.

SECTION 7.03. REGULATION OF ELECTIONS.

The legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

Comment: This leaves the regulation of elections to the legislature and would replace the long, involved, and largely obsolete provisions of present sections 179 through 193 and amendments 41 and 223.

ARTICLE VIII

Taxation and Debt Limitation

SECTION 8.01. LIMIT ON POWERS TO TAX AND LEND CREDIT.

The State of Alabama and its political subdivisions shall use

their power to tax and lend thir credit only for public purposes, except as otherwise permitted by amendments to the Constitution of 1901 at the time this section is adopted or as herein otherwise permitted.

Comment: This section expands the authority of the State and its political subdivisions to permit them to use their taxing power and lend their credit for any public purpose, but it also limits the use of these powers to public purposes. Present section 93 prohibits the State from engaging in "works of internal improvement" or lending its credit in aid thereof. This restriction has resulted in numerous constitutional amendments to permit the state to build roads and bridges, state docks, hospitals, airports and like improvements. This section would eliminate the necessity of submitting amendments of this type for ratification from time to time.

Present section 94 denies to the legislature the power to authorize counties, cities or towns to lend their credit or grant public money to any private person or agency or to become a stockholder in any corporation or association. The language of Section 1 imposes the same restrictions on local government agencies. An exception for industrial and commercial development is provided in Section 14 of this Article.

SECTION 8.02. DELEGATION OF TAXING POWER.

The power to levy taxes shall not be delegated to individuals or private corporations or associations.

Comment: This is present section 212 without change. Section 212 has been construed to prohibit the levy or repeal of a tax subject to a popular referendum. *Al Means, Inc. v. City of Montgomery*, 268 Ala. 31, 104 So. 2d 816 (1958); *Opinions of the Justices*, 232 Ala. 56, 166 So. 706 (1936); 270 Ala. 38, 115 So. 2d 464 (1959); 287 Ala. 321, 251 So. 2d 739 (1971); 252 Ala. 561, 42 So. 2d 81 (1941); 287 Ala. 326, 251 So. 2d 744 (1971).

However, many amendments to the 1901 Constitution have made property tax referenda commonplace in this state, and

local elections on property taxes are provided for in Section 8.10 of this article. Although there may be no valid distinction between referenda on property and other taxes, the difference is deeply engrained in public thinking and tradition, and the Commission has concluded that it would recommend no change in the present approach of the 1901 Constitution and amendments, which recognize the distinction.

SECTION 8.03. STATE TAXES ON INCOME.

(a) A state tax on income shall be levied only on net income and shall not exceed the rate of five per cent.

(b) A resident individual or a corporation organized under the law of this state shall be allowed to deduct from gross income the amount of federal income tax paid or accrued within the taxable year. A nonresident individual or foreign corporation shall be allowed to deduct only that amount of federal income tax paid or accrued in the taxable year on income received from sources within the state to be determined in accordance with such laws as the legislature may enact.

Comment: This section takes the place of several amendments to the 1901 constitution, including Nos. 25, 61, 212 and 225. It retains the present 5 per cent maximum on the income tax and the present prohibition against the removal of the deduction of the Federal income tax from gross income. The requirement of amendment 61 that the proceeds be used for property tax reduction and education has been deleted and the personal exemption specified in amendment 25 has been omitted, as a matter of simplification. The trend is toward an increase, not a reduction, in the original $300 personal exemption.

SECTION 8.04. IMPOSITION OF INCOME TAX WITH REFERENCE TO FEDERAL LAW.

Except as prohibited by this Constitution, the legislature in enacting laws taxing income, may define income by reference to provisions of the laws of the United States as they then exist or may prospectively be enacted, with such modification as may be prescribed by the law of this state.

COMMENTARY

Comment: This provision is a new one. It permits a simplified levy, as e.g. a levy based on a percentage of the income as shown on the Federal income tax return. The purpose is to permit the legislature to simplify the task of the taxpayer in having to fill out two separate tax returns and make two separate complicated calculations to determine his federal and state income tax liability. It merely permits the legislature to grant as a convenience to the taxpayer a so-called "piggy-back" levy. The amendment is necessary because otherwise there could be an invalid delegation of the State's taxing power to the congress. A similar provision is contained in a number of recent constitutions, including Missouri, Kansas, New York, Utah and Oregon.

SECTION 8.05. STATE INHERITANCE AND ESTATE TAXES.

The legislature may provide for the assessment, levy and collection of a tax upon inheritances and for the levying of estate taxes not to exceed in the aggregate the amounts which may by law of the United States be allowed to be credited against or deducted from any similar tax upon inheritances or taxes on estates assessed or levied by the United States on the same subject.

Comment: This is taken from and intended as a simplification of present amendment 23. It permits an estate or inheritance tax not to exceed the credit allowed for such levy against the Federal estate tax. The last sentence of amendment 23 has been omitted because it is redundant and unnecesary.

SECTION 8.06. DEDICATED FUNDS.

No proceeds of any state tax hereafter levied by the legislature, or derived from an increase in the rate of taxes now imposed, shall be dedicated to any special purpose, except when required by the federal government for state participation in federal programs. Any dedication of taxes for special purposes existing at the time of the ratification of this section shall continue until terminated by act of the legislature.

Comment: This is a new section designed to give the legislature greater freedom in budgeting and effectively using available State funds to meet the financial obligations of the State. The greater part of the State's revenues is now earmarked for special purposes. Amendment 61 restricts a portion of the income tax to homestead exemptions and to the special educational trust fund. Amendment 93 earmarks vehicle and motor fuel taxes for highway expenditures. Amendment 272 earmarks the revenue derived from hunting and fishing licenses for conservation. This section retains these and other presently existing earmarkings, but it permits the legislature to terminate them.

SECTION 8.07. LIMITATION ON STATE AD VALOREM TAXATION.

State ad valorem taxes shall not be levied in excess of six and one-half mills on the assessed value of property in any one taxable year, except for taxes required to pay bonds issued after the ratification of section 8.11 of this article.

Comment: This section imposes the same limit as present section 214. It is recommended as a substitute for section (h) of amendment 325 (ratified May 30, 1972) which limits all property taxes to one and one-half per cent of the fair market value of the property taxed. After thorough consideration and consultation with experts in the field, the Commission has concluded that the one overall limitation on three separate levels of government, state, county and city and in some cases even taxing districts as well, is impracticable and administratively unworkable. If the combined levy of taxes by state, county and city should exceed the limit, the determination of what portion of which levy is unlawful would be practically impossible. Separate limitations on local property taxes are provided in Section 8.10 of this article, but with a procedure for exceeding the limits with local governing body, legislative and voter approval, just as is now provided in amendment 325.

The exception for unlimited taxes to pay bonds will provide a higher credit rating for Alabama bonds and reduce the

interest rate the State will have to pay for its borrowing. Whether this exception is included or not, the State can never afford to default on its bonds, and it is generally recognized that it would not do so. It should get the rate of interest that this unstated policy deserves but the policy must be written into the constitution for the market place to reflect it in the interest which the State must pay.

SECTION 8.08. ASSESSMENT AND CLASSIFICATION OF PROPERTY FOR AD VALOREM TAXATION.

(a) All taxable property within this state, not exempt by law, shall be divided into the following classes for the purposes of ad valorem taxation:

Class I. All property of utilities used in the business of such utilities.

Class II. All property not otherwise classified.

Class III. All agricultural, forest and residential property.

(b) With respect to ad valorem taxes levied by the state, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes thereof as herein defined at the following ratios of assessed value to the fair and reasonable market value of such property:

Class I. 30 percentum.

Class II. 25 percentum.

Class III. 15 percentum.

(c) With respect to ad valorem taxes levied by counties, incorporated cities or towns, or other taxing authority, all taxable property shall be forever taxed at the same rate, and such property shall be assessed for ad valorem tax purposes according to the classes of property defined in paragraph (a) herein and at the same ratios of assessed value to the fair and reasonable market value thereof as fixed in paragraph (b) herein, provided, however, that the legislature may vary the ratio of assessed value to the fair and reasonable market value as to any class of

property as defined in paragraph (b) herein, and provided, further, that the lgislature may fix a uniform ratio of assessment of all property within a county defined in paragraph (a) herein as Class II and III and may fix a different ratio of assessment for property defined in paragraph (a) as Class I. Such ratios as herein authorized may vary among counties so long as each such ratio is uniform within a county.

No class of property shall have a ratio of assessed value to fair and reasonable market value of less than 15 percentum nor more than 35 percentum.

(d) Wherever any constitutional provision or statute provides for, limits or measures the power or authority of any county, incorporated city or town, or other taxing authority to levy taxes, borrow money, or incur indebtedness in relation to the assessment of property therein for state taxes or for state and county taxes such provision shall mean as assessed for county or incorporated city or town taxes as the case may be.

Comment: Subsections (a), (b) and (c) are the same as the first three subsections of amendment 325 ratified on May 30, 1972. Subsection (d) is the same as subsection (g) of amendment 325.

SECTION 8.09. EXEMPTIONS FROM AD VALOREM TAXATION.

(a) The following property shall be exempt from all ad valorem taxation: the real and personal property of the state, counties, incorporated cities or towns, and property devoted exclusively to religous, educational or charitable purposes.

(b) The legislature may provide for other exemptions from ad valorem taxation.

Comment: This is a substitute for present section 91. It is taken from paragraphs (i) and (f) of amendment 325.

SECTION 8.10. TAXATION.

Except for taxes levied by the States, taxes presently per-

mitted by the constitution of 1901 as amended, and taxes required for the payment of bonds issued after the ratification of section 8.12 of this article, no ad valorem taxes on real or personal property shall be levied unless the tax shall have been (1) approved by the authority having power to levy the tax after a public hearing on the proposal, (2) thereafter approved by an act of the legislature, and (3) subsequently approved by a majority of the electors of the area in which the tax is to be levied who vote on the proposal.

Comment: This section is a substitute for section 215 (as amended by amendment 208) and 216 (as supplemented by amendment 56) of the 1901 constitution and numerous amendments providing for local property taxation. It is in substance the same as subsection (e) of amendment 325 and it permits local tax increases above the present limits without a constitutional amendment, but subject to a procedure which requires the approval of the local governing body, the legislature and the local voters. Consideration was given to providing a fixed limit for cities and towns and another for counties but no general limitation could allow for the local variances which now exist as permitted by numerous amendments to the 1901 constitution. This section simply recognizes the status quo as to present authorizations.

Paragraph (d) of amendment 325 is a one time adjustment and for this reason it is not carried forward into this section. If by that provision of amendment 325 the existing constitutional limit is increased for any county, city or town in order to maintain last year's tax yield, then that is the limit which will be in effect under this section.

This section is the product of intensive study, consultation and debate in the commission. Several members of the commission and some of its consultants feel strongly that all constitutional limitations on local property taxes should be eliminated. Only a few state constitutions contain such limitations. There is much to be said for the view that a constitution should not deal with taxes at all, leaving to the legislature and the people the determination of the amount and kinds of

taxes to be levied, subject only to the general requirements of due process and equal protection.

SECTION 8.11. STATE DEBT LIMITATION.

No debt or other obligation payable in whole or in part from taxes shall be contracted by or in behalf of the state except as provided herein and the full faith and credit of the state shall be pledged to all debt incurred under this section.

(a) TEMPORARY BORROWING. The legislature may authorize debts to be contracted to meet deficits in the revenue in anticapation of the collection during the then current fiscal year of state taxes and within appropriations for such fiscal year in an amount not exceeding one-tenth of the average annual tax receipts of the state for the five fiscal years immediately preceding. Such debt shall mature and be paid from such tax collection within the current fiscal year.

(b) DEBTS TO FINANCE CAPITAL PROJECTS OR TO REFUND PREVIOUS OBLIGATIONS. The legislature may authorize debts to be contracted: (1) to finance a capital project which is to be specified in the authorizing act, or (2) to refund a previous obligation of the state. The total principal amount of debts so authorized together with all debts or obligations of the state, payable in whole or in part from taxes, shall not exceed one and three-fourths times the average annual revenue receipts of the state for the immediately preceding five fiscal years. An act authorizing such debt shall require for its passage a vote of three-fifths of the members elected to each house.

(c) ADDITIONAL DEBT. The legislature may authorize debt in excess of the limit provided in paragraph (b) by an act passed by a vote of three-fifths of the members elected to each house and approved by a majority of the electors of the state voting on the question.

(d) BONDS TO FINANCE REVENUE PRODUCING CAPITAL PROJECTS. The legislature may authorize the issuance of general obligation bonds of the state to finance or refinance specified revenue producing projects (including the enlargement or improvement thereof), which are owned and controlled by the

state or by one of its institutions or agencies, to an amount not exceeding the average annual tax revenues of the state for the immediately preceding five fiscal years; and such bonds shall not be included in determining the limitation on debt contained in paragraph (b), provided that:

(1) the bonds shall be secured by a pledge of the net revenues derived from rates, fees or other charges of the projects;

(2) before any such bonds shall be authorized, the governor shall file with the clerk of the house and secretary of the senate his opinion, based on responsible engineering and economic estimates attached thereto, that the anticipated net revenues to be pledged to the payment of the principal and interest on such bonds will be sufficient to meet such payments and to provide such reserves as the act authorizing such bonds may require; and

(3) the act authorizing such bonds shall be adopted by a vote of two-thirds of the members elected to each house.

(e) RETIRING DEBT. All bonds authorized under paragraphs (b), (c), or (d) above shall mature serially in annual or more frequent installments, beginning not later than three years from the date of issue and ending within the estimated useful life of the project as stated in the authorizing act or thirty years from date of issue, whichever is shorter. The principal and interest on all such bonds shall be a first charge on the general revenues of the state and, unless sufficient funds are appropriated in each fiscal year for the payment of such principal and interest, there shall be set aside from the first tax revenues received during each fiscal year and each succeeding fiscal year a sum sufficient to pay such principal and interest.

Comment: This section would replace present section 213, as amended. Section 213 forbids the creation of State debts except for temporary loans not to exceed $300,000. This unrealistic limitation has led to many amendments to the constitution, so much so that the accepted method of authorizing state bonds has come to be by constitutional amendment.

The proposed section will alleviate the need for financing desirable improvements by recurring constitutional amendments. Under it, the legislature could (1) authorize temporary debts in anticipation of tax collections not exceeding one-tenth of five year average tax receipts; (2) create debts for capital projects or to refinance previous debt, in a total amount not exceeding one and three-fourths times the average annual revenues, but only by a vote of three-fifths of the members of each house; (3) create additional debt without limit but only if, in addition to being first approved by a vote of three-fifths of the members of each house, it shall be submitted to and approved by the voters of the State; (4) issue general obligation bonds by a vote of two-thirds of the elected members of each house to finance a specified project determined and certified to be productive of revenues sufficient to amortize the bonds.

These are reasonable authorizations with conservative restrictions. They make unnecessary the subterfuges used in the past to avoid the unrealistic limit on State debts and, by permitting the full faith and credit of the State to be pledged, assure a better rating and correspondingly lower rate of interest for State bonds.

Mandatory requirements for scheduling the repayment of debt and for priorities on state revenues are included in paragraph (e) and these requirements, as well as the provision for an unlimited tax for the payment of State bonds in proposed section 8.07 will also improve the State's credit standing and lower the interest rate on bonds issued under this section.

SECTION 8.12. PROCEDURE FOR INCURRING COUNTY AND MUNICIPAL DEBT.

(a) Except as hereinabove permitted, no county or incorporated city or town shall contract or incur any debt or obligation pledging its full faith and credit, or payable in whole or part from taxes unless (1) such debt or obligation shall be incurred or contracted for the purpose of making one or more capital improvements, (2) shall mature within the estimated useful life of such capital improvements or thirty years whichever is the

shorter and (3) shall have been approved by a majority vote of the electors of such county or incorporated city or town voting at an election held in the manner prescribed by law.

(b) The limitation on incurring a debt or obligation provided by subdivision (a) hereof shall not apply to the following:

(1) Obligations incurred for current operating expenses in any fiscal year which do not exceed the anticipated income of that year available for such purposes.

(2) Temporary loans to be paid within one year made in anticipation of the collection of taxes, not exceeding one-fourth of the average annual general revenues (excluding state and federal grants) or such county, incorporated city or town, for the preceding five fiscal years.

(3) The renewal, refunding or reissue of obligations lawfully issued.

(4) Obligations to procure funds to pay for public improvements, the cost of which is to be assessed, in whole or in part, against the property abutting on or served by such improvements.

(5) Obligations of a public corporation created by any county or incorporated city or town, even though property, whether or not capable of producing income, may have been transferred to such public corporation by a county or an incorporated city or town with or without consideration.

Comment: The present debt limits of section 224 for counties and 225 (as amended by amendment 268) for cities and towns are removed, but safeguards are provided to limit the purposes for which debt may be incurred, to impose strict requirements for amortization and repayment, and to require voter approval. Financing by general obligation warrants without an election will no longer be permitted under this section. Present section 224 limits county indebtedness to three and one-half per cent of assessed value and section 225, as amended, limits municipalities to twenty per cent of assessed value with certain exceptions. In its interim report of May 4,

1971, the commission recommended the retention of debt limits, but proposed an enlargement of the county's limit to ten per cent. After further consideration, the commission has concluded that debt limits should be abandoned in favor of the restrictions in this section.

By paragraph (b), the restrictions on incurring debts and the election requirements for issuing bonds and other obligations are made inapplicable to special types of financing presently exempted from the debt limit and election requirements of the 1901 constitution, and amendments. Sections 222, 224, 225, Amendment 107, 108, 126, 194, 228 and 268.

SECTION 8.13. EXCEPTION TO ELECTION REQUIREMENTS FOR OBLIGATIONS TO FINANCE SMALL CAPITAL PROJECTS.

(a) Notwithstanding the provisions of the constitution requiring an election for incurring debts or obligations, a county or an incorporated city or town may incur a debt or obligation without an election in an amount not exceeding one-fifth of its average annual tax revenue paid into its general fund, and, in the case of a county, also its public building, road and bridge fund, for the last five preceding fiscal years, to finance a capital project, if approved by three-fifths of the members of its governing body after a public hearing, of which at least ten days notice has been given by publication. Notice of approval by the governing body shall be published within seven days after approval.

(b) In the event that five percent of the number of electors who were qualified to vote in such county in the last general election, or in such incorporated city or town in the last municipal election, within thirty days following publication of the notice of approval, file a written petition with the governing body for an election, the debt or obligation shall not be incurred unless approved by a majority of the electors voting on the question at an election.

(c) The total principal amount of all debts or obligations incurred without an election and outstanding under this section

shall never exceed one percent of the assessed value of taxable property in the county or incorporated city or town.

Comment: This is a new exception to local debt restrictions not presently found in the 1901 constitution or any amendments thereto. It exempts a county or a city or town from the election requirement of section 8.12 when it incurs debts in limited amounts for small capital projects. No election is required unless five per cent of the electors, after notice that bonds have been authorized, file a petition for an election.

SECTION 8.14. GENERAL OBLIGATION INDEBTEDNESS OF COUNTIES AND MUNICIPALITIES FOR INDUSTRIAL DEVELOPMENT.

(a) No county or incorporated city or town authorized by any amendment to the constitution of 1901 to incur obligations, payable in whole or in part from taxes, for industrial or commercial development shall incur obligations under such authority later than five years after the adoption of this amendment.

(b) The legislature may authorize any county, incorporated city or town, or other subdivision to incur obligations, payable in whole or in part from taxes, for industrial or commercial development, provided that: (1) the obligations shall be approved by a vote of a majority of the electors of the county, incorporated city or town, or other subdivision voting in an election thereon; and (2) the electors simultaneously authorize the levying of a special tax reasonably estimated to be sufficient to pay the obligations if revenues pledged are insufficient. The type of tax, its possible duration and maximum rate shall be set out on the ballot to be used at such election.

Comment: This section is intended to take the place of the numerous amendments to the 1901 constitution which permit indebtedness payable from county or municipal taxes for industrial or commercial development. Under paragraph (a) outstanding authorizations under these amendments would continue for five years, thus allowing ample opportunity for any county or municipality which has an industrial or commercial project in the works to complete this financing. From the

date of ratification and, in the case of counties and municipalities under special amendments, after the five year cut-off, the local government units would be permitted to incur obligations, payable in whole or in part from taxes, for industrial or commercial development but only subject to the stringent limitations imposed in paragraph (b). These include voter approval of the obligation and simultaneous voter authorization of the levy of a special tax reasonably estimated to be sufficient to pay the proposed bonds in the event that the rent or revenues from which these bonds are made payable should turn out to be insufficient. These provisions are intended to make sure that the voters face up to the possibility that they will have to dig into their own pockets to pay more taxes if these bonds are not paid from rent or revenues as contemplated. Some members of the commission feel strongly that tax obligations should not be used for the subsidization of local industrial and commercial development but the majority felt that these special safeguards were adequate. There was strong sentiment in the commission for making the same industrial and commercial financing opportunities equally available to all counties and municipalities, and this view prevailed, subject to the five year continuance of authority in present local amendments.

ARTICLE IX

Local Government

SECTION 9.01. COUNTIES.

(a) The state shall be divided into political subdivisions called counties; and the present boundaries of the several counties shall continue until changed in accordance with the provisions of this article.

Comment: This is a substitute for present section 38. No change in substance is involved.

(b) The legislature shall by general law prescribe procedures for the creation, abolition, consolidation, merger, and change of boundaries of counties, and shall provide for payment

or apportionment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

Comment: This is a substitute for present sections 39, 40 and Amendment 132. The present sections allow the legislature to alter boundaries of counties by a two-thirds vote, prohibit changes which would create boundaries within seven miles of a courthouse, and permit the legislature to alter the boundaries of Macon County by a majority vote. This proposal requires the legislature to provide uniform procedures for all counties whereby boundaries may be changed with the consent of the people involved.

(c) The legislature may, by local law adopted by a vote of two-thirds of each house, change the boundary between adjoining counties, provided that the change shall have been approved by the governing bodies of each county prior to the enactment of such law.

Comment: This provides another method of changing boundaries between adjoining counties. Under this alternate procedure boundaries could be changed by a local law, which would have to be published in each county affected, if adopted by a two-thirds vote of each house of the legislature and approved by the governing bodies of each county.

(d) No new county shall be formed with an area of less than six hundred square miles, and no county shall be reduced below that area by a change of boundaries.

Comment: This retains the prohibition against reducing any county to less than six hundred square miles which is now provided for by section 39.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or

or apportionment of the public debt of each county affected by a change, provided that no such change shall be made without consent of a majority of the electors voting on the proposal within each county affected.

Comment: This is a substitute for present sections 39, 40 and Amendment 132. The present sections allow the legislature to alter boundaries of counties by a two-thirds vote, prohibit changes which would create boundaries within seven miles of a courthouse, and permit the legislature to alter the boundaries of Macon County by a majority vote. This proposal requires the legislature to provide uniform procedures for all counties whereby boundaries may be changed with the consent of the people involved.

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(d) No new county shall be formed with an area of less than six hundred square miles, and no county shall be reduced below that area by a change of boundaries.

Comment: This retains the prohibition against reducing any county to less than six hundred square miles which is now provided for by section 39.

(e) No courthouse or county site shall be removed, nor shall any branch courthouse be established or abolished, unless such proposal is first submitted to a vote of the electors of the county or counties to be affected and is approved by a majority of those voting upon such proposal. An election under this section on the issue of moving, establishing or abolishing a courthouse or

branch courthouse shall not be held at more frequent intervals than every four years.

Comment: This is a substitute for present section 41 and amendment 81. No change in substance is involved.

SECTION 9.02. MUNICIPALITIES.

The legislature shall provide by general law for the incorporation, government, merger and change of boundaries of cities and towns, and for the annexation of unincorporated territory to incorporated cities and towns, which are referred to as municipalities in this article. When any municipality is abolished, provision shall be made for the protection of its creditors.

Comment: There is nothing in the present constitution similar to this proposed section. However, the proposed section does not grant any power to the legislature which it does not already have. The section simply makes explicit the duty of the legislature to provide by general law for the government and change of boundaries of municipalities.

SECTION 9.03. OPTIONAL PLANS OF GOVERNMENT FOR COUNTIES AND MUNICIPALITIES.

The legislature shall provide by general law optional plans of local government for counties and municipalities. A county or municipality may adopt or repeal a prescribed plan of local government by referendum in accordance with such conditions and procedures as the legislature shall provide by general law.

Comment: This section grants no new power to the legislature. It merely makes explicit the duty of the legislature to provide optional plans of local government for both counties and municipalities.

SECTION 9.04. COUNTY AND MUNICIPAL HOME RULE CHARTERS.

Upon the expiration of two years following the adoption of this article, a county or municipality shall have the right and power to frame, adopt, amend or repeal a home rule charter by the following procedure:

COMMENTARY

1. Upon resolution approved by the governing body of a county or municipality, or upon petition of ten per cent of the number of electors who were qualified to vote in such county in the last general election, or in such municipality in the last municipal election, filed with the governing body and a copy filed with the probate judge, the question of the creation of a commission to frame a home rule charter, or charter amendments, shall be submitted to the electorate not less than forty-five days nor more than ninety days after the filing of the petition at a general election, if one is to be held during such period but if not, at a special election. An affirmative vote of a majority of the electors voting on the question shall authorize the creation of the commission.

2. The resolution or petition to have a charter commission may include the names of seven commissioners, to be listed at the end of the ballot, so that an affirmative vote on the question is a vote to elect the persons named. Otherwise, the resolution or petition shall designate the method by which the members of the charter commission shall be chosen.

3. Any proposed charter, or charter amendment, shall be published by the commission and submitted to the electorate not less than forty-five days nor more than ninety days after publication at a general election, if one is to be held during such period, but if not, at a special election. The procedure for publication shall be prescribed by resolution of the charter commission. The governing body of the county or municipality shall appropriate money to provide for the reasonable expenses of the commission and for the publication of its proposals.

4. Any election pursuant to the provisions of this section shall be conducted in the manner provided by law for holding other county and municipal elections. The cost of any such election shall be paid out of the general funds of the county or municipality.

5. A home rule charter or charter amendment shall become effective if approved by a majority of the electors voting thereon. The charter may provide for direct submission of charter revisions or amendments initiated by petition or by resolution of the governing body of a county or municipality.

6. An election on the issue of the creation of a charter commission shall not be held at more frequent intervals than every two years.

Comment: There is nothing in the present constitution similar to this proposed section. This section provides the procedure whereby a county or municipality may frame and adopt a home rule charter. The procedure does not become effective until two years after the adoption of the local government article in order to give the legislature time within which it may provide optional plans of local government under Section 9.03. It is contemplated that most counties and municipalities would want to operate under a plan of local government provided for by the legislature.

SECTION 9.05. COUNTY AND MUNICIPAL POWERS OF GOVERNMENT.

Any county or municipality which adopts a home rule charter, or plan of local government prescribed by the legislature, after the ratification of this article of the constitution, may exercise all legislative power of government not inconsistent with its charter, this constitution, or the general law of the state.

Comment: This provision would permit the exercise of very broad "home rule" powers by local governments whose organization meets certain standards. At the present time both counties and cities may exercise only such powers as are specifically delegated to them. Court decisions have consistently held that counties and cities are strictly limited to those powers which have been expressly or impliedly granted by constitutional provisions or legislative enactments. The proposed grant of residual powers of local government to counties and cities would eliminate the need for local acts of the legislature granting specific powers, and would enable local governments to serve the needs of their people more promptly and efficiently. These broad local powers would not be given to counties having the present governmental organization, but only to those which are carefully structured under guidance from the legislature.

and the legislature would retain the authority to restrict or limit the powers of local governments by general laws.

SECTION 9.06. CONFLICTING COUNTY AND MUNICIPAL ORDINANCES.

In the event of conflict between a municipal ordinance and a county ordinance, the municipal ordinance shall prevail within the municipality, unless otherwise provided by a county charter or general law.

Comment: There is no similar provision in the present constitution. If both counties and municipalities exercise legislative powers, it is necessary to define the limits of such powers in the event of a conflict.

SECTION 9.07. MUNICIPAL FRANCHISES.

No franchise or license shall be granted by any municipality for a period longer than thirty years.

Comment: This is a substitute for section 228 of the present constitution which forbids the granting of utility franchises for the use of public streets, except to railroads, for longer than thirty years. The draft broadens the prohibition to all franchises and licenses of any kind, for more than thirty years. While section 228 applies only to cities or towns having a population of more than six thousand, the proposed section would apply to all municipalities.

SECTION 9.08. RESPONSIBILITY FOR COUNTY ROADS.

The county's responsibility for the construction and maintenance of county roads shall not hereafter be delegated to a state agency unless the delegation is approved by a vote of the electors of the county.

Comment: This is a substitute for amendment 142. The language has been changed but the substance of amendment 142 has been retained.

SECTION 9.09. MUNICIPAL STREETS.

No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any municipality for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of the municipality.

Comment: This is section 220 of the present constitution with the omission of the word "village." Municipal corporations are classified as cities or towns. Code, Tit. 37, sec. 2. There is a statute in the language of section 220: Code, Tit. 10, sec. 72.

ARTICLE X

Education

SECTION 10.01. MAINTENANCE AND SUPPORT OF PUBLIC SCHOOLS AND EDUCATIONAL INSTITUTIONS.

The legislature shall provide for the maintenance and support of public schools open to all children in the state and shall establish, organize and support such other public educational institutions, including public institutions of higher learning, as may be desirable.

Comment: This general mandate to the legislature to provide for public education is substituted for the longer detailed one in present Section 256. It is taken from the Model State Constitution.

SECTION 10.02. STATE BOARD AND SUPERINTENDENT OF EDUCATION.

(a) General supervision of the public schools in Alabama shall be vested in a state board of education, which shall be elected in such manner as the legislature may provide.

(b) The chief state school officer shall be the state superintendent of education, who shall be appointed by the state board of education and serve at its pleasure. The authority and duties of the superintendent of education shall be determined by the

state board of education according to such regulations as the legislature may prescribe.

Comment: Only one change of substance is made in the present amendment 284. The requirement that the legislature fix the superintendent's salary is changed to permit the legislature to allow the board of education to set the salary.

SECTION 10.03. BOARD OF TRUSTEES FOR THE UNIVERSITY OF ALABAMA.

(a) The state university shall be under the management and control of a board of trustees which shall consist of two members from the congressional district in which the university is located, one from each of the other congressional districts in the state, the superintendent of education, and the governor, who shall be ex officio president of the board. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Each elected member shall hold office for a term of twelve years .

(b) When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected.

(c) At every meeting of the legislature the superintendent of education shall certify to the senate the names of all who have been so elected since the last session of the legislature, and the senate shall confirm or reject them, as it shall determine is for the best interest of the university. If it rejects the names of any members it shall thereupon elect trustees in the stead of those rejected.

(d) In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor, who shall hold office until the next session of the legislature.

(e) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

Comment: The only change made in present section 264 is to delete the obsolete material concerning the board's membership in the period immediately following the adoption of the 1901 Constitution.

SECTION 10.04. BOARD OF TRUSTEES FOR AUBURN UNIVERSITY.

(a) Auburn University shall be under the management and control of a board of trustees. The board shall consist of two members from the congressional district in which the institution is located, one from each of the other congressional districts in the state as the same were constituted on the first day of January, 1961, the state superintendent of education, and the governor, who shall be ex officio president of the board.

(b) The trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of twelve years, and until their successors be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadrennially.

(c) Vacancies occurring in the office of trustees from death or resignation shall be filled by the governor, and such appointee shall hold office until the next meeting of the legislature. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be appointed as herein required.

(d) No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such. No employee of Auburn University shall be eligible to serve on its board of trustees.

Comment: Amendment 161. No change.

COMMENTARY

SECTION 10.05. MEMBERS OF LEGISLATURE INELIGIBLE TO SERVE ON BOARD OF TRUSTEES.

No member of the legislature shall be eligible to serve as a member of the board of trustees of any state college or university.

Comment: This is a new section designed to promote objectivity in the consideration of programs and fund requests of state colleges and universities.

SECTION 10.06. COMMISSION ON HIGHER EDUCATION.

There shall be a Commission on Higher Education, which shall have the responsibility of advising the governor and the legislature on education beyond the secondary level. The membership, duties, and procedures of the Commission shall be provided for by law.

Comment: This is a new section giving constitutional status to the Commission of Higher Education, but leaving to the legislature the definition of its functions and authority. The Commission was established by statute in 1969. Code, Tit. 52, sec. 513(84) - (93).

SECTION 10.07. EXEMPTION OF MOBILE COUNTY.

The provisions of this article and of any act of the legislature passed in pursuance thereof for educational purposes, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw portions of the funds to which said county shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature.

Comment: This is section 270 of the constitution as amended by amendment 111, unchanged.

CONSTITUTION OF ALABAMA

ARTICLE XI

Public Officers

SECTION 11.01. DUAL OFFICEHOLDING.

No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state; nor shall any person, except a notary public, hold two offices of profit at one and the same time under this state. Service of a delegate to a constitutional convention or as a member of a statutory body having only advisory powers shall not be considered an office of profit as the term is used in this constitution. The legislature may by general law exempt persons in the state military forces or in the military service of the United States from the provisions of this section.

Comment: This section would replace present section 280. It omits the exemptions contained in section 280 concerning postmasters, justices of the peace, constables, and commissioners of deeds. It adds a new provision exempting delegates to a constitutional convention and members of statutory bodies having only advisory powers. The last sentence was added in order to remove any question concerning the validity of statutes exempting persons in military service from the prohibition against dual officeholding. See: Code, Tit. 35, Sec. 37; Tit. 41, Secs. 224, 230(1).

SECTION 11.02. DISQUALIFICATION BY CONVICTION OF CRIME.

No person convicted of a felony involving moral turpitude whose civil and political rights have not been restored shall be eligible to hold any office of trust or profit in this state.

Comment: This section is a substitute for present section 60. The only change in substance is to replace the list of crimes in the current section with the words, "felony involving moral turpitude whose civil and political rights have not been restored."

COMMENTARY

SECTION 11.03. COMPENSATION OF PUBLIC OFFICERS.

(a) The rate of compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, who is elected or appointed for a fixed term, whether such officer may be removed at the pleasure of the authority electing or appointing him or only upon impeachment, shall not be increased or diminished, during the term for which he shall have been elected or appointed, either by the imposition of new, different, and additional duties, or otherwise.

(b) Nor shall the expense allowance of any such officer be increased or decreased during his term except by general law applying to all similar public officers.

(c) Any increase or decrease in the compensation of officers who are members of any court, board, commission, or similar body, whose terms do not run concurrently, shall become effective as to all such members thereof immediately after the expiration of the term or terms of office of the member or members whose term or terms first expire.

(d) Notwithstanding the provisions of this section, the legislature may by general law provide for adjustments, up or down, in the compensation of such officers based on the United States Bureau of Labor Statistics Consumer Price Index or other appropriate cost-of-living criteria.

Comment: Subsection (a), (b) and (c) combine the substance of section 281 and amendment 92. Subsection (b) also prohibits any increase in the expense allowances of such officers except by general law applying to all similar officers.

Subsection (d) is new. To ease the burden of inflation on officers and to provide for help to the government in times of depression, this subsection would allow the legislature to provide for adjustments in compensation based on cost-of-living criteria. The United States Bureau of Labor Statistics Consumer Price Index is commonly used in labor contracts to provide for cost of living adjustments. Under this provision the legislature could provide for automatic adjustments at reason-

able intervals, or set up a commission to determine the amount and timing of adjustments.

SECTION 11.04. METHOD OF CHANGING THE BASIS OF COMPENSATING COUNTY OFFICIALS.

The legislature may, by general or local law, change the method or basis of compensating any officer of a county, including the judge of probate, sheriff, tax assessor, tax collector, clerk of the circuit court, and register, and may place such officers on a salary. In the event that a county officer is placed on a salary, all fees, allowances, and commissions collected by him shall be paid into the county treasury. No law shall be effective to change the method of compensating any county officer during the term for which he shall have been elected or appointed, nor shall any such law become effective in a county until it has been approved by a majority of the electors of the county who vote thereon at a referendum election held for such purpose.

Comment: This is a new section which would replace sections 96 and 104(24) and would render 33 constitutional amendments unnecessary. It was submitted to the legislature in May, 1971. Since submission to the legislature, the language has been changed slightly to make it clear that an officer placed on salary must pay into the treasury all fees collected by him.

SECTION 11.05. CIVIL SERVICE.

(a) The legislature shall provide by law for appointments and promotions in the civil service of the state according to merit, fitness, and efficiency, to be determined, so far as practicable, by competitive examination. The legislature shall provide adequate financial support for a program of personnel management in the state service.

Comment: Section 11.05 is amendment 88 without change of substance.

SECTION 11.06. OATH OF OFFICE.

All members of the legislature, and all officers, executive

and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation:

"I, . . . , solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

The oath may be administered by the presiding officer of either house of the legislature, or by any officer authorized by law to administer an oath.

Comment: This is present section 279 of the constitution without change.

ARTICLE XII

Impeachments

SECTION 12.01. IMPEACHMENT OF STATE OFFICERS.

(a) The governor, or acting governor, and all state officers, except judges, who are elected on a statewide basis, shall be subject to impeachment by the house of representatives for willful neglect of duty, corruption in office, or the commission of any offense, while in office, involving moral turpitude.

(b) Unless otherwise provided by law, impeachment by the house of representatives shall be tried by the senate. No person shall be convicted by the senate sitting as a court of impeachment without the concurrence of at least two-thirds of the members present. The legislature may provide for the trial of impeachments by a special tribunal of seven judges appointed by the supreme court from the judges of the state.

(c) When the governor or acting governor is impeached, the chief justice, or one of the associate justices of the supreme court, to be selected by it, shall preside over the senate when sitting as a court of impeachment.

(d) If at any time when the legislature is not in session, a majority of all the members elected to the house of representatives shall certify in writing to the speaker of the house their desire to meet to consider the impeachment of the governor or acting governor, it shall be the duty of the speaker of the house to summon the members of the house to assemble at the capitol to consider the impeachment of the governor or acting governor. If the house of representatives prefers articles of impeachment, the lieutenant governor or president pro tempore of the senate shall summon the members of the senate to assemble at the capitol for the purpose of organizing as a court of impeachment, unless the legislature has provided for the trial of such official by a special tribunal.

(e) An officer impeached by the house of representatives shall be disqualified from performing any official duties until he has been tried and acquitted. He shall be removed from office upon conviction.

Comment: This section is a substitute for section 173 of the present constitution. It differs from section 173 in the following respects:

(1) Judges are exempt from legislative impeachment because the judicial article provides a method of removing judges from office.

(2) It omits "incompetency or intemperence in the use of intoxicating liquors or narcotics" as specific grounds for impeachment.

(3) It requires a two-thirds vote of the senate to convict, when the senate is sitting as a court of impeachment.

(4) It permits the legislature to provide for the trial of impeachments by a special tribunal of seven judges.

(5) It provides that an officer impeached by the house shall be disqualified from performing his official duties until acquitted.

SECTION 12.02. DISTRICT ATTORNEYS AND SHERIFFS.

District attorneys and sheriffs may be removed from office

for any of the causes specified in section 12.01(a), by the supreme court, under such regulations as may be prescribed by law.

Comment: This section is a substitute for section 174 of the present constitution. Section 174 has been implemented by statute. Code, Tit. 41, sec. 178-202. The proposed section has been made applicable only to sheriffs and district attorneys, since the judicial article provides a method for the removal of judges.

SECTION 12.03. COUNTY AND CITY OFFICERS.

All county officers and officers of incorporated cities and towns may be removed from office for any of the causes specified in section 12.01(a) of this article by a court having jurisdiction to try felony cases in the county or district in which such officers hold their office. The legislature shall provide by law the method of proceeding under this section, provided that the right of trial by jury and appeal in such cases shall be secured. This section shall not apply to the judge of any court who may be removed by procedures provided by the judicial article.

Comment: This section is a substitute for section 175 of the present constitution. The only change of substance made by the proposed section is the omission of judges of inferior courts. Section 175 has been implemented by statute. Code Tit. 41, sec. 178-202.

SECTION 12.04. PENALTIES UPON CONVICTION.

Judgments in cases arising under the three preceding sections shall not extend beyond removal from office and disqualification to hold any office of honor, trust or profit under the state. But the person convicted, or acquitted, shall be subject to criminal punishment according to law.

Comment: This section is a substitute for section 176 of the present constitution. Under section 176 judgment of conviction in impeachment proceedings does not extend beyond removal from office and disqualification to hold office "for the term for which the officer was elected or appointed." The proposed section would disqualify any person convicted in im-

peachment proceedings from holding "any office of honor, trust or profit, under the state." This is the language of the 1819 constitution Art. V, sec. 8.

ARTICLE XIII

Miscellaneous Provisions

SECTION 13.01. EMINENT DOMAIN.

In proceedings for the taking of property for public use, the right of appeal from any preliminary assessment of damages may not be denied but such appeal shall not deprive the condemnor of a right of entry, provided the amount of damages assessed shall have have been paid into court in money, and an adequate bond shall have been given, in not less than double the amount of the damages assessed, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on demand of either party be determined by a jury according to law.

Comment: This section is based on present section 235, which specifically applies to "municipal and other corporations and individuals invested with the privilege of taking property for public use. It does not apply to the condemnors, including the state.

The first sentence of section 235, which prohibits the taking of property without paying compensation, has been omitted because it is a repetition of the eminent domain section in the Bill of Rights (Sec. 1.14).

Section 35 provides for a right of entry pending an appeal provided that the condemnor pay the amount of damages assessed into court and give bond "with good and sufficient sureties." This has been changed to require the condemnor to give "an adequate bond."

SECTION 13.02. PROTECTION OF ENVIRONMENT.

It shall be the policy of the state to conserve and protect its

natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and and water pollution and of excessive and unnecessary noise.

Comment: There is no comparable section in the present constitution. The proposed section is the same as article II, sec. 7 of the 1968 Florida constitution.

SECTION 13.03. EXEMPTION OF HOMESTEADS.

The legislature shall provide by law for the exemption of homesteads, of a value of not less than two thousand dollars, from forced sale for the payment of debts.

Comment: This section is proposed as a substitute for sections 205-208 of the present constitution. The proposed section requires the legislature to provide for homestead exemptions, but the definition of homestead and the extent of the exemption is left to the legislature.

ARTICLE XIV

Amending the Constitution

SECTION 14.01. PROCEDURE.

(a) The legislature may propose an amendment to this constitution in the manner required for the enactment of legislation if, on its final passage, the amendment is read at length in each house and three-fifths of all the members elected to each house approve it.

(b) Proposed amendments shall be submitted to the electors of the state at the next general election following the notice required by this section, provided, that the legislature may, by separate bill enacted in the manner required for proposing an amendment, call a special election for submission of an amendment. The act must declare that an emergency exists necessitating the submission prior to the next general election, and shall not be effective unless approved by the governor within seven days after it has been submitted to him. If a special

election on a proposed amendment is called, other amendments may be submitted at the same election.

(c) Notice of the election on all proposed amendments shall be given by a single proclamation of the governor. The notice, with the full text of all proposed amendments shall be published once in every county, in a newspaper of general circulation, not more than thirty nor less than ten days before the day of the election. The ballot statement of each amendment shall also be published once not less than three nor more than ten days before the election in each newspaper in the state which is authorized by law to publish such notices at public expense. In addition to the required publication in newspapers, the legislature may provide for the publication of the proposed amendments or the ballot statements thereof by other means, including radio and television.

(d) Elections upon proposed amendments shall be held as provided by law. A proposed amendment shall become part of the constitution if approved by a majority of electors voting on the proposal.

(e) The revision of an entire article or articles or the addition of one or more new articles may be proposed as a single amendment.

Comment: Section 1 sets out the procedure to be used when amending the constitution and would replace section 284 (as amended by No. 24) of the present constitution. Several substantive changes have been made. The major ones are:

(1) The present requirement that an amendment must be read at length on three separate days in each house before a vote thereon is shortened to require only one reading at length before final passage.

(2) An effort has been made in the new section to curtail expensive special elections by requiring that a bill declaring that an emergency exists be passed before a special election on an amendment may be held.

(3) The notice requirement has been changed from publication for four successive weeks to one publication of the full

text in every county and one publication of the ballot statement in each newspaper of the state. The new section also permits the legislature to provide for publication by other means, including radio and television.

(4) The new section would allow the revision of an article, or articles, or the addition of one or more new ones, including the submission of an entire new constitution, as a single amendment.

SECTION 14.02. FORM OF THE BALLOT.

The ballot submitting an amendment to the constitution shall contain a summary or short statement clearly indicating its effect. It shall be the duty of the attorney general to prepare such statement in such language as shall create no prejudice for or against the proposed amendment.

Comment: This section provides for the preparation of the ballot. It replaces section 285. The attorney general is required to prepare a short statement of the effect of the amendment, rather than a statement of the substance or subject matter now required.

SECTION 14.03. CONSTITUTIONAL CONVENTION.

(a) The legislature may by a vote of a majority of the members elected to each house adopt an act calling for a convention to propose a general revision of, or specific amendments to this constitution. If a convention is called for the consideration of a specific amendment, or amendments, the convention shall have no power to propose amendments on other subjects. No convention shall be held unless the question of holding the same as limited by the legislature shall be first submitted to a vote of the electors of the state and approved by a majority of the electors voting on the proposal.

(b) The act calling the convention shall provide for the election of delegates and may limit the period of time during which the convention can meet, provided that the duration of the convention may be extended, by act of the legislature, adopted in the manner required for legislation, after the convention convenes.

(c) No act of the legislature calling a convention for the purpose of revising or amending the constitution shall be repealed after the electors of the state have approved the holding of a convention.

(d) The legislature shall provide for the submission of the proposals of the convention to a vote of the electors of the state. If a majority of electors voting on any such proposal vote in favor of it, the proposal thus approved shall become effective on the date designated therein.

Comment: Section 14.03 describes the method of calling and holding constitutional conventions. It replaces present section 286 and makes several substantive changes. The most important are:

(1) The legislature can limit the convention to specific sections or amendments under the new section.

(2) The legislature may, under this section, limit the duration of the convention. After the convention meets, its duration may be extended by legislative act.

(3) An act calling a convention may not be repealed after the approval of the convention by the voters. The old section allowed repeal only by the same session of the legislature which passed the act.

(4) The new section requires approval of a convention's proposals by the voters.

SECTION 14.04. METHOD OF VOTING.

All votes of the legislature upon proposed revisions of, or amendments to this constitution and upon bills calling a convention for the purpose of altering or amending the constitution of this state, shall be taken by yeas and nays and entered on the journals. No act of the legislature passed in accordance with the provisions of this article, proposing revisions of, or amendments to this constitution, or calling a convention for the purpose of altering or amending the constitution, shall be submitted for the approval of the governor, but shall be valid without his approval.

COMMENTARY

Comment: This section makes only one minor change in present section 287. The words "proposed revisions" and "proposing revisions" are added in order to incorporate the changes made by proposed section 14.01.

CONSTITUTION OF ALABAMA

CORRESPONDING SECTIONS

OF

1901 CONSTITUTION

AND

PROPOSED REVISION

Section 1901	Proposed Section	1901 Section	Proposed Section
1	1.01	38	9.01
2	deleted	39	9.01
3	1.02	40	9.01
4	1.02	41	9.01
5	1.04	42	2.01
6	1.03, 1.05	43	2.01
7	deleted	44	3.01
8	1.05	45	3.16
9	1.05	46	3.02
10	1.10	47	3.04
11	1.06	48	3.06, 3.07,
12	deleted		3.09, 3.11.
13	10	49	deleted
14	11	50	4.01
15	1.05	51	3.07
16	1.05	52	3.13
17	1.07	53	3.14
18	1.09	54	3.14
19	deleted	55	3.17
20	1.08	56	3.15
21	1.15	57	deleted
22	1.13	58	3.13
23	1.14	59	3.05
24	deleted	60	11.02
25	1.02	61	3.18, 3.19
26	1.12	62	3.18
27	1.16	63	3.18
28 - 36	deleted	64	3.19
37	deleted	65	deleted

CORRESPONDING SECTIONS OF 1901 CONSTITUTION

1901 Section	Proposed Section	1901 Section	Proposed Section
66	3.20	115	5.03
67	3.12	116	5.02
68	deleted	117	5.04
69	deleted	118	5.05
70	3.21	119	deleted
71	3.22	120 - 121	5.07
72	3.23	112, 123	5.06
73	3.24	124	5.08
74	deleted	125, 126	5.06
75	deleted	127	5.09
76	3.10	128	5.10
77 - 81	deleted	129	5.11
82	3.31	130	11.01
83	3.08	131	5.07
84 - 88	deleted	132	5.13
89	9.05	133	5.14
90	deleted	134, 135	deleted
91	8.09	136	5.07
92	deleted	137, 138	deleted
93	8.01	139	8.01
94	8.01	140	8.02
95	deleted	141	deleted
96	11.04	142, 144	8.04
97	3.25	145, 148	deleted
98	3.25	149	8.06
99	deleted	150	8.08
100	3.26	151	8.02
101 - 103	deleted	152	8.13
104	3.29	153	deleted
105	3.29	154	8.07
106	3.30	155	8.15
107	3.30	156, 157	deleted
108 - 109	deleted	158	8.13, 8.14, 8.15
110	3.28		
111	3.30	159 - 161	deleted
112, 113	5.01	162	8.08
114	5.02	163 - 172	deleted

Section 1901	Proposed Section	Section 1901	Proposed Section
173	12.01	223	deleted
174	12.02	224	8.12
175	12.03	225	8.12
176	12.04	226 - 227	deleted
177 - 196	7.01, 7.02, 7.03	228	9.07
		229 - 234	deleted
197	4.01	235	13.01
198	4.01 & 4.03	236 - 255	deleted
199 - 203	4.02 & 4.03	256	10.01
204	deleted	257 - 263	deleted
205 - 208	13.03	264	10.03
209 - 210	deleted	265 - 268	deleted
211	deleted	269	8.10
212	8.02	270 - 278	deleted
213	8.11	279	11.06
214	8.07	280	11.01
215 - 216	8.10	281	11.03
217	8.08	282 - 283	deleted
218 - 219	deleted	284	14.01
220	9.09	285	1402
221	deleted	286	14.03
222	8.12	287	14.04

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENTS TO 1901 CONSTITUTION AND CORRESPONDING SECTIONS OF PROPOSED REVISION

AMENDMENT		PROPOSED SECTION
Amendments on local ad valorem taxes:		8.10
8	41 cities	
13	9 cities	
17	12 cities	
18	Mobile	
19	Walker	
31	Attalla	
34	Limestone	
45	Colbert	
52	Decatur-Cullman-Morgan County	
54	Haleyville	
56	All counties	
59	All counties except Mobile and Montgomery	
63	Montgomery	
65	DeKalb	
66	Marshall	
69	Marion	
70	Escambia	
72	All counties except Mobile, Montgomery and Jefferson	
76	All counties except Mobile and Jefferson	
125	All counties	
143	Barbour	
195	Mobile	
198	Tallapoosa	
199	Washington	
208	Amendments Section 215	
209	Mountain Brook	
230	Baldwin	
240	Birmingham	
242	Auburn	
248	Mobile	
254	Winston	

AMENDMENT	PROPOSED SECTION
262	Franklin
269	All counties — library
275	Mobile
276	Walker
300	Mobile
307	Chambers
311	Lawrence, Limestone, Morgan
318	Morgan
319	Baldwin
324	Lee

Amendments on County, City and District School Taxes:

3	State wide
6	Selma
16	Mobile
20	Lawrence
32	Lawrence
52	Decatur, Cullman
67	Etowah
68	Calhoun
71	Tuscaloosa
77	St. Clair
78	Cherokee
79	Courtland
80	Huntsville
82	Jefferson
86	Monroe
98	Talladega
99	Lawrence
101	Marshall
102	Chambers
106	Morgan
111	State wide
123	Cleburne
124	Russell
129	Tallapoosa
130	Colbert

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
131	Butler	
145	Coosa	
146	DeKalb	
147	Lee and Opelika	
148	Auburn	
149	Madison	
153	Winston	
156	Randolph	
162	Baldwin	
163	Bullock	
164	Tuscaloosa	
165	Calhoun	
166	Chilton	
167	Choctaw	
168	Clarke	
169	Clay	
170	Tuscumbia	
171	Sheffield	
172	Muscle Shoals	
173	Franklin	
174	Jackson	
175	Jefferson	
176	Lamar	
177	Lauderdale	
178	Florence	
179	Mobile	
180	Randolph	
181	Talladega	
182	Washington	
202	State wide	
203	Jackson	
204	Walker	
205	Marion	
206	Coffee	
210	DeKalb	
211	Franklin	
216	Coffee	
218	Huntsville	

AMENDMENT		PROPOSED SECTION
232	Anniston	
234	Fort Payne	
252	Talladega	
253	Jasper	
260	Jefferson	
279	Fort Payne	
281	Anniston	
291	Calhoun	
292	Covington	
293	Colbert	
294	Lawrence	
295	Dale	
296	Etowah	
298	Jefferson	
299	Oneonta	
301	Mobile	
304	Madison	
305	Huntsville	
309	Lee	
310	Talladega	
316	Mountain Brook	
Amendments on Local Economic Development:		8.14
84	Marion	
94	Fayette	
95	Blount	
104	Haleyville and Double Springs	
128	Bullock	
155	Union Town	
183	Autauga	
186	Franklin	
188	Greene	
189	Lamar	
190	Lawrence	
191	Madison	
197	St. Clair	
217	Clarke	

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
220	Bayou La Batre	
221	York	
244	Lester	
245	Madison	
246	Marion	
250	Sumter	
251	Livingston	
256	Addison and Lynn	
259	Evergreen	
261	Bayou La Batre	
263	Geneva	
277	Carbon Hill	
302	Pickens	
303	Morgan	
308	Marengo	
312	Bibb	
313	Hale	
Amendments on County Debt Limit:		8.12
18	Mobile	
29	Mobile	
30	Lawrence	
36	Morgan	
60	Mobile	
73	Jefferson	
75	Marion	
100	Mobile	
115	Tuscaloosa	
122	Mobile	
151	Mobile	
152	Mobile	
187	Geneva	
193	Mobile	
194	Mobile	
200	State wide	
237	Henry	
238	Jefferson	

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
220	Bayou La Batre	
221	York	
244	Lester	
245	Madison	
246	Marion	
250	Sumter	
251	Livingston	
256	Addison and Lynn	
259	Evergreen	
261	Bayou La Batre	
263	Geneva	
277	Carbon Hill	
302	Pickens	
303	Morgan	
308	Marengo	
312	Bibb	
313	Hale	
Amendments on County Debt Limit:		8.12
18	Mobile	
29	Mobile	
30	Lawrence	
36	Morgan	
60	Mobile	
73	Jefferson	
75	Marion	
100	Mobile	
115	Tuscaloosa	
122	Mobile	
151	Mobile	
152	Mobile	
187	Geneva	
193	Mobile	
194	Mobile	
200	State wide	
237	Henry	
238	Jefferson	

AMENDMENT		PROPOSED SECTION
284	Marengo	
280	Jefferson	
300	Mobile	
301	Mobile	
320	Madison	
Amendments on Municipal Debt Limit:		8.12
107	All municipalities	
108	Public corporations	
126	Towns less than 6,000	
194	Mobile	
228	All cities	
268	Towns less than 6,000	
Local Salary and Court Cost Amendments:		11.04
2	Jefferson	
4	Montgomery	
28	Mobile	
43	Etowah and Cherokee	
44	Morgan	
46	Dallas	
47	Mobile	
48	Houston	
50	Walker	
62	Etowah	
64	Limestone	
85	Talladega	
103	Chambers	
127	Walker	
134	DeKalb	
135	Madison	
136	Colbert	
137	Cullman	
138	Dallas	
139	Montgomery	
185	Elmore	

CORRESPONDING SECTIONS OF AMENDMENTS

AMENDMENT		PROPOSED SECTION
196	**St. Clair**	
215	**Marshall**	
229	**Baldwin**	
231	**Bullock**	
236	**Greene**	
241	Lauderdale	
249	**Shelby**	
265	**Marengo**	
290	**Barbour**	
297	Tallapoosa	
306	Bibb	
321	Lawrence	
326	**Dale**	
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5	Repealed Sec. 250	
7, 9, 10, 14, 49, 90, 109	Poll taxes	
12	Port Authority	
22	Drainage districts	
23	Inheritance tax	8.05
24	Amendment procedure	14.01
25	Income tax	8.03
26-A	Salaries	11.03
27	Corporations	
35	Sheriffs	
37	Waiver of indictment by plea of guilty	1.05
38	Pardon and parole	5.08

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41	Voting machines	7.03
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53	State hospitals	8.01
55	Voter qualification (see 91, 96)	7.01
57	Legislative sessions and pay	3.09, 3.11
58	Harbors and airports	8.01
61	Income tax disposition	8.06
81	Branch court houses	
83, 110	Vacancies in Jefferson Circuit Court	6.13
88	Civil Service	11.05
89	Militia	
91	Voter qualification	7.01
92	Salaries (Boutwell)	11.03
93	Gasoline tax earmarked	8.06
96	Voter residence	7.01
97	Legislature vacancies	3.03
105	Legislature may fix court costs Madison County	
132	Abolish Macon County	9.01
133	Municipal taxes on wages Walker County prohibited	
139	Court costs Montgomery	
140	No change form of government Lauderdale without local vote	9.02, 9.03
142	Highway Dept. assumption of responsibility for county roads	9.08
144	Local vote for changes in government or salaries Colbert	9.02, 9.03, 11.03
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184	No change government Dekalb without vote	9.03

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212	Income tax on corporations	8.03
214	Promotion of poultry	
219	No tax on wages in Mobile county without local vote	
223	Literacy test for voters	7.01
225	Income tax — deduction of federal tax	8.03
226	Circuit Solicitor changed to district attorney	
227	Irrigation districts	
233	Legislature may fix court costs Dallas County	
235	Law library court cost tax Etowah	
239	Fire and garbage districts Jefferson	
257	Water management dist[illegible]s	
258	Inferior courts Jefferson (1966)	6.05
271	Clerk of Supreme Court (unnecessary)	
272	Game and Fish Fund	8.06
274	Dock facilities on inland waters	
278	Court costs Elmore county	
282	Governor and state officers succeed themselves once	5.02
283	Jefferson inferior courts (1967) Identical to amendment 258	6.05
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285	Voter registration by mail (1969) see Amend. 322	7.03
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315	Promotion of soybeans	
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323	Justices of the Peace abolished	6.05
325	Ad valorem tax classification	8.08

THE MAKING OF ALABAMA'S SIX CONSTITUTIONS (1819-1901)

by

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INTRODUCTION

Alabama moved from a rural frontier of about a hundred thousand people in 1819 to a semi-industrial state with thriving cities and almost two million people in 1901. In these eighty-two years the state held six conventions, or an average of one every fourteen years. The Civil War and its aftermath precipitated a series of crises which brought four conventions in fifteen years. Alabama's six constitutions may be briefly described as the Frontier Constitution of 1819; Secession Constitution of 1861; Reorganization Constitution of 1865 (following the War); Reconstruction or Radical Constitution of 1868; Bourbon or Conservative Constitution of 1875; and the Disfranchising Constitution of 1901. All of these constitutions were written by constitutional conventions but only the last three were submitted to the people for their ratification.

PERIODS OF CONSTITUTION MAKING

Alabama, coming into the Union in 1819, missed the first period of constitution making in America. The early constitutions, usually framed by the legislature, gave expression to the political ideas and problems of the Revolutionary era. They manifested a dread of executive and military power (stemming from experiences with England and the royal governors), and showed a disposition to entrust the government to the hands of the legislative authority, which more directly represented the people. Most of the early constitutions contained little but an elaborate bill of rights, and a rather crudely drawn outline of a frame of government with provision for few executive or judicial officers.

The second period of constitution making began in the early part of the nineteenth century. The powers of the legislative branch began to be questioned, checks and balances of power among the three branches further developed, and the governor became a popularly elected official with veto powers. An increasing demand for popular election of all executive and judicial officials and the extension of the suffrage by the elimination of property and educational qualifications were both notable trends of the period. The Alabama Constitution of 1819 reflected most of these trends. Made in the early part of the period, however, it still favored the legislative branch with large appointive powers and contrary to the trend was not submitted for ratification by the people.

The third period began about the time of the Civil War and was marked by a tendency to further strengthen the judicial and especially the executive department in the crisis of the war period. As governmental problems increased because of industrialization and urbanization, the governor's powers were further increased. The most marked change during this period, however, was a narrowing of the power and competency of the legislature, and the fettering of its action in some fields by absolute prohibition. The trend was accentuated in Alabama and other Southern states where the legislative branch was more discredited than elsewhere as a result of the public's belief that it was incompetent and of general low caliber during the Reconstruction period. Added distrust of the electorate after the enfranchisement of the Negro in 1867 also had its effect. Severe restrictions on taxation, state aid to internal improvements, local legislation and other like limitations were the result.

The conservative-dominated constitutional convention of 1875 abandoned many of the objectives of the Radical period and launched a policy of retrenchment and economy in an effort to extricate the state from a $29,000,000 debt amassed since 1867. However, the Carpetbaggers left a lasting imprint on the Alabama constitution. There was no attempt to retreat from reforms such as popular election of all judicial and executive officials, guarantees of homestead exemptions and women's

rights. The article on education in the Constitution of 1875 was more like that of 1868 than any previous article, and the convention of 1875 dared not take action against Negro suffrage for fear of federal intervention. In fact, the bill of rights of the Constitution of 1875 forbade any educational or property qualifications for voting or the denial of the right to vote to anyone because of race. However, no factor influenced the 1875 convention more than unfaded memories of the Reconstruction regime. To guard against every possible evil of that regime, numerous restrictions were written into the Constitution of 1875 until it became primarily an "instrument of prohibition."

SUFFRAGE AND DISFRANCHISEMENT

The Constitution of 1819 contained no property, educational, taxpaying, or similar qualifications for voting and provided for universal white manhood suffrage. In its suffrage and other general divisions it was noted along with the constitution of Kentucky for its democracy. The Constitution of 1901 contained limitations on suffrage based on property, literacy, good character, "understanding", vagrancy, petty crimes, and poll taxes which made it the most complicated suffrage article in any of the state constitutions. It represented a drastic break with the past as no previous constitution of Alabama had contained any of these provisions. Universal white manhood suffrage had existed since 1819 and universal manhood suffrage since 1868. The Constitution of 1901 effected a revolution in state politics in the opposite direction from the Constitution of 1868. The latter enlarged the electorate by more than forty per cent by enfranchising the Negro. The former reduced the electorate by an even greater percentage by disfranchising the Negro and many whites as well.

[1] The federal Civil Rights Acts of the 1960's and federal court decisions struck down most of the suffrage provisions of the 1901 constitution.

The first constitutional provision for a poll tax was written into the Constitution of 1868, when the Radicals provided for a compulsory poll tax of $1.50 to be used for educational purposes. The Constitution of 1875 contained the same poll tax provisions as that of 1868. The convention of 1901 continued

the poll tax for schools, but also made it non-compulsory as a tax, cumulative, and a prerequisite for voting. In 1941-42, some 600,000 whites and 520,000 Negroes over 21 years of age were not voters. By contrast there were 440,291 registered voters in the state. Designed to disfranchise the Negro, the poll tax and other deterrents had disfranchised more whites than blacks.

Residence requirements for voting were lengthened at the end of the century. All constitutions prior to 1868 required one year in the state and three months in the county or district. The Carpetbaggers provided for six months in the state and three months in the county or district in order not to disqualify themselves. The Constitution of 1875 restored the residence provisions existing prior to 1868. But the convention of 1901 lengthened residence requirements for voting to two years in the state, one year in the county and three months in the ward or precinct. Supposedly directed at migratory Negroes, these severe residence qualifications also disfranchised some whites from the beginning. Moreover, as Americans became more mobile, they took an increasing toll of both whites and Negroes in all economic groups. In the 1960's, a residence requirement of only one year in the state was provided for by amendment of the Constitution of 1901 and recent federal court decisions have further reduced state, county, and precinct residence requirements.

No religious, property, educational, or tax paying requirements for office holding have ever been written into any of Alabama's constitutions. The bill of rights of every Alabama constitution has forbidden any religious qualification.

ELECTION OF OFFICIALS

Unlike the constitutions of most of the older Southern states, the Alabama Constitution of 1819 provided for the election of the governor and sheriffs by the people. The election of other executive officials was entrusted to the legislature. The legislature elected the secretary of state, the state treasurer, and the comptroller of public accounts until 1868, when the Radicals provided for their election by the people. The election

of all judicial officials, except the justices of the peace whom the people elected, was granted the legislature by the Constitution of 1819. In 1850, the election of circuit and county judges was given to the people, but chancellors and judges of the Supreme Court were still elected by the legislature. There was much agitation in the eighteen-fifties for the election of all executive and judicial officials by the people. Before this change could be accomplished, however, the Civil War checked constitutional reform.

The Constitution of 1868 made all executive and judicial officials elective by the people. The Negroes, Carpetbaggers, and most of the Scalawags demanded this privilege in the name of democracy, although the old electorate had not enjoyed it. The convention of 1875 left the election of these officials, with minor exceptions, to the people.

ELECTIONS AND SESSIONS OF THE LEGISLATURE

The Constitution of 1819 provided for annual elections; the Constitution of 1901 for quadrennial elections. Alabama had annual elections to 1846 and biennial elections from 1846 to 1901.

Annual sessions of the legislature were held from 1819 to 1846; biennial sessions from 1846 to 1861; annual sessions from 1861 to 1875; biennial sessions from 1875 to 1901; quadrennial sessions from 1901 to 1939; biennial sessions since 1939.

RESTRICTIONS ON THE LEGISLATURE

A growing distrust of the legislature was one of the most apparent constitutional trends in Alabama in the nineteenth century. After 1819, not a single convention met without placing additional limitations on the legislature. The people limited the legislature by the adoption of two amendments before the Civil War. In 1846, an amendment took the election of district and county judges from the legislature and gave it to the people. The convention of 1861 restored annual sessions of the legislature but limited each session to thirty days. For the first time restrictions were placed on local legislation and

on the power of the legislature to create debt; also the legislature was forbidden to grant divorces. The convention of 1865 forbade the legislature, which had a large share of the appointive power until 1868, to appoint a legislator to any state civil office of profit. The convention of 1867 provided that state aid to corporations could be given only with a two-thirds vote of the legislature (a check which proved insufficient) and forbade the legislature to grant any municipality the right to levy a greater tax than two percentum of the assessed value of property. Strangely enough, the Radicals were the first to place a restriction on state aid to corporations and a tax limit in the constitution of Alabama. However, by granting to the people the power to elect many executive and judicial officials formerly elected by the legislature, the Radical convention made the greatest reduction in the power of the legislature. By creating a rival legislative body, the Board of Education, which had power to make all laws on the subject of education, the convention of 1867 further reduced the power of the legislature.

In 1875, with the Reconstruction period in mind, the convention restricted the legislature by placing an absolute prohibition against state aid to corporations and a limitation of three-fourths of one percentum on state taxation. It provided for biennial sessions of the legislature limited to fifty days and because of frequent special sessions in the Radical period, special sessions were now limited (except by a two-thirds vote of the legislature) to a consideration of only those subjects listed in the governor's call. Additional sections were written into the constitution seeking to limit the legislature's power to pass local and special legislation. Moreover, numerous sections protecting the people from corrupt legislatures were incorporated into the organic law. Most of these concerned matters of legislative procedure or sought to regulate the legislature in making contracts. A proviso that the governor might veto items in an appropriation bill substantially reduced the legislature's power in financial matters. The convention of 1875, with Civil War and Reconstruction history in mind, forbade the legislature or the governor to suspend the writ of *habeas corpus* under any circumstances. The convention of 1901 provided for quadren-

nial sessions of the legislature, limited to fifty days. This proviso sought to reduce the time the legislature was in session by one-half, as biennial sessions under the Constitution of 1875 had also been limited to fifty days. Quadrennial sessions of the legislature were a new venture to state government. Many states have quadrennial elections but only Alabama has ever provided for quadrennial sessions. However, so many special sessions were called under the Constitution of 1901 that Alabama returned to biennial sessions by constitutional amendment in 1939.

In 1901 thirty-one subjects on which there could be no local legislation were written into the constitution. The convention further limited the legislature's power by providing that the governor might propose amendments to the legislature embodying his objections to a bill presented for his signature. The bill with executive amendments must be accepted or rejected in toto by the legislature without alteration. Moreover, the same convention further restricted the legislature's taxing power by limiting the legislature to a maximum state ad valorem tax of sixty-five-hundredths of one percentum instead of seventy-five-hundredths. Criticism of the legislature had reached a new high by the end of the century.

GROWTH OF EXECUTIVE POWER

The governor was given more power in 1819 than in most of the old states of the Union, despite the fact that popular resentment against several territorial governors had been great. He was made elective by the people rather than by the legislature; hence he was not dependent on the legislature as in many of the early state constitutions. Unlike most of the early state governors, the Alabama governor had the veto power. However, the governor in Alabama never secured the power to appoint with the consent of the Senate major judicial and executive officials which governors enjoyed in some states. Beginning in 1819, the legislature elected the secretary of state, state treasurer, the comptroller of public accounts, and all judicial officials except the justices of the peace, who were elected by the people. When the election of some of them was denied

the legislature by amendment in 1850 and the election of all of them by the Radical convention of 1867, they were all made elective by the people instead of appointive by the governor. And as new officials were created (state superintendent of education, commissioner of industrial resources, commissioner of agriculture and industry) they were also made elective by the people.

As the century advanced the governor secured longer tenure and more participation in the making of legislation. He was elected biennially from 1819 to 1901 and quadrennially after 1901. However, the convention of 1901 provided that the governor could not succeed himself, a provision since changed by amendment. In 1875, the governor was given much more participation in the making of financial legislature by the provision that he could veto part of an appropriation bill. (Such a veto is still denied the President of the United States.)

APPORTIONMENT OF THE LEGISLATURE

Disagreement over apportionment in the legislature was an important reason for sectionalism in Alabama in the nineteenth century. In 1819 and thereafter, North Alabama wanted representation based on the white population; South Alabama, the federal ratio, which added three fifths of the Negroes to the white count. Apportionment in the state legislature was based on the white population until 1868. All attempts of the "black" counties, beginning in the convention of 1819, to have the federal ratio adopted were defeated. Although the slaves had been freed, the convention of 1865 retained white population as the basis for representation. The Radical convention of 1867 not only enfranchised the Negro but provided that the whole population should be the basis of representation in the state legislature. The convention of 1875 retained that basis but violated the principle by apportioning representation for the next six years unfavorably to the Black Belt where most blacks lived and where the Radicals were still in control. Long before 1900, however, apportionment in the legislature and the Democratic State Convention was shifted in favor of the Black Belt and other South Alabama counties. Since apportionment in the con-

stitutional convention of 1901 was based in large part on legislative apportionment, South Alabama controlled that body. Leaders of that section proceeded to apportion representation in favor of South Alabama and provided in addition that the whole population as the basis of representation could not be changed by the amending process.

The new constitution required the legislature to reapportion representation after each federal census; a provision which the legislature controlled by South Alabama has refused to honor after the federal census of 1910 and every decennial census thereafter until 1965, when the federal courts forced reapportionment.[2]

A strict mathematical, or "one man one vote" basis of apportionment was never applied throughout the nineteenth century. As in the Federal structure, the interests of political units as such were recognized not only in the Senate, but by providing that each county have at least one representative regardless of population.

AMENDING ALABAMA'S CONSTITUTION

The amending process in Alabama became easier during the century. The Constitution of 1819 provided for amendment by a two-thirds vote of the legislature, a majority vote of all the electors voting in a regular election, and a two-thirds majority vote of the following legislature. This process was followed until 1875, when the latter provision was stricken out. This requirement for amending the Alabama constitution, however, proved too difficult in the period from 1875 to 1901. The provision that an amendment secure a majority of those

[2] Birmingham, a city of well over 350,000 in 1965, had no more representation in the legislature than it did as a city of about 30,000 in 1901. When the federal court reapportioned the lower house, it gave Jefferson County 20 representatives to seven which they had had since 1901. The Alabama legislature then apportioned the Senate, changing Jefferson County from one senator to seven. The court declared that not only the House of Representatives but also the state Senate should be apportioned on a "one-man, one-vote basis." Hence geography or political units could no longer be used as a basis for representation even in the Senate.

voting in a regular election was prohibitive since many electors voted for candidates but failed to mark the ballot on constitutional amendments. The convention of 1901 reduced the two-thirds provision to three-fifths; it also provided that an amendment might be submitted in a special or general election. In either case it was required to receive only a majority of those voting on the amendment.

SUBMISSION OF CONSTITUTIONS TO THE PEOPLE

The Constitution of 1868 was the first one submitted to a vote of the people in Alabama. Its submission was required by the Reconstruction Acts. Since that time all Alabama constitutions have been submitted rather than proclaimed. Popular fear of the powers of a convention became evident early in the century and increased as the century advanced. In 1861, popular indignation became intense in North Alabama when the secession convention carried Alabama out of the Union without a referendum vote, although North Alabama demanded one and there was great opposition to secession in that section. North Alabama was able to write a proviso into the Constitution of 1865 which declared that no convention should ever be called in Alabama without submitting the question to the people and securing a favorable vote. In order to secure the conventions of 1875 and 1901, the Democratic party found it necessary to pledge that the proposed conventions would not consider certain questions and would not change certain sections of the constitution; and the legislature wrote certain limitations on the proposed conventions in the enabling acts.

SUMMARY OF CONSTITUTIONAL TRENDS IN NINETEENTH CENTURY

Legislative supremacy, evident in the Constitution of 1819, had been greatly eroded by 1901. The executive had gained power at the expense of the legislature and the people at the expense of all three branches of the government. The judiciary, elected by the legislature for life dependent on good behavior in 1819, was made elective as the century advanced. Popular election of officials became an established principle in

all three branches of the government. The amending process was made more pliable and the principle of submission of a new constitution to popular vote established. However, democracy in Alabama was marred at the end of the century by the denial of the suffrage, its most essential feature, to the Negro and many whites. From the liberal suffrage article of 1819 Alabama moved by 1901 to the most complicated and undemocratic suffrage article in the United States.

THE CONSTITUTION OF 1901 A "STRAITJACKET"

Each major revision of the constitution has lengthened the document. The Constitution of 1819 was a document of only eighteen pages, that of 1901 fifty-two pages. Many of the new sections were legislative rather than constitutional in nature. The Alabama constitution has become a code of laws as well as a constitution. The freezing of essentially current legislative matter has made constant changes by amendment unavoidable.

More amendments to Alabama's Constitution of 1901 deal with changing tax and debt limits for counties and municipalities, than with any other subject. And each time the electorate of the whole state is called upon to vote on the matter. The amendments to the Constitution of 1901 form a document much longer than the constitution itself. The constitution has been amended 327 times and more than 150 other proposed amendments have been submitted and rejected by the people.

The state was forbidden to engage in "internal improvements" by the Constitution of 1901. This forced the state to get an amendment to the Constitution of 1901 allowing it to build highways, when the federal government under the Good Roads Act of 1918 offered to match any money the state would spend on roads. Fundamentally, except in regard to the suffrage, the Constitution of 1901 was a re-adoption of that of 1875, which came direcly out of the pangs of Reconstruction. "The constitutional convention of 1901 was called for the paramount purpose of reforming the suffrage and removing from our electorate the menace of an ignorant and purchasable vote."

declared Governor Emmet O'Neal in asking for a new constitution as early as 1914. "Little consideration was given to matters of reform, and hence the Constitution of 1875 which was framed to meet conditions which can never again exist, was practically readopted," he said.

A constitution should be a principled framework of government, limited by firm protection of individual rights and liberties, but not so unpliant that it cannot be interpreted to meet the changing needs of succeeding generations. It must not be a code of statutory laws. Legislative matters belong to the legislature itself. Unfortunately, the Alabama Constitution of 1901 has become the longest, most statutory, rigid, and prohibitive in the state's history, and next to Louisiana's, the longest and most restrictive in the nation. It is time that it be recast to open for the states unlimited potential "the room to grow in" which the Birmingham *Age Herald* (April 25, 1901) admonished the convention of 1901 to provide.

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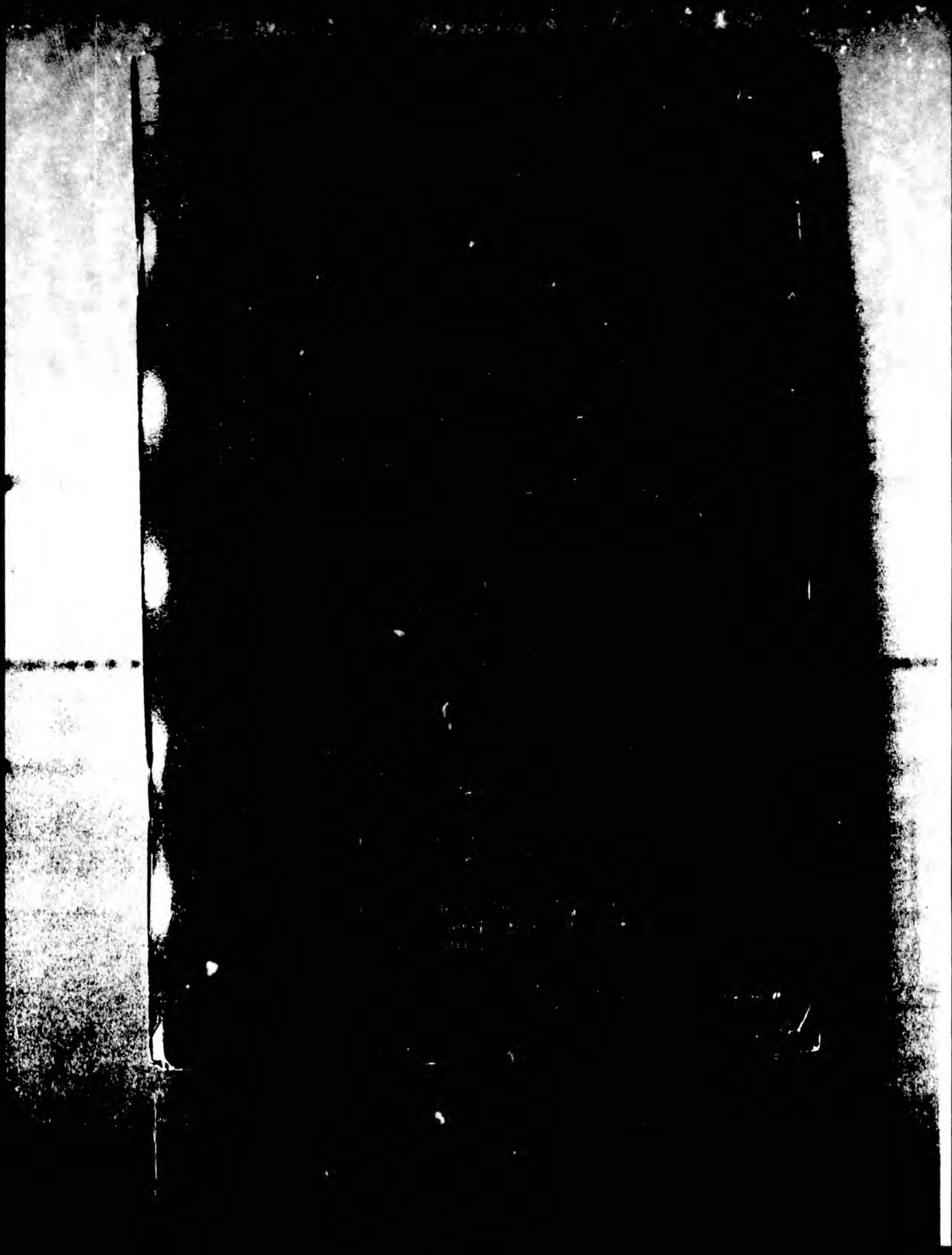

Winter 1979

State Government

Published Quarterly by
The Council of State Governments

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NATIONAL CIVIC REVIEW

Vol. 69 January
No. One 1980

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CHECKLIST ON LEGISLATIVE IMPLEMENTATION OF THE 1970 ILLINOIS CONSTITUTION

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September 14, 1971

RICHARD B. OGILVIE
Governor

LETTER OF TRANSMITTAL

Honorable Richard B. Ogilvie,
Governor, State of Illinois;
Honorable Cecil A. Partee,
President Pro Tempore of the Senate;
Honorable W. Robert Blair,
Speaker of the House;
Honorable Robert C. Underwood,
Chief Justice of the Supreme Court

Submitted herewith is the third report of the Citizens Task Force on Constitutional Implementation. The report encompasses action taken to implement the 1970 Illinois Constitution during the first session of the 77th General Assembly. It also takes note of proposed actions which await the session scheduled for October, 1971.

The Task Force is gratified by the effort made to implement the new Constitution. Full implementation has not been achieved but there is evidence of a good faith effort to deal with the more than eighty sections identified in our initial report. Proposals for adoption of procedural rules are pending before the rules committees of the General Assembly. Action has been taken by the Supreme Court to conform its rules to the new Constitution. The will of the people, expressed by their ratification of the new Constitution on December 15, 1970, is well on its way to being effected.

The work of the Task Force has been significantly aided by the continuing high level of cooperation forthcoming from officers and agents of the state, from groups and associations, and from individual citizens. Our job would have been infinitely more demanding without their advice and counsel.

Sincerely,

Samuel K. Gove
Chairman

Room 2000 – 160 North LaSalle Street – Chicago, Illinois 60601

INTRODUCTION

Implementation of a new state constitution is a task which is not often confronted. Illinois history spans a full century since the citizens and public officials of this state last made the transition from one basic charter to another. It was, therefore, with no experience and some trepidation that concerned Illinoisans approached the task of implementing the 1970 Illinois Constitution. This report describes the several stages in the process of implementation and offers an evaluation of the progress made in the nine months since the new constitution was ratified by the people.

Implementation of the new constitution, while not complete, has progressed well up to this time. The Citizens Task Force on Constitutional Implementation issued its initial report on April 12, 1971. The report identified 91 sections or subsections out of a total of 226 as requiring implementation prior to July 1, 1971.

Substantial implementation has been achieved for 21 of the 91 sections originally identified. Another 24 sections have been reconsidered by the Task Force as while early implementation is necessary, such action can be deferred until the 1972 session of the General Assembly. An additional 34 sections have been addressed by bills which were introduced prior to the end of the 1971 regular session. These bills have been carried over to the session planned for October, 1971, and will be considered at that time. Finally, 12 sections await introduction of bills or other implementing action. These last two categories must be given special attention in the weeks ahead.

Among the 34 sections to which bills have been addressed and are now pending are some of the most important and controversial provisions in the 1970 Constitution. They include creation of a bipartisan State Board of Elections (Article III, Section 5); provision for the new office of County Chief Executive (Article VII, Sections 4(a) and 6(a)); creation of a State Board of Education (Article X, Section 2(a)); and provision of a new ethical standard for public officials (Article XIII, Section 2). These and other sections in this category have far-reaching ramifications and merit thoughtful and detailed consideration.

The 12 sections to which no bills have been addressed should be dealt with during the session planned for October, 1971. Five of these have been considered by the Citizen's Advisory Committee on Implementation of the Comptroller's Office.

The Committee is expected to make detailed recommendations in its final report, to be issued in late September, 1971. The House Special Committee on Constitutional Implementation is expected to introduce bills in connection with five more sections during the October session. Two sections remain with no implementing action pending or in process at this time.

Full implementation of the 1970 Illinois Constitution has not been attained at this time. There has been a good faith effort on the part of the General Assembly but several months passed before the members of that body realized the magnitude of their task. When recognition did occur, particularly on the part of the House Special Committee on Constitutional Implementation, action was forthcoming. This does not lessen the burden and the responsibility of the General Assembly to quickly and effectively achieve full implementation of the new Constitution. It does establish that the legislature has confronted the issue and is, we trust, ready to deal with it in the best interests of the citizens of Illinois.

I. IMPLEMENTING A NEW CONSTITUTION: THE ILLINOIS EXPERIENCE

The Citizens Task Force - Creation and Purpose

The die was irrevocably cast on December 15, 1970. The people of Illinois, by a margin of some 11 percent of more than two million votes cast, had ratified a new state Constitution. Their action was the ratification of the product of nearly nine months of work by 116 elected representatives--the members of the Sixth Illinois Constitutional Convention.* The central question on December 16, 1970, was a simple one. How does a state with a full century of experience with one charter go about the serious business of implementing a new one--the 1970 Illinois Constitution.

The question of implementation of the 1970 Illinois Constitution did not go long unresolved. Before the new year Governor Ogilvie, a strong supporter of the new Constitution, had directed his staff to begin considering steps to be taken in the immediate future. The goal of a new, more flexible constitution had been achieved. The central purpose now was to bring it into effect.

The question of implementing the new constitution had not been (indeed, could not have been) resolved by the Convention which created it. That body had not been empowered or funded to perform such a task. Furthermore, it had adjourned sine die on September 3, 1970, more than three months prior to ratification of the new document. Implementation of the new charter was now in the hands of the elected representatives of the people; the members of the executive, legislative and judicial branches of the state government.

At his direction, members of the Governor's staff met and exchanged memoranda during late December, 1970, and early January, 1971. Several members of the convention expressed their concern over implementation, as did a number of other public and private persons. The Governor, aware that no formal provisions had been made for implementation and sympathetic to the concerns being expressed, promulgated Executive Order No. 1, 1971. (See Appendix B) Executive Order No. 1 created a special study group, the Citizens Task Force on Constitutional Implementation, and gave it four charges: identify those sections of the new constitution requiring implementation prior to July 1, 1971; specify the nature of required implementation; assist the General Assembly in such ways as that body might request or direct; and advise the Governor on the constitutional appropriateness of implementing legislation awaiting his approval.

*The Sixth Illinois Constitutional Convention performed the final act in a scenario which had spanned at least two decades. Space is too limited to list the many citizens and groups whose works contributed to its success. Credit must be given to the Constitutional Study Commission for its efforts in bringing together the ideas and information which helped pave the way to the ultimate success of the convention.

Organization of the Task Force

Executive Order No. 1 was promulgated on January 21, 1971. Eight days later the newly constituted Citizens Task Force on Constitutional Implementation met for the first time. Comprised by 14 former members of the Constitutional Convention and 11 members at-large, the Task Force represented all major areas and persuasions in Illinois. An early order of business at the initial meeting was the grant of authority to the Chairman to establish a steering committee to deal with procedural matters and to nominate members to standing committees.

The Steering Committee met on February 9, 1971 for the purpose of defining areas of committee responsibility and nominating members to the several committees. This action was ratified by the Task Force on February 10. The committees were to consist of one each in the general areas of local government, revenue and financial administration, rights and legal procedures, and structure of state government. Each committee was assigned a group of articles and sections in the new constitution as its primary field for review and recommendation of implementing action (see Appendix C).

The Committee Structure

It is necessary to understand how the Task Force organized itself to meet its initial charge before further discussing its role in working toward implementation of the new constitution. As previously noted, the Task Force had been organized into a steering committee and four other committees which were to study selected portions of the new Constitution.

With the exception of the Chairman, each member of the Steering Committee was also a member of one of the four committees which dealt with selected articles of the new constitution. Their dual role called for them to deal with questions of policy as well as those of constitutional substance. The policy questions related to matters such as how the Task Force would be staffed and budgeted, the allocation of committee assignments, determination of committee jurisdiction, and initial review of the various reports which ultimately issued from the Task Force.

The four substantive committees were given the responsibility of reviewing their assigned articles of the new constitution to determine which sections required implementation prior to July 1, 1971, the effective date of the new charter. Although the charge to the Task Force had been to determine those areas where legislation was required, it soon became apparent that action would also be necessary with regard to procedural rules of the General Assembly and rules of court. The Task Force was aware that full implementation would require adaptation in all of these areas, not to mention the years ahead when the courts will define the ultimate validity of statute law and constitutional law.

The Task Force dealt with the question of whether the several committees should hold public hearings at its meeting on February 10, 1971. It was noted that the people of Illinois had expressed their mandate by ratifying the new charter. Furthermore, the Task Force had been given a clear charge in Executive Order No. 1. The central questions to be answered were these: Which sections were, by their language, self-executing? Which sections could await implementation at some future time? Which sections required immediate implementation? The Task Force believed that the answers to these questions could best be found in the words of the Constitution and that public hearings were not necessary.

Staff Structure

Staffing an agency such as the Task Force is always a complex process. First, such an agency operates within a limited span of time. In the case of the Task Force it was originally envisioned that this time would extend approximately 90 days beyond the end of the first session of the 77th General Assembly on June 30, 1971. This coincides with the constitutionally prescribed period within which the Governor must complete his action on bills passed during the session. This meant that the maximum life of the Task Force would be some eight months.

An agency with an anticipated life span of eight months could ordinarily expect some difficulty in finding competent staff personnel. The Task Force was fortunate in several respects. There was available a small pool of personnel who had been associated with the Sixth Illinois Constitutional Convention and with the campaign for ratification of the new document. There was also an abiding interest in and concern for the constitution-framing process on the part of these and many others. Furthermore, budgetary and other constraints militated in favor of a small staff. Finally, the Task Force was comprised by persons of wide-ranging expertise and did not require a large staff to service its needs.

The staff of the Task Force never exceeded four persons and was at that level for only two months* Of the four, three

*Miss Virginia Ubik served as research aid to the Committee on Structure of State Government until late March, when she was named staff director of the Governor's Advisory Commission on Financing the Arts in Illinois. A former staff member of the Constitutional Convention and of the staff of the Citizens Committee for the New Constitution, Miss Ubik brought knowledge, experience and a high level of competence to her assignment. Miss Kathleen Meehan served as secretary to the Task Force. She had also served as staff to the convention and the Citizens Committee. Her quiet competence, efficiency and initiative were of immeasurable value to the success of the staff effort. Mr. Harvey Schwartz, Attorney-at-Law, provided expert legal knowledge to the Committee on Rights and Legal Procedures. Dr. John Wenum, college professor and former member of the Constitutional Convention served as staff director for the Task Force.

were full-time persons engaged on a contractual basis. These three consisted of a staff director, secretary, and a research aid to the Committee on Structure of State Government. The fourth person was a lawyer who was engaged as research aid to the Committee on Rights and Legal Procedures on a fee basis. After the Initial Report was approved for publication the staff was reduced to two persons, the staff director and secretary. Staff remained at this level until mid-September, at which time the major responsibilities of the Task Force had been discharged. *

*Due to the small number and non-controversial nature of implementing bills passed, the Task Force was not called upon to assist in reviewing bills awaiting action by the Governor as envisioned in charge number 4 of Executive Order No. 1.

II. THE WORK OF THE TASK FORCE

Preparing the Initial Report

The Task Force adopted the committee structure as proposed by the Steering Committee at a meeting on February 10. Subsequently the chairman and staff director formalized the assignment of committee responsibilities which had been suggested during the meeting and on February 12 a memorandum was circulated in which specific articles and sections were assigned to the committees. The committees immediately began scheduling meetings to review their respective articles and sections to determine which of them required implementation prior to July 1, 1971.

The committees of the Task Force were working against an imminent deadline. The 77th General Assembly had already been in session for over a month and few pieces of implementing legislation had been introduced. Only four and one-half months remained in a session during which the legislature had to reapportion itself, review the proposed state budget and pass related appropriation bills, consider the more than 4,000 bills which would be introduced, and implement the new constitution. The problems of the General Assembly were compounded by its nearly even partisan division, a condition which harbored the potential for stalemate The Senate was evenly divided along party lines and in the House the Republicans had one vote more than the constitutional majority required to pass a bill.

The Task Force recognized the nature of the work facing the General Assembly. It was decided that a report should be prepared and submitted to the Governor and the legislature at the earliest possible date. The report would serve as a guide to the legislature in establishing priorities for action. It would also be a statement of necessary action from a bipartisan public agency.

Each committee of the Task Force met several times between February 10 and April 1. The Task Force met as a body on March 3, March 18 and April 1. At each meeting the recommendations of the committees were reviewed by the Task Force. Subsequent to each meeting the staff made corrections in the evolving report and submitted the revised drafts back to the Task Force members. The Task Force met on April 1 to review the final draft of the Initial Report. Necessary editorial corrections were made and the report was submitted for publication. On April 12 the report was published and three days later it was formally presented to the Governor at a press conference in his office. The report was simultaneously released to the legislature, the state departments and agencies, the Supreme Court and to the public.

The Initial Report identified 99 sections out of 226 in the new constitution as requiring implementation prior to July 1, 1971. It specified sections of the statutes which needed to be reviewed for conformity with the new constitution, where new laws were required, and where implementation could be achieved

by changes in procedural rules of the legislature and rules of court. The report also noted options available to the General Assembly in certain cases and provided notes to explain its recommendations in many instances. Publication of the Initial Report fulfilled the first and second charges in Executive Order No. 1.

It would be inappropriate to leave the discussion of the Initial Report without commenting briefly on the assistance received from individuals and associations. Letters commenting on various sections of the new constitution were received from members of the convention, staff counsel to committees of the convention and agencies of the state. The Illinois League of Women Voters, the Chicago Bar Association and the Illinois Legislative Council had all prepared lists of sections which, in their judgement, required legislative implementation. The Illinois Municipal League made available a commentary on Article VII, Local Government, which had been prepared by their legal counsel. These and many other letters and reports were made available to the Task Force. The Task Force sometimes arrived at different conclusions with respect to specific sections. All of these source materials were carefully considered, however, and helped the Task Force in making its determinations.

The Liaison Function

During the period when the Task Force was preparing its Initial Report, the leadership in the General Assembly had been considering how to best perform its function in the implementing process. At one point it was proposed that a joint committee on implementation be created. This proposal was nullified by creation of the House Special Committee on Constitutional Implementation on February 19. Although some members of the Senate pursued the idea of a joint committee for a time, formation of a counterpart Senate committee was announced on March 19.

Throughout the remaining months of the session the Task Force was represented at most meetings of the special committees. The Task Force representative was more an observer than a spokesman, however. This was rooted in two positions taken by the Task Force early in its existence. The first of these was that any appearance of intrusion into legislative prerogative should be scrupously avoided. This was based in the third charge of Executive Order No. 1, which stated that the Task Force was to "work in cooperation with the General Assembly and its agencies as that body may direct and request..." This charge, it was felt, did not empower the Task Force to act as a lobbying agency in the usual sense of the term.

A second position taken was that no one person could speak for the Task Force unless that body had adopted a point of view on the particular bill or subject. The Task Force did not endorse or sanction specific bills. It sought instead to assess the implementing effect of bills and to avoid questions of ideology or partisanship. Its concern was that

the constitution be implemented in a manner consistent with the words of the document and the intent of the framers.

Adoption of the foregoing positions limited any spokesman for the Task Force to the role of advisor and neutral commentator. Advocacy, while the prerogative of members as individuals, was denied them as spokesman for the body. In retrospect this appears to have been a wise course of action. The credibility of the Task Force was enhanced in the eyes of the General Assembly and it could never be accused of polarizing partisan or regional groups on a particular bill or issue. Taking a neutral position also led to better relations with the chairmen of the special committees, particularly in the House. This in turn led to a better exchange of ideas and information than might have been expected.

Communications between representatives of the Task Force and the special committees of the General Assembly varied considerably from one house to the other. This derived in large part from the role each committee chose for itself. The choice of role was a product, at least in part, of the size of the two committees and the date of their creation.

The Legislative Implementation Committees

The Senate committee chose to act as a bill-review agency. It reacted to legislation which was assigned to it but did not prepare and introduce any committee bills. Choice of this course of action appears to have been related both to the size of the committee and its date of creation. Comprised by 12 members, the Senate committee was not large enough to be organized into sub-committees which could adequately deal with assigned portions of the new Constitution in the time remaining. Its creation on March 19, 1971, with barely more than one-half of the session remaining, appears to have forced the Senate committee to adopt its limited role.

The House committee was comprised by 24 members. It was created on February 19, a full month before its Senate counterpart. With its larger membership and longer work period, the House committee was able to adopt a different approach to its task. Shortly after its creation the committee was organized into five study groups. Each study group was assigned responsibility for reviewing one or more articles of the Constitution to determine what implementing action was required.

It would appear at first glance that the Task Force was performing much the same role as the House committee. This is clearly not the case, however, when the roles and perspectives of the two groups are examined. Only three of the 24 members of the House committee had been members of the Constitutional Convention. This meant that the case for intent behind the words of the new constitution could not be as clearly made as in the Task Force, where 14 of the 25 members had been at

the convention. In addition, the Task Force had been charged with identifying those sections which required implementation prior to July 1, 1971, the effective date of the new Constitution. The House and Senate committees were no less concerned with achieving full implementation but did not always share the Task Force's concern over the July 1 effective date.

The more active role chosen by the House committee caused representatives of the Task Force to relate more to that body than to its Senate counterpart. Beginning in February, a working relationship developed between the chairman and staff director of the Task Force and the chairman, vice-chairman and staff of the House committee. (Relations with the Senate committee were always cordial but not as substantive.) There were frequent discussions of the progress of implementation, both with staff and with the committee leadership.

Despite the good working relationship established with the House committee, it became apparent in late April that a large number of constitutional provisions had not been addressed with implementing legislation. The subject was briefly discussed at a Task Force meeting on April 30 but no formal action was taken.

The Task Force met again on May 14. The staff had prepared a report on the status of implementing legislation which showed that more than half of the sections identified in the Initial Report as requiring implementation prior to July 1 had not been addressed by the General Assembly. The members of the Task Force were uncertain as to how best to proceed in seeking more expeditious implementation. After lengthy discussion, a motion was taken which directed the Steering Committee to prepare letters to the Governor and the presiding officers of the House and Senate.

Letters were sent to Governor Richard B. Ogilvie, Speaker of the House W. Robert Blair, and Senate President Pro Tempore Cecil A. Partee on May 21. The letter to the Governor asked if there were ways beyond those noted in Executive Order No. 1 in which the Task Force could be of assistance. The letters to Speaker Blair and President Pro Tempore Partee offered "...to assist the General Assembly in such ways as you might desire, particularly in the following areas:"

1. Identification of sections of the new Constitution which require implementation prior to July 1 and to which no legislation has been addressed.

2. Review pending bills and advise you when they seem to be inadequate to implement or in conflict with the provisions of the new Constitution.

3. Assist in drafting legislation in those areas where none has been introduced to date.

Governor Ogilvie responded in a letter dated May 26. In his reply the Governor stated:

> **In specific response to your letter, I am of the opinion that the Task Force can best discharge its continuing responsibilities by servicing the specific requests you might receive from the leadership of the General Assembly and from the membership of the two committees on Constitutional Implementation. Although it is premature for me at this time to indicate specifically which bills I will need your guidance (on), I intend to submit specific legislation for your review following the adjournment of the present session.**

The Governor had reinforced the charge given in Executive Order No. 1 but left any elaboration thereon to the leadership of the General Assembly and the two committees.

President Pro Tempore Partee responded on June 3. He expressed his appreciation of the Task Force's initial report and noted his understanding that the Task Force was maintaining a running record of implementing legislation. After stating his hope that such a record would be available to the Senate and its committee on Constitutional Implementation, Senator Partee assured the Task Force that its service would be requested "...if other matters arise in connection with implementation of the Constitution where we think you may be helpful." Speaker Blair did not respond to the letter from the Task Force.

The Task Force met on June 4 and reviewed its position. It was now clear that more than 40 of the sections identified in the initial report had not been addressed. The Governor's letter of May 26 made it clear that for the remainder of the session the Task Force should service requests from the General Assembly. In the absence of specific requests for such assistance from the General Assembly, the Task Force directed its staff to prepare a second report for the purpose of identifying those areas where no implementing action had been taken to date.

The Second Report

The staff, as part of its service to the Task Force, had been maintaining a detailed record of the status of implementation. As soon as a bill was introduced the published synopsis was evaluated to identify any implementing effect. When the printed bill became available it was analyzed to determine its constitutional import. Committee chairmen received copies of all bills which appeared to pertain to the sections of the Constitution assigned to their respective committees. The Task Force members received copies of bill synopses and a brief bill analysis on a regular basis.

The Task Force met on June 4 to review the status of implementation. Copies of the response of the Governor and the President Pro Tempore to the letters of May 21 were distributed to the membership. After an extended discussion of several courses of action available to it, the Task Force took a motion that a second report be prepared and distributed. The second report was to be brief, containing only a letter of transmittal and a listing of sections which had not yet been addressed with implementing action. The report was prepared and publication occurred on June 16, 1971.

Two weeks of the legislative session remained when the second report was published. The two weeks were more productive of bills designed to implement the new Constitution than the preceding five months. (In fairness it must be noted that many of the bills introduced during the last two weeks had been in the process of preparation long before publication of the second report.) The report listed 42 sections of the 91 originally identified as being inadequately addressed by pending legislation or not addressed at all. By the end of the session that number had been reduced to Implementation would not be fully accomplished before the end of the legislative session but a new awareness had been created on the part of the General Assembly.

The Last Two Weeks: Results of the Second Report

Publication of the Second Report of the Citizens Task Force on Constitutional Implementation generated a new awareness on the part of the General Assembly. Only two weeks remained in the session, yet barely more than one-half of the 91 sections identified in the initial report had been addressed with implementing bills. The second report listed 42 of these as having no bills or other action pending.

Chairman Thomas C. Rose of the House Committee on Constitutional Implementation was already sensitive to the complexities of bringing the new document into effect by July 1. Subsequent to publication of the second report he redoubled the efforts of his committee and staff. Bills, many of which had been in the drafting process, were completed and introduced. Chairman Rose initiated correspondence with the House Rules Committee in which he recommended changes in procedural rules to bring them into conformance with the new Constitution. He also indicated that his committee will prepare bills relating to five of the remaining sections for introduction during an unusual fall session of the legislature. It is expected that the final report of the Citizens' Advisory Committee on Implementation of the Comptroller's Office will recommend action on five other sections.

The 77th Illinois General Assembly can look to its fall session with only two sections remaining to which no implementing action has been addressed or promised. The

record has improved markedly since June 16 but one fact remains. Despite the many bills and other actions pending, the new Constitution is far from being fully implemented. As was noted earlier, several of the most controversial sections still must receive final action. The task of implementing a new Constitution has been found complex and laborious. Readjusting a process of government set in a century of constitutional history subjected the legislative process to a difficult test. The results are not yet in.

III. THE PROCESS OF IMPLEMENTATION: A RECAPITUALTION

It is less productive but far easier to look backward rather than into the future. This truism applies equally well to the Citizens Task Force on Constitutional Implementation and the 77th General Assembly. In February neither body had any experience with constitutional implementation. By the end of the legislative session both bodies were somewhat chastened and far more appreciative of the myriad problems involved. The Task Force, because it was created for the express purpose of expediting implementation, came to appreciate those problems at an earlier date. To its credit, the General Assembly came to share those appreciations well before the end of the session in the early morning hours of July 1.

Perhaps the major problem confronting the members of the General Assembly was conceptual in nature. The members of the Task Force came to their assignment with their attention focused only on the new constitution. The members of the General Assembly, however, returned to the same climate of law and court cases, the same array of organized interest groups and the typical legislative burden of new bills on old subjects. There were more things to take their attention away from the new constitution than to course them to focus upon it. The result was that the members of the General Assembly did not grasp as readily some of the innovative provisions of the 1970 Illinois Constitution.

Part of the conceptual problem for members of the General Assembly can be attributed to their relative isolation from the process of writing the new Constitution. With the exception of the members of the special committees of the House and Senate, this isolation was not lessened until well into the first session of the 77th General Assembly. Part of it may also have derived from the short period of time between ratification of the new Constitution on December 15, 1970, and the convening of the 77th General Assembly on January 6. 1971. In those three weeks there was all too little opportunity for members of the General Assembly to ponder and develop strategies on implementation.

It is necessary to note that many in the General Assembly did not share the concern of the Task Force for early implementation. Both by the charge of Executive Order No. 1 and the nature of its membership, the Task Force viewed the July 1 effective date in absolute terms. Failure to achieve full implementation of the new Constitution would deprive the people of Illinois of the full force and effect of the document they had ratified. The General Assembly on the other hand, appears not to have felt as strongly on the subject. Furthermore, it did not share the sense of urgency of the Task Force with respect to some sections. For example, while the Task Force was concerned that a state board of education be immediately created as provided by Article X, Section 2(a), the General Assembly was not disposed to rush into the subject. Several

bills were introduced and are on the fall, 1971 calendar. The legislature, however, was not as concerned over the question of what would take place in the event of a vacancy in the office of Superintendent of Public Instruction as with the manner of naming the members of the new board.

It is necessary to note, out of fairness to the members of the General Assembly, that the Task Force may have been overly zealous in its identification of sections requiring immediate implementation. Approximately 24 of the 91 sections originially identified did not, on further study, seem to require implementation by July 1. They are still viewed as demanding early action but may be deferred until a later session without unduly jeopardizing the intent of the Constitution and the welfare of the people of Illinois.

The Role of the Court

It would be all too easy to overlook the part already played by the Illinois Supreme Court in bringing the 1970 Illinois Constitution into effect. At this date no cases have been tried nor laws tested against the standard of the new charter. The courts do not deal only in the substance of the laws, however. They also deal with procedures, with the framework of actions and processes within which justice is sought.

The Illinois Supreme Court and its staff have been working for several months at revising the rules which govern the conduct of judicial business. The results of their efforts can be found in two sets of revisions to the Illinois Supreme Court Rules. The first of these, effective July 1, 1971, modifies a number of rules which deal with original and appellate jurisdiction and procedural matters. Several sections of the new Constitution are implemented in whole or in part by these revisions.

The second set of revised rules relates to discovery in criminal cases and will be effective on October 1, 1971. Although substantive in content, these rules set procedural guidelines in relation to sections of the Constitution which the members of the Task Force believe to be self-executing.

The Supreme Court has moved quickly in fulfilling its first responsibility in connection with implementation of the new Constitution. Its further responsibility will be discharged in the further evolution of case law and additional refinements to the rules of court.

The Effect of Anticipatory Legislation

A question which arose early in the deliberations of the Task Force had to do with so-called anticipatory legislation. What is the legal status of a bill passed prior to the effective date of a new Constitution when the intent of the bill is to deal with provisions contained in the new document. The question becomes more complex when the bill relates to a provision in the new Constitution which does not appear in the old one.

On February 20, 1971, the Honorable Wayne W. Whalen, member of the Task Force and former member of the Constitutional Convention, distributed a memorandum on the subject. The answer to the question regarding anticipatory legislation was a qualified yes (see Appendix D). His position was supported by a second memorandum prepared by Miss Ann Lousin, lawyer and staff aid to the House Committee on Constitutional Implementation. Miss Lousin's memorandum, dated March 22, 1971 also concluded that anticipatory legislation could be passed by the General Assembly. There were a number of differences in both reasoning and conclusions reached but both memoranda sustained the concept of anticipatory legislation.

A more cautious view was expressed in a memorandum prepared by Mr. Frank M. Pfeifer, General Counsel to the Illinois Municipal League. In his memorandum of January 4, 1971, Mr. Pfeifer had addressed himself to the question of local ordinances passed in anticipation of the effective date of the new Constitution. Directing himself to the grant of home rule contained in the new document, Mr. Pfeifer said, "The power to operate under home rule ordinances...does not come into being until July 1, 1971 and I do not believe that any such ordinances should be enacted before that date." He went on to note that such ordinances could probably be legally passed prior to July 1 if they were not effective until after that date, but suggested waiting on such action.

The General Assembly operated under the assumption that anticipatory legislation could be passed prior to July 1.

The Timing of Gubernatorial Approval of Bills

A question which related in some part to that regarding anticipatory legislation was being considered in the Governor's office. How did the provisions of the new Constitution, which differed from those in the old one, effect the timing of the Governor's approval of bills passed prior to July 1? The old Constitution provided a maximum period of 10 days (Sundays excepted) between the time the Governor received a bill and the time when he had to either approve or veto it. Lacking any action on his part, the bill became law at the end of the 10 day period.

The new Constitution provided a maximum period of 90 days between time of passage and approval or rejection by the veto. The Attorney General was asked for an opinion as to the effect of the varying provisions in the old and new Constitutions. The Attorney General responded in an opinion dated June 15, 1971 (see Appendix E). The essence of his answer was that any bill passed within less then 10 days (Sundays excepted) of July 1 was to be considered under the new provisions. For any bill passed earlier, the Governor had 10 days from the time it reached his desk to indicate approval or rejection. Owing to the spate of bills passed during the waning hours of the session, the Governor had a much longer time to consider his actions thereon.

Deferred Implementation: The Fall Session

During the spring of 1971 the leadership of the General Assembly came to the realization that their work would not be completed by June 30, the end of the regular session under the provisions of the 1870 Constitution. In an effort to better understand the ramifications of the new Constitution, the Attorney General was requested to prepare an opinion on the General Assembly as a continuing body. The question had two important parts to it. Could the 77th General Assembly, constituted under the previous Constitution, continue to transact business after July 1, when the new Constitution came into effect? Could bills still pending as of June 30 be placed on the calendar of a later session with the same status? The Attorney General answered both parts of the question in the affirmative. (See Appendix F). The procedural feasibility of a fall session had been assured.

The General Assembly now faces a fall session in which hundreds of bills must be considered. Among these are several score which relate to the new Constitution. At least 45 of these are substantive bills and in several cases these is more than one bill pending on a section of the Constitution. Because of their late introduction, a number of implementing bills are still on first reading in the Committees on Constitutional Implementation of the House and Senate.

The procedural hurdles have been cleared away by the opinions of the Attorney General. The General Assembly must still face the difficult question of how to enact bills which best serve the words and intent of the 1970 Illinois Constitution. The basic political climate is unchanged, although various interest groups will have had more time to establish their positions for and against particular pieces of legislation.

The Task Force believes the best interest of the people of Illinois have been served by implementation effected to date. We trust that concern for that common good will pervade the fall session of the 77th General Assembly. Its responsibility is of heroic proportions and far-reaching historical significance. We wish good fortune and Godspeed to all concerned with full implementation of the 1970 Illinois Constitution.

APPENDIX A
SEPTEMBER, 1971: THE STATUS OF IMPLEMENTATION

The history of the United States clearly demonstrates the dynamic and evolutionary nature of our constitutional tradition. It would therefore be inconsistent to expect that Illinois ever can or even should arrive at a moment when the 1970 Constitution is fully implemented. Full implementation would connote stasis, a condition incompatible with the history of the state and the nation. There is necessary, however, some measure of the extent to which the words and intent of a constitution operate at any given time. Such a measure is to be found in the pages following, where the present and prospective status of implementation of the new constitution is reported.

Several comments are necessary here so as to give more meaning to the analysis of the status of implementation which follows. It must first be made clear that this analysis is presented from the point of view of the Citizens Task Force on Constitutional Implementation. That point of view is expressed in the initial report of the Task Force. The initial report identified those sections of the new constitution which required implementation prior to July 1, 1971. Although not repeated herein, the statement contained in the initial report is the base from which this analysis begins.

The reader of this report must also be aware that the status of implementation of many sections of the new constitution is difficult to define at this time. A number of implementing bills are awaiting gubernatorial action. Until the governor either approves or vetoes these bills the status of the related sections remains in doubt. (This deadline for gubernatorial action may be as late as September 29 for a bill passed on June 30.) Furthermore, bills relating to 34 sections have been introduced but await final legislative action during the fall session.

The pages which follow contain the complete text of the 1971 Illinois Constitution. A statement as to the status of implementation appears opposite each section of the new constitution. These statements fall into the following categories.

1. The Task Force believes the section is self-executing or adequately treated by existing statutes and rules.

2. The section is implemented.

3. The section is not implemented.

4. The section will be implemented if pending bills are passed substantially as introduced.

5. Specific and immediate implementation is not required.

CONSTITUTION OF THE STATE OF ILLINOIS

Adopted in Convention at Springfield, September 3, 1970.
Ratified by the People, December 15, 1970.
In force July 1, 1971.

PREAMBLE

We, the People of the State of Illinois—grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors—in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity—do ordain and establish this Constitution for the State of Illinois.

ARTICLE I

BILL OF RIGHTS

SECTION 1. INHERENT AND INALIENABLE RIGHTS

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

SECTION 2. DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

SECTION 3. RELIGIOUS FREEDOM

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and

(cont'd)

STATUS OF IMPLEMENTATION

The Preamble is a statement of the goals and purposes envisioned in this Constitution. Traditionally a Preamble is not viewed as having the force of law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

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no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference by* given by law to any religious denomination or mode of worship.

SECTION 4. FREEDOM OF SPEECH

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. RIGHT TO ASSEMBLE AND PETITION

The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 6. SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 7. INDICTMENT AND PRELIMINARY HEARING

No person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The General Assembly by law may abolish the grand jury or further limit its use.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

*Probably should read "be".

No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.

SECTION 8. RIGHTS AFTER INDICTMENT

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to meet the witnesses face to face and to have process to compel the attendance of witnesses in his behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 9. BAIL AND HABEAS CORPUS

All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 10. SELF-INCRIMINATION AND DOUBLE JEOPARDY

No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 11. LIMITATION OF PENALTIES AFTER CONVICTION

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the State.

Section will be implemented if HB 3044 is passed substantially as introduced. HB 3044 declares the purpose of the Criminal Code to be the restoration of offenders to useful citizenship. The bill is on the fall calendar.

Passage of SB 759-64, 767-68, 770-72, 774-94 and 1058 and their approval by the Governor partially implements the section. Bills in the 700 series allow consideration of felony convictions in determining an applicant's eligibility for licensing in certain occupations (cont'd)

or professions but prevents such convictions from acting as a bar to registration. SB 1058 established procedures for restoring voting rights upon completion of sentence.

SECTION 12. RIGHT TO REMEDY AND JUSTICE

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 13. TRIAL BY JURY

The right of trial by jury as heretofore enjoyed shall remain inviolate.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 14. IMPRISONMENT FOR DEBT

No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment.

Section will be implemented if HB 3077 is passed substantially as introduced. HB 3077 establishes procedures for installment payment of fines. The bill is on the fall calendar. In the absence of legislation the section can be implemented by rule of court.

SECTION 15. RIGHT OF EMINENT DOMAIN

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

Specific and immediate implementation is not required. Ch. 47, Sec. 1, Ill. Rev. Stat. (1969) provides for jury determination of just compensation in certain cases and permits it upon request in certain others. It is desirable that the permissive language be amended to conform with this section at a future date.

SECTION 16. EX POST FACTO LAWS AND IMPAIRING CONTRACTS

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 17. NO DISCRIMINATION IN EMPLOYMENT AND THE SALE OR RENTAL OF PROPERTY

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 18. NO DISCRIMINATION ON THE BASIS OF SEX

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 19. NO DISCRIMINATION AGAINST THE HANDICAPPED

All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 20. INDIVIDUAL DIGNITY

To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 21. QUARTERING OF SOLDIERS

No soldier in time of peace shall be quartered in a house without the consent of the owner, nor in time of war except as provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 22. RIGHT TO ARMS

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 23. FUNDAMENTAL PRINCIPLES

A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 24. RIGHTS RETAINED

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE II

THE POWERS OF THE STATE

SECTION 1. SEPARATION OF POWERS

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. POWERS OF GOVERNMENT

The enumeration in this Constitution of specified powers and functions shall not be construed as a limitation of powers of state government.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE III

SUFFRAGE AND ELECTIONS

SECTION 1. VOTING QUALIFICATIONS

Every United States citizen who has attained the age of 21 or any other voting age required by the United States for voting in State elections and who has been a permanent resident of this State for at least six months next preceding any election shall have the right to vote at such election. The General Assembly by law may establish registration requirements and require permanent residence in an election district not to exceed thirty days prior to an election. The General Assembly by law may establish shorter residence requirements for voting for President and Vice-President of the United States.

Section is implemented by passage of SB 719 and HB 1964 if these bills are approved by the Governor. SB 719 and HB 1964 bring Chs. 46 and 122, Ill.Rev. Stat. (1969) into conformance with this section. This section is subject to continous implementation by state and federal statutes and judicial determination. HB 1963 which changed residence requirements for voting in school elections has been returned to the General Assembly.

SECTION 2. VOTING DISQUALIFICATIONS

A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence.

Section has been implemented by passage and approval of SB 1058. SB 1058 establishes procedures for restoring voting rights upon completion of sentence.

SECTION 3. ELECTIONS

All elections shall be free and equal.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. ELECTION LAWS

The General Assembly by law shall define permanent residence for voting purposes, insure secrecy of voting and the integrity of the election process, and facilitate registration and voting by all qualified persons. Laws governing voter registration and conduct of elections shall be general and uniform.

Section is implemented by passage of SB 719 if this bill is approved by the Governor. SB 719 bring Chs. 46 and 122, Ill. Rev. Stat. (1969) into conformance with this section. A more precise definition of "permanent abode" as used in Ch. 46, Sec. 3-2, is desirable. This section is subject to continuing implementation by state and federal statutes and judicial determination. HB 1963 which changed residence requirements for voting in school elections has been returned to the General Assembly.

SECTION 5. BOARD OF ELECTIONS

A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board.

Section will be implemented if HB 2615, 2916, SB 654 or 868 is passed substantially as introduced. These bills are on the fall calendar.

SECTION 6. GENERAL ELECTION

As used in all articles of this Constitution except Article VII, "general election" means the biennial election at which members of the General Assembly are elected. Such election shall be held on the Tuesday following the first Monday of November in even-numbered years or on such other day as provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE IV

THE LEGISLATURE

SECTION 1. LEGISLATURE—POWER AND STRUCTURE

The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives elected by the electors from 59 Legislative Districts.

SECTION 2. LEGISLATIVE COMPOSITION

(a) One Senator shall be elected from each Legislative District. Immediately following each decennial redistricting, the General Assembly by law shall divide the Legislative Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years. The Legislative Districts in each group shall be distributed substantially equally over the State.

(b) Three Representatives shall be elected from each Legislative District for a term of two years. No political party shall limit its nominations to less than two candidates for Representative in any Legislative District. In elections for Representatives, including those for nomination, each elector may cast three votes for one candidate or distribute them equally among no more than three candidates. The candidates highest in votes shall be declared elected.

(c) To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent. In the general election following a redistricting, a candidate for the General Assembly may be elected from any district which contains a part of the district in which he resided at the time of the redistricting and reelected if a resident of the new district he represents for 18 months prior to reelection.

(cont'd)

Section has been implemented. The Legislative Redistricting Commission has filed its redistricting plan with the Secretary of State. The plan provides for a 59th Senate seat.

Section will be implemented if HB 2908 is passed substantially as introduced. HB 2908 provides for dividing legislative districts into three groups and for staggered terms of Senators.

Section will be implemented if either HB 1148 or 2134 is passed substantially as introduced. HB 1148 and 2134 both limit any party from nominating only one candidate for Representative in a legislative district. Both bills are on the fall calendar.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) Within thirty days after a vacancy occurs, it shall be filled by appointment as provided by law. If the vacancy is in a Senatorial office with more than twenty-eight months remaining in the term, the appointed Senator shall serve until the next general election, at which time a Senator shall be elected to serve for the remainder of the term. If the vacancy is in a Representative office or in any other Senatorial office, the appointment shall be for the remainder of the term. An appointee to fill a vacancy shall be a member of the same political party as the person he succeeds.

(e) No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly.

No member of the General Assembly during the term for which he was elected or appointed shall be appointed to a public office which shall have been created or the compensation for which shall have been increased by the General Assembly during that term.

Section is implemented by passage of HB 3042 and SB 67 if either of these bills is approved by the Governor. Either bill will establish procedures for filling legislative vacancies.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. LEGISLATIVE REDISTRICTING

(a) Legislative Districts shall be compact, contiguous and substantially equal in population.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts.

If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.

The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.

(cont'd)

Section has been implemented. The Legislative Redistricting Commission has filed its redistricting plan with the Secretary of State. Redistricting will have to be accomplished after each decennial census as provided in this section.

The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General. [This Section 3 of Article IV shall become effective on January 15, 1971. See Transition Schedule Section 10.]

Revised Illinois Supreme Court Rule 382, July 1, 1971, implements the last sentence of this section by establishing procedures for actions challenging legislative redistricting.

SECTION 4. ELECTION

Members of the General Assembly shall be elected at the general election in even-numbered years.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. SESSIONS

(a) The General Assembly shall convene each year on the second Wednesday of January. The General Assembly shall be a continuous body during the term for which members of the House of Representatives are elected.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(cont'd)

ARTICLE IV–THE LEGISLATURE (cont'd)

(b) The Governor may convene the General Assembly or the Senate alone in special session by a proclamation stating the purpose of the session; and only business encompassed by such purpose, together with any impeachments or confirmation of appointments shall be transacted. Special sessions of the General Assembly may also be convened by joint proclamation of the presiding officers of both houses, issued as provided by law.

(c) Sessions of each house of the General Assembly and meetings of committees, joint committees and legislative commissions shall be open to the public. Sessions and committee meetings of a house may be closed to the public if two-thirds of the members elected to that house determine that the public interest so requires; and meetings of joint committees and legislative commissions may be so closed if two-thirds of the members elected to each house so determine.

Section will be implemented if HB 2899 is passed substantially as introduced. HB 2899 establishes procedures whereby the presiding officers of both houses of the General Assembly may call a special session. The bill is on the fall calendar.

Section will be implemented if HB 3038 is passed substantially as introduced and if rules changes recommended in the House of Representatives are adopted by both houses of the General Assembly. HB 3038 is on the fall calendar.

SECTION 6. ORGANIZATION

(a) A majority of the members elected to each house constitutes a quorum.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) On the first day of the January session of the General Assembly in odd-numbered years, the Secretary of State shall convene the House of Representatives to elect from its membership a Speaker of the House of Representatives as presiding officer, and the Governor shall convene the Senate to elect from its membership a President of the Senate as presiding officer.

Specific and immediate implementation is not required. Section is substantially implemented by existing procedures of the General Assembly. Wherever they appear in rules of the Senate or in statutes, references to the Lieutenant Governor as President of the Senate should be changed prior to the convening of the 78th General Assembly.

(c) For purposes of powers of appointment conferred by this Constitution, the Minority Leader of either house is a member of the numerically strongest political party other than the party to which the Speaker or the President belongs, as the case may be.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) Each house shall determine the rules of its proceedings, judge the elections, returns and qualifications of its members and choose its officers. No member shall be expelled by either house, except by a vote of two-thirds of the members elected to that house. A member may be expelled only once for the same offense. Each house may punish by imprisonment any person, not a member, guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. Imprisonment shall not extend beyond twenty-four hours at one time unless the person persists in disorderly or contemptuous behavior.

Specific and immediate implementation is not required. Section is substantially implemented by existing procedures of the General Assembly.

SECTION 7. TRANSACTION OF BUSINESS

(a) Committees of each house, joint committees of the two houses and legislative commissions shall give reasonable public notice of meetings, including a statement of subjects to be considered.

Section will be implemented if HB 3038 is passed substantially as introduced. HB 3038 provides for notice of meetings of legislative committees and commissions. The bill is on the fall calendar

(b) Each house shall keep a journal of its proceedings and a transcript of its debates. The journal shall be published and the transcript shall be available to the public.

Section has been implemented by passage and approval of HB 2894. HB 2894 provides a line item appropriation for defraying the costs of preparing a transcript of legislative debates. Modification of procedural rules of the General Assembly may also be desirable.

(c) Either house or any committee thereof as provided by law may compel by subpoena the attendance and testimony of witnesses and the production of books, records and papers.

Specific and immediate implementation is not required.

SECTION 8. PASSAGE OF BILLS

(a) The enacting clause of the laws of this State shall be: "Be it enacted by the People of the State of Illinois, represented in the General Assembly."

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) The General Assembly shall enact laws only by bill. Bills may originate in either house, but may be amended or rejected by the other.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) No bill shall become a law without the concurrence of a majority of the members elected to each house. Final passage of a bill shall be by record vote. In the Senate at the request of two members, and in the House at the request of five members, a record vote may be taken on any other occasion. A record vote is a vote by yeas and nays entered on the journal.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.

Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.

A bill expressly amending a law shall set forth completely the sections amended.

The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.

Section will be implemented if HB 3041 is passed substantially as introduced. HB 3041 provides for certification by the Speaker of the House and President of the Senate that procedural requirements for passage have been met. The bill is on the fall calendar.

SECTION 9. VETO PROCEDURE

(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(cont'd)

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall become law.

(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.

SECTION 10. EFFECTIVE DATE OF LAWS

The General Assembly shall provide by law for a uniform effective date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1. A bill passed after June 30 shall not become effective prior to July 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

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Section has been implemented by passage and approval of HB 3029. HB 3029 establishes a uniform effective date of October 1 and provides for exceptions.

SECTION 11. COMPENSATION AND ALLOWANCES

A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

Specific and immediate implementation is not required. HB 1938 and 1939 deal with expense allowances for members of the General Assembly. Both bills are on the fall calendar.

SECTION 12. LEGISLATIVE IMMUNITY

Except in cases of treason, felony or breach of peace, a member shall be privileged from arrest going to, during, and returning from sessions of the General Assembly. A member shall not be held to answer before any other tribunal for any speech or debate, written or oral, in either house. These immunities shall apply to committee and legislative commission proceedings.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 13. SPECIAL LEGISLATION

The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 14. IMPEACHMENT

The House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers. Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall be upon oath, or affirmation, to do justice according to law. If the Governor is tried, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment shall not extend beyond removal from office and disqualification to hold any public office of this State. An impeached officer, whether convicted or acquitted, shall be liable to prosecution, trial, judgment and punishment according to law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 15. ADJOURNMENT

(a) When the General Assembly is in session, neither house without the consent of the other shall adjourn for more than three days or to a place other than where the two houses are sitting.

(b) If either house certifies that a disagreement exists between the houses as to the time for adjourning a session, the Governor may adjourn the General Assembly to a time not later than the first day of the next annual session.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE V

THE EXECUTIVE

SECTION 1. OFFICERS

The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their terms of office.

Section has been implemented in areas of immediate need by passage and approval of SB 1146. SB 1146 amends Ch. 127, Sec. 151a, Ill. Rev. Stat.(1969) to reflect that the Lieutenant Governor shall maintain residence at the state capitol during his term. SB 652 which would have deleted reference to the Superintendent of Public Instruction in Ch. 46, Sec. 25-5 has been vetoed. Deletion of reference to the Superintendent of Public Instruction in the Election Code will be desirable prior to the election of 1974. Further implementation awaits the final report and recommendations of the Citizens Advisory Committee on Implementation of Comptroller's Office.

SECTION 2. TERMS

These elected officers of the Executive Branch shall hold office for four years beginning on the second Monday of January after their election and, except in the case of the Lieutenant Governor, until their successors are qualified. They shall be elected at the general election in 1978 and every four years thereafter.

Section has been implemented by passage and approval of SB 653. SB 653 establishes procedures for electing state officers in 1978 and every four years thereafter.

SECTION 3. ELIGIBILITY

To be eligible to hold the office of Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller or Treasurer, a person must be a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his election.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. JOINT ELECTION

In the general election for Governor and Lieutenant Governor, one vote shall be cast jointly for the candidates nominated by the same political party or petition. The General Assembly may provide by law for the joint nomination of candidates for Governor and Lieutenant Governor.

Section will be implemented if SB 1224, HB 2158, 2900 or 2912 is passed substantially as introduced. SB 1224 provides for joint nomination and election, as does HB 2158. HB 2900 provides for joint election and for nomination of the Lieutenant Governor by party convention. HB 2912 provides for joint election. These bills are on the fall calendar.

SECTION 5. CANVASS–CONTESTS

The election returns for executive offices shall be sealed and transmitted to the Secretary of State, or other person or body provided by law, who shall examine and consolidate the returns. The person having the highest number of votes for an office shall be declared elected. If two or more persons have an equal and the highest number of votes for an office, they shall draw lots to determine which of them shall be declared elected. Election contests shall be decided by the courts in a manner provided by law.

Section is implemented in areas of immediate need by existing statutes. Transfer of responsibility for canvassing from Secretary of State to State Board of Elections may be necessary. SB 654, 868, HB 2615 or 2916 will accomplish this. These bills are on the fall calendar.

SECTION 6. GUBERNATORIAL SUCCESSION

(a) In the event of a vacancy, the order of succession to the office of Governor or to the position of Acting Governor shall be the Lieutenant Governor, the elected Attorney General, the elected Secretary of State, and then as provided by law.

Section will be implemented if SB 148 is passed substantially as introduced. SB 148 establishes order of succession beyond that provided in this section. Bill is on the fall calendar.

(b) If the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, the office of Governor shall be filled by the officer next in line of succession for the remainder of the term or until the disability is removed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) Whenever the Governor determines that he may be seriously impeded in the exercise of his powers, he shall so notify the Secretary of State and the officer next in line of succession. The latter shall thereafter become Acting Governor with the duties and powers of Governor. When the Governor is prepared to resume office, he shall do so by notifying the Secretary of State and the Acting Governor.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(cont'd)

(d) The General Assembly by law shall specify by whom and by what procedures the ability of the Governor to serve or to resume office may be questioned and determined. The Supreme Court shall have original and exclusive jurisdiction to review such a law and any such determination and, in the absence of such a law, shall make the determination under such rules as it may adopt.

Section will be implemented if HB 2898 or 3018 is passed substantially as introduced. HB 2898 provides for resumption of duties by Governor subject to challenge by code department heads. HB 3018 provides that ability of Governor to serve will be determined by a commission comprised by other elective officers of executive branch. Both bills are on the fall calendar. Revised Illinois Supreme Court Rule 382, July 1, 1971, implements the last sentence of the section.

SECTION 7. VACANCIES IN OTHER ELECTIVE OFFICES

If the Attorney General, Secretary of State, Comptroller or Treasurer fails to qualify or if his office becomes vacant, the Governor shall fill the office by appointment. The appointee shall hold office until the elected officer qualifies or until a successor is elected and qualified as may be provided by law and shall not be subject to removal by the Governor. If the Lieutenant Governor fails to qualify or if his office becomes vacant, it shall remain vacant until the end of the term.

Specific and immediate implementation is not required. SB 652 which would have deleted reference to the Superintendent of Public Instruction has been vetoed. Transition Schedule, Section 7 provides in the event of a vacancy in this office. Deletion of reference to Office of Superintendent of Public Instruction in the Ill. Rev. Stat. will be desirable after 19/4.

SECTION 8. GOVERNOR–SUPREME EXECUTIVE POWER

The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 9. GOVERNOR–APPOINTING POWER

(a) The Governor shall nominate and, by and with the advice and consent of the Senate, a majority of the members elected concurring by record vote, shall appoint all officers whose election or appointment is not otherwise provided for. Any nomination not acted upon by the Senate within 60 session days after the receipt thereof shall be deemed to have received the advice and consent of the Senate. The General Assembly shall have no power to elect or appoint officers of the Executive Branch.

Specific and immediate implementation is not required.

(b) If, during a recess of the Senate, there is a vacancy in an office filled by appointment by the Governor by and with the advice and consent of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall make a nomination to fill such office.

Specific and immediate implementation is not required.

(cont'd)

(c) No person rejected by the Senate for an office shall, except at the Senate's request, be nominated again for that office at the same session or be appointed to that office during a recess of that Senate.

SECTION 10. GOVERNOR—REMOVALS

The Governor may remove for incompetence, neglect of duty, or malfeasance in office any officer who may be appointed by the Governor.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 11. GOVERNOR—AGENCY REORGANIZATION

The Governor, by Executive Order, may reassign functions among or reorganize executive agencies which are directly responsible to him. If such a reassignment or reorganization would contravene a statute, the Executive Order shall be delivered to the General Assembly. If the General Assembly is in annual session and if the Executive Order is delivered on or before April 1, the General Assembly shall consider the Executive Order at that annual session. If the General Assembly is not in annual session or if the Executive Order is delivered after April 1, the General Assembly shall consider the Executive Order at its next annual session, in which case the Executive Order shall be deemed to have been delivered on the first day of that annual session. Such an Executive Order shall not become effective if, within 60 calendar days after its delivery to the General Assembly, either house disapproves the Executive Order by the record vote of a majority of the members elected. An Executive Order not so disapproved shall become effective by its terms but not less than 60 calendar days after its delivery to the General Assembly.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Specific and immediate implementation is not required. It may be desirable to modify the rules of both houses of the General Assembly to deal with reorganization orders.

SECTION 12. GOVERNOR—PARDONS

The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The manner of applying therefore may be regulated by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 13. GOVERNOR—LEGISLATIVE MESSAGES

The Governor, at the beginning of each annual session of the General Assembly and at the close of his term of office, shall report to the General Assembly on the condition of the State and recommend such measures as he deems desirable.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 14. LIEUTENANT GOVERNOR—DUTIES

The Lieutenant Governor shall perform the duties and exercise the powers in the Executive Branch that may be delegated to him by the Governor and that may be prescribed by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 15. ATTORNEY GENERAL—DUTIES

The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 16. SECRETARY OF STATE—DUTIES

The Secretary of State shall maintain the official records of the acts of the General Assembly and such official records of the Executive Branch as provided by law. Such official records shall be available for inspection by the public. He shall keep the Great Seal of the State of Illinois and perform other duties that may be prescribed by law.

Section will be implemented if HB 1339 or 2199 is passed substantially as introduced. HB 1339 and 2199 require that public records be subject to disclosure. Both bills are on the fall calendar.

SECTION 17. COMPTROLLER—DUTIES

The Comptroller, in accordance with law, shall maintain the State's central fiscal accounts, and order payments into and out of the funds held by the Treasurer.

Section is not implemented. It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

SECTION 18. TREASURER—DUTIES

The Treasurer, in accordance with law, shall be responsible for the safekeeping and investment of monies and securities deposited with him, and for their disbursement upon order of the Comptroller.

Section is not implemented. It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

SECTION 19. RECORDS—REPORTS

All officers of the Executive Branch shall keep accounts and shall make such reports as may be required by law. They shall provide the Governor with information relating to their respective offices, either in writing under oath, or otherwise, as the Governor may require.

Section is not implemented. It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

SECTION 20. BOND

Civil officers of the Executive Branch may be required by law to give reasonable bond or other security for the faithful performance of their duties. If any officer is in default of such a requirement, his office shall be deemed vacant.

Section is not implemented It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

SECTION 21. COMPENSATION

Officers of the Executive Branch shall be paid salaries established by law and shall receive no other compensation for their services. Changes in the salaries of these officers elected or appointed for stated terms shall not take effect during the stated terms.

Specific and immediate implementation is not required.

ARTICLE VI

THE JUDICIARY

SECTION 1. COURTS

The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. JUDICIAL DISTRICTS

The State is divided into five Judicial Districts for the selection of Supreme and Appellate Court Judges. The First Judicial District consists of Cook County. The remainder of the State shall be divided by law into four Judicial Districts of substantially equal population, each of which shall be compact and composed of contiguous counties.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. SUPREME COURT—ORGANIZATION

The Supreme Court shall consist of seven Judges. Three shall be selected from the First Judicial District and one from each of the other Judicial Districts. Four judges constitute a quorum and the concurrence of four is necessary for a decision. Supreme Court Judges shall select a Chief Justice from their number to serve for a term of three years.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. SUPREME COURT—JURISDICTION

(a) The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review.

(b) Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right. The Supreme Court shall provide by rule for direct appeal in other cases.

(c) Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court, or if a division of the Appellate Court certifies that a case decided by it involves a question of such importance that the case should be decided by the Supreme Court. The Supreme Court may provide by rule for appeals from the Appellate Court in other cases.

The Task Force believes this section is self-executing or adequatley treated by existing statutes and rules.

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SECTION 5. APPELLATE COURT—ORGANIZATION

The number of Appellate Judges to be selected from each Judicial District shall be provided by law. The Supreme Court shall prescribe by rule the number of Appellate divisions in each Judicial District. Each Appellate division shall have at least three Judges. Assignments to divisions shall be made by the Supreme Court. A majority of a division constitutes a quorum and the concurrence of a majority of the division is necessary for a decision. There shall be at least one division in each Judicial District and each division shall sit at times and places prescribed by rules of the Supreme Court.

Section has been implemented by revised Ill. Supreme Court Rule 22, July 1, 1971. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session. The General Assembly will need to periodically review the number of Appellate Judges from each Judicial District.

SECTION 6. APPELLATE COURT—JURISDICTION

Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located except in cases appealable directly to the Supreme Court and except that after a trail on the merits in a criminal case, there shall be no appeal from a judgment of acquittal. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts. The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review. The Appellate Court shall have such powers of direct review of administrative action as provided by law.

Section is not implemented. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session. Revised Illinois Supreme Court Rule 306 and 307, July 1, 1971, implements the permissive second sentence.

SECTION 7. JUDICIAL CIRCUITS

(a) The State shall be divided into Judicial Circuits consisting of one or more counties. The First Judicial District shall constitute a Judicial Circuit. The Judicial Circuits within the other Judicial Districts shall be as provided by law. Circuits composed of more than one county shall be compact and of contiguous counties. The General Assembly by law may provide for the division of a circuit for the purpose of selection of Circuit Judges and for the selection of Circuit Judges from the circuit at large.

Section will be implemented if HB 2756 is passed substantially as introduced. HB 2756 provides for division of the state into judicial circuits. This action will need to occur periodically to reflect changes in population and case load.

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(b) Each Judicial Circuit shall have one Circuit Court with such number of Circuit Judges as provided by law. Unless otherwise provided by law, there shall be at least one Circuit Judge from each county. In the First Judicial District, unless otherwise provided by law, Cook County, Chicago, and the area outside Chicago shall be separate units for the selection of Circuit Judges, with at least twelve chosen at large from the area outside Chicago and at least thirty-six chosen at large from Chicago.

(c) Circuit Judges in each circuit shall select by secret ballot a Chief Judge from their number to serve at their pleasure. Subject to the authority of the Supreme Court, the Chief Judge shall have general administrative authority over his court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court.

SECTION 8. ASSOCIATE JUDGES

Each Circuit Court shall have such number of Associate Judges as provided by law. Associate Judges shall be appointed by the Circuit Judges in each circuit as the Supreme Court shall provide by rule. In the First Judicial District, unless otherwise provided by law, at least one-fourth of the Associate Judges shall be appointed from, and reside, outside Chicago. The Supreme Court shall provide by rule for matters to be assigned to Associate Judges.

SECTION 9. CIRCUIT COURTS—JURISDICTION

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

SECTION 10. TERMS OF OFFICE

The terms of office of Supreme and Appellate Court Judges shall be ten years; of Circuit Judges, six years; and of Associate Judges, four years.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Section has been implemented by passage and approval of HB 2951-98 and 3001-13 and by revised Illinois Supreme Court Rules 39 and 295, July 1, 1971. These bills provide for change of reference regarding magistrates and associate judges. Periodic review of statutes will be necessary to determine the appropriate number of associate judges. Rule 39 provides for the appointment of associate judges. Rule 295 provides for matters assigned to them.

Section is not implemented. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session.

Specific and immediate implementation is not required.

SECTION 11. ELIGIBILITY FOR OFFICE

No person shall be eligible to be a Judge or Associate Judge unless he is a United States citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him. No change in the boundaries of a unit shall affect the tenure in office of a Judge or Associate Judge incumbent at the time of such change.

Specific and immediate implementation is not required.

SECTION 12. ELECTION AND RETENTION

(a) Supreme, Appellate and Circuit Judges shall be nominated at primary elections or by petition. Judges shall be elected at general or judicial elections as the General Assembly shall provide by law. A person eligible for the office of Judge may cause his name to appear on the ballot as a candidate for Judge at the primary and at the general or judicial elections by submitting petitions. The General Assembly shall prescribe by law the requirements for petitions.

Section is not implemented. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session.

(b) The office of a Judge shall be vacant upon his death, resignation, retirement, removal, or upon the conclusion of his term without retention in office. Whenever an additional Appellate or Circuit Judge is authorized by law, the office shall be filled in the manner provided for filling a vacancy in that office.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) A vacancy occurring in the office of Supreme, Appellate or Circuit Judge shall be filled as the General Assembly may provide by law. In the absence of a law, vacancies may be filled by appointment by the Supreme Court. A person appointed to fill a vacancy 60 or more days prior to the next primary election to nominate Judges shall serve until the vacancy is filled for a term at the next general or judicial election. A person appointed to fill a vacancy less than 60 days prior to the next primary election to nominate Judges shall serve until the vacancy is filled at the second general or judicial election following such appointment.

Section will be implemented if SB 1065 or HB 2901 passes substantially as introduced. SB 1065 and HB 2901 provide different methods of filling judicial vacancies. Both bills are on the fall calendar.

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(d) Not less than six months before the general election preceding the expiration of his term of office, a Supreme, Appellate or Circuit Judge who has been elected to that office may file in the office of the Secretary of State a declaration of candidacy to succeed himself. The Secretary of State, not less than 63 days before the election, shall certify the Judge's candidacy to the proper election officials. The names of Judges seeking retention shall be submitted to the electors, separately and without party designation, on the sole question whether each Judge shall be retained in office for another term. The retention elections shall be conducted at general elections in the appropriate Judicial District, for Supreme and Appellate Judges, and in the circuit for Circuit Judges. The affirmative vote of three-fifths of the electors voting on the question shall elect the Judge to the office for a term commencing on the first Monday in December following his election.

(e) A law reducing the number of Appellate or Circuit Judges shall be without prejudice to the right of the Judges affected to seek retention in office. A reduction shall become effective when a vacancy occurs in the affected unit.

SECTION 13. PROHIBITED ACTIVITIES

(a) The Supreme Court shall adopt rules of conduct for Judges and Associate Judges.

(b) Judges and Associate Judges shall devote full time to judicial duties. They shall not practice law, hold a position of profit, hold office under the United States or this State or unit of local government or school district or in a political party. Service in the State militia or armed forces of the United States for periods of time permitted by rule of the Supreme Court shall not disqualify a person from serving as a Judge or Associate Judge.

SECTION 14. JUDICIAL SALARIES AND EXPENSES—FEE OFFICERS ELIMINATED

Judges shall receive salaries provided by law which shall not be diminished to take effect during their terms of office. All salaries and such expenses as may be provided by law shall be paid by the State, except that Appellate, Circuit and Associate Judges shall receive such additional compensation from counties within their district or circuit as may be provided by law. There shall be no fee officers in the judicial system.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

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Specific and immediate implementation is not required. Further review of existing statutes to eliminate provisions for former fee officers is desirable.

SECTION 15. RETIREMENT–DISCIPLINE

(a) The General Assembly may provide by law for the retirement of Judges and Associate Judges at a prescribed age. Any retired Judge or Associate Judge, with his consent, may be assigned by the Supreme Court to judicial service for which he shall receive the applicable compensation in lieu of retirement benefits. A retired Associate Judge may be assigned only as an Associate Judge.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) A Judicial Inquiry Board is created. The Supreme Court shall select two Circuit Judges as members and the Governor shall appoint four persons who are not lawyers and three lawyers as members of the Board. No more than two of the lawyers and two of the non-lawyers appointed by the Governor shall be members of the same political party. The terms of Board members shall be four years. A vacancy on the Board shall be filled for a full term in the manner the original appointment was made. No member may serve on the Board more than eight years.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules. HB 3047 creates the Board and appears to be unnecessary. It is on the fall calendar.

(c) The Board shall be convened permanently, with authority to conduct investigations, receive or initiate complaints concerning a Judge or Associate Judge, and file complaints with the Courts Commission. The Board shall not file a complaint unless five members believe that a reasonable basis exists (1) to charge the Judge or Associate Judge with willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to charge that the Judge or Associate Judge is physically or mentally unable to perform his duties. All proceedings of the Board shall be confidential except the filing of a complaint with the Courts Commission. The Board shall prosecute the complaint.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) The Board shall adopt rules governing its procedures. It shall have subpoena power and authority to appoint and direct its staff. Members of the Board who are not Judges shall receive per diem compensation and necessary expenses; members who are Judges shall receive necessary expenses only. The General Assembly by law shall appropriate funds for the operation of the Board.

Section will be implemented if HB 3030 is passed substantially as introduced. HB 3030 provides an appropriation for expenses of the Judicial Inquiry Board. The bill is on the fall calendar.

(e) A Courts Commission is created consisting of one Supreme Court Judge selected by that Court, who shall be its chairman, two Appellate Court Judges selected by that Court, and two Circuit Judges selected by the Supreme Court. The Commission shall be convened permanently to hear complaints filed by the Judicial Inquiry Board. The Commission shall have authority after notice and public hearing, (1) to remove from office, suspend without pay, censure or reprimand a Judge or Associate Judge for willful misconduct in office, persistent failure to perform his duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute, or (2) to suspend, with or without pay, or retire a Judge or Associate Judge who is physically or mentally unable to perform his duties.

(f) The concurrence of three members of the Commission shall be necessary for a decision. The decision of the Commission shall be final.

(g) The Commission shall adopt rules governing its procedures and shall have power to issue subpoenas. The General Assembly shall provide by law for the expenses of the Commission.

SECTION 16. ADMINISTRATION

General administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. The Supreme Court shall appoint an administrative director and staff, who shall serve at its pleasure, to assist the Chief Justice in his duties. The Supreme Court may assign a Judge temporarily to any court and an Associate Judge to serve temporarily as an Associate Judge on any Circuit Court. The Supreme Court shall provide by rule for expeditious and inexpensive appeals.

SECTION 17. JUDICIAL CONFERENCE

The Supreme Court shall provide by rule for an annual judicial conference to consider the work of the courts and to suggest improvements in the administration of justice and shall report thereon annually in writing to the General Assembly not later than January 31.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Section has been implemented by passage and approval of SB 1215. SB 1215 provides a line item appropriation for expenses of the Courts Commission.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 18. CLERKS OF COURTS

(a) The Supreme Court and the Appellate Court Judges of each Judicial District, respectively, shall appoint a clerk and other non-judicial officers for their Court or District.

Section will be implemented if SB 1257 or 1265 is passed substantially as introduced. SB 1256 and 1265 provide for appointment of clerks of the Supreme and Appellate Courts. Both bills are on the fall calendar. Provision should be made for filling a vacancy occuring during the term of the incumbents.

(b) The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, of clerks and other non-judicial officers of the Circuit Courts and for their terms of office and removal for cause.

Section will be implemented by passage of SB 1258 and 1259. SB 1258 deals with vacancies in the office of Circuit Court clerk. SB 1259 provides for appointment of Circuit Court clerks by the Circuit Judges. Both bills are on the fall calendar.

(c) The salaries of clerks and other non-judicial officers shall be as provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 19. STATE'S ATTORNEYS—SELECTION, SALARY

A State's Attorney shall be elected in each county in 1972 and every fourth year thereafter for a four year term. One State's Attorney may be elected to serve two or more counties if the governing boards of such counties so provide and a majority of the electors of each county voting on the issue approve. A person shall not be eligible for the office of State's Attorney unless he is a United States citizen and a licensed attorney-at-law of this State. His salary shall be provided by law.

Section is not implemented. The House Special Committee on Constitutional Implementation is preparing bills for introduction during the fall session.

ARTICLE VII

LOCAL GOVERNMENT

SECTION 1. MUNICIPALITIES AND UNITS OF LOCAL GOVERNMENT

"Municipalities" means cities, villages and incorporated towns. "Units of local government" means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.

Section is not implemented. The varying statutory definitions of "municipal", "municipality", "municipalities", and "local government" make full implementation of this section a complex and long-term process. For example, Ch. 108½, Sec. 7-105, Ill. Rev. Stat.(1969) defines "municipality" as any of 17 different types of local government. This section limits "municipalities" to cities, villages and incorporated towns. Secs. 8 and 10 of this Article are also affected, especially by statutory definitions of "units of local government". Failure of implementation may lead to unnecessary litigation, especially for non-home rule units. For example, is a junior college district a school district, and therefore not included in the constitutional definition of "unit of local government?

SECTION 2. COUNTY TERRITORY, BOUNDARIES AND SEATS

(a) The General Assembly shall provide by law for the formation, consolidation, merger, division, and dissolution of counties, and for the transfer of territory between counties.

Specific and immediate implementation is not required. Review of the statutes to insure conformity with this section is desirable, particularly so as to delete obsolete provisions such as found in Ch. 34, Secs. 108-110, Ill. Rev. Stat. (1969).

(b) County boundaries shall not be changed unless approved by referendum in each county affected.

Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government. Further review of statutes to insure conformance with this section is desirable.

(c) County seats shall not be changed unless approved by three-fifths of those voting on the question in a county-wide referendum.

Specific and immediate implementation is not required. Further review of statutes to insure conformance with this section is desirable.

SECTION 3. COUNTY BOARDS

(a) A county board shall be elected in each county. The number of members of the county board shall be fixed by ordinance in each county within limitations provided by law.

Specific and immediate implementation is not required.

(b) The General Assembly by law shall provide methods available to all counties for the election of county board members. No county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum.

Specific and immediate implementation is not required. Further review of statutes to insure conformance with this section is desirable, particulary as regards counties which elect a board of county commissioners.

(c) Members of the Cook County Board shall be elected from two districts, Chicago and that part of Cook County outside Chicago, unless (1) a different method of election is approved by a majority of votes cast in each of the two districts in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected. If a different method of election is adopted pursuant to option (1) the method of election may thereafter be altered only pursuant to option (2) or by county-wide referendum. A different method of election may be adopted pursuant to option (2) only once and the method of election may thereafter be altered only by county-wide referendum.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. COUNTY OFFICERS

(a) Any county may elect a chief executive officer as provided by law. He shall have those duties and powers provided by law and those provided by county ordinance.

Section will be implemented if HB 1800 or SB 810 is passed substantially as introduced. HB 1800 and SB 810 were identical bills at the time of introduction. HB 1800 has been amended. Both bills are on the fall calendar.

(b) The President of the Cook County Board shall be elected from the County at large and shall be the chief executive officer of the County. If authorized by county ordinance, a person seeking election as President of the Cook County Board may also seek election as a member of the Board.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government.

(d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

Section will be implemented if HB 2840 and 2841 are passed substantially as introduced. HB 2840 requires county sheriffs to submit periodic financial reports to their county boards. HB 2841 allows county boards to alter the powers, duties and functions of county officers by 2/3 vote. Both bills are on the fall calendar.

Section is partially implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government.

(e) The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in his county when requested by any such unit or school district and shall so act when required to do so by law.

Section will be implemented if HB 3045 is passed substantially as introduced. HB 3045 provides that county treasurers may act as treasurers for other units of local government and school districts within the county upon written request. The bill is on the fall calendar.

SECTION 5. TOWNSHIPS

The General Assembly shall provide by law for the formation of townships in any county when approved by county-wide referendum. Townships may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by referendum in each township affected. All townships in a county may be dissolved when approved by a referendum in the total area in which township officers are elected.

Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government. Dissolution or consolidation of townships under this section will require implementation of Sec. 12 of this article.

SECTION 6. POWERS OF HOME RULE UNITS

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt

Section will be implemented if SB 810 or HB 1800 is passed substantially as implemented. SB 810 or HB 1800 will provide procedures whereby counties may become home rule units. Both bills are on the fall calendar.

Section is partially implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government.

(b) A home rule unit by referendum may elect not to be a home rule unit.	Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government. HB 2926 which has been approved provides that a municipality which is a home rule unit by reason of having a population of over 25,000 subsequently falls below 25,000, it shall continue to have home rule powers until it elects by referendum not to be a home rule unit.
(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.	The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.
(d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.	The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.
(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.	The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.
(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.	Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (1) of this section.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (1) of this Section.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

Specific and immediate implementation is not required. Legislation to clarify procedures for incurring debt and to change the maximum period for service of bonded debt from 20 to not more than 40 years is desirable (see Sec. 6d above).

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

Specific and immediate implementation is not required. Legislation to clarify procedures for incurring debt and to change the maximum period for service of bonded debt from 20 to not more than 40 years is desirable (see Sec. 6d above).

Section will be implemented if SB 479 or HB 1799 is passed substantially as introduced. SB 479 and HB 1799 are identical bills which provide special assessment and area taxation powers for counties. HB 1440 also provides for county special assessments. All of these bills are on the fall calendar. It will also be necessary to provide for area taxation by municipalities.

(m) Powers and functions of home rule units shall be construed liberally.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 7. COUNTIES AND MUNICIPALITIES OTHER THAN HOME RULE UNITS

Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

Section will be implemented if SB 479 or HB 1799 passes substantially as introduced. These are identical bills which provide for special assessment and area taxation by counties. HB 1440 also provides for county special assessment. All of these bills are on the fall calendar. It will also be necessary to provide for area taxation by municipalities.

Section has been partially implemented by passage and approval of HB 1715, 1716, 2076, 2427, SB 920 and 921 which provide grants of authority as permitted under this section. HB 3017 provides initiative and referendum procedures for use in all units of local government is awaiting approval by the Governor.

SECTION 8. POWERS AND OFFICERS OF SCHOOL DISTRICTS AND UNITS OF LOCAL GOVERNMENT OTHER THAN COUNTIES AND MUNICIPALITIES

Townships, school districts special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law. No law shall grant the power (1) to any of the foregoing units to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred, or (2) to make improvements by special assessments to any of the foregoing classes of units which

Section has been implemented by passage and approval of HB 2084-2105. HB 2084-2105 provide for appointment of officers of special districts by non-judicial authorities. Legislation to clarify procedures for incurring debt and to change the maximum period for service of debt from 20 to not more than 40 years is desirable.

HB 2625 passed. It continues judicial appointment of trustees of River Conservancy Districts and is in conflict with the letter and intent of this section.

do not have that power on the effective date of this Constitution. The General Assembly shall provide by law for the selection of officers of the foregoing units, but the officers shall not be appointed by any person in the Judicial Branch.

SECTION 9. SALARIES AND FEES

(a) Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes. [This Section 9(a) of Article VII shall become effective on December 1, 1971. See Transition Schedule Section 1(b).]

(b) An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.

Section will be implemented if HB 2618 is passed substantially as introduced. HB 2618 provides for timely deposit with the county treasurer of fees collected by any elected or appointed county officer and provides penalties for violation. Further review of the statutes to provide salaries for former fee officers and to develop appropriate fee schedules is desirable.

SECTION 10. INTERGOVERNMENTAL COOPERATION

(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

(b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions.

(c) The State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.

Specific and immediate implementation is not required. SB 734, 735, 738, HB 2040 and 2041 passed and have been approved by the Governor. These bills are among a number introduced which grant authority to units of local government to enter into specific types of intergovernmental activity. These bills appear to be unnecessary where they grant authority for intergovernmental activitiy but are required insofar as they grant related tax powers to non-home rule units.

SECTION 11. INITIATIVE AND REFERENDUM

(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.

Section is implemented by passage of HB 3017 if it is approved by the Governor. HB 3017 provides initiative and referendum procedures for use in all units of local government. The bill is flawed by the omission of a word. Corrective action has been instituted and an amendatory bill will be introduced during the fall session.

(b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 12. IMPLEMENTATION OF GOVERNMENTAL CHANGES

The General Assembly shall provide by law for the transfer of assets, powers and functions, and for the payment of outstanding debt in connection with the formation, consolidation, merger, division, dissolution and change in the boundaries of units of local government.

Section is not implemented. The House Special Committee on Constitutional Implementation is expected to prepare bills for introduction during the fall session.

SB 903 and 904 passed and have been approved by the Governor. They provide for transfer of pension funds where a fire district is absorbed by a municipality. SB 226 and HB 1798 provide for transfer of functions and assets in certain other cases of local governmental consolidation or merger. Both bills are on the fall calendar.

ARTICLE VIII

FINANCE

SECTION 1. GENERAL PROVISIONS

(a) Public funds, property or credit shall be used only for public purposes.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(cont'd)

(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) Reports and records of the obligation, receipt and use of public funds of the State, units of local government and school districts are public records available for inspection by the public according to law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. STATE FINANCE

(a) The Governor shall prepare and submit to the General Assembly, at a time prescribed by law, a State budget for the ensuing fiscal year. The budget shall set forth the estimated balance of funds available for appropriation at the beginning of the fiscal year, the estimated receipts, and a plan for expenditures and obligations during the fiscal year of every department, authority, public corporation and quasi-public corporation of the State, every State college and university, and every other public agency created by the State, but not of units of local government or school districts. The budget shall also set forth the indebtedness and contingent liabilities of the State and such other information as may be required by law. Proposed expenditures shall not exceed funds estimated to be available for the fiscal year as shown in the budget.

Specific and immediate implementation is not required. The legislature may wish to designate an agency to provide an estimate of funds available for the fiscal year as shown in the budget.

(b) The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year. [This Section 2 of Article VIII shall become effective on January 1, 1972. See Transition Schedule Section 1(c).]

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules. The legislature may wish to designate an agency to provide an estimate of funds available for the fiscal year shown in the budget.

SECTION 3. STATE AUDIT AND AUDITOR GENERAL

(a) The General Assembly shall provide by law for the audit of the obligation, receipt and use of public funds of the State. The General Assembly, by a vote of three-fifths of the members elected to each house, shall appoint an Auditor General and may remove him for cause by a similar vote. The Auditor General shall serve for a term of ten years. His compensation shall be established by law and shall not be diminished, but may be increased, to take effect during his term.

(b) The Auditor General shall conduct the audit of public funds of the State. He shall make additional reports and investigations as directed by the General Assembly. He shall report his findings and recommendations to the General Assembly and to the Governor.

SECTION 4. SYSTEMS OF ACCOUNTING, AUDITING AND REPORTING

The General Assembly by law shall provide systems of accounting, auditing and reporting of the obligation, receipt and use of public funds. These systems shall be used by all units of local government and school districts.

Section will be implemented if HB 3031 is passed substantially as introduced. HB 3031 provides for the office of Auditor General and prescribes his powers and duties. The bill is on the fall calendar.

Section will be implemented if HB 3031 is passed substantially as introduced. HB 3031 provides for the offices of Auditor General and prescribes his powers and duties. The bill is on the fall calendar.

Section is not implemented. It is expected that the final report of the Citizens' Advisory Committee on Implementation of Comptroller's Office will contain specific recommendations. Report will be published prior to the fall session.

Several parties are concerned with early implementation of this section. They include the Citizens' Advisory Committee(see above), the Auditor of Public Accounts, the Office of Community Services of the Department of Local Government Affairs, several county auditors and representatives of other units of local governments. Coordination of the efforts of these several concerned parties is desirable.

ARTICLE IX

REVENUE

SECTION 1. STATE REVENUE POWER

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. NON-PROPERTY TAXES—CLASSIFICATION, EXEMPTIONS, DEDUCTIONS, ALLOWANCES AND CREDITS

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. LIMITATIONS ON INCOME TAXATION

(a) A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the rate shall not exceed the rate imposed on individuals by more than a ratio of 8 to 5.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. REAL PROPERTY TAXATION

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

Section will be implemented if HB 2197 is passed substantially as introduced. HB 2197 provides for classification of real estate for purposes of taxation in counties with a population of more than 200,000 but not more than 1,000,000. HB 556 defines "fair cash value" as 50% of actual value except for counties over 200,000 which classify. HB 2772 also provides for classification of real property. These bills are on the fall calendar.

(c) Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. PERSONAL PROPERTY TAXATION

(a) The General Assembly by law may classify personal property for purposes of taxation by valuation, abolish such taxes on any or all classes and authorize the levy of taxes in lieu of the taxation of personal property by valuation.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated.

Specific and immediate implementation is not required. The Illinois Supreme Court, in Lake Auto Parts Co. et al v. Bernard J. Korzen el al and related cases, nullified the results of the November 3, 1970 referendum. In that referendum the electorate approved of abolition of the personal property tax on individuals.

HB 2839 creates a Revenue Replacement Commission to study and report on the effects of the abolition of the ad valorem personal property tax.

The effect of this section is deferred until not later than January 1, 1979 (see Sec. 5(c) below).

(c) On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971. If any taxes imposed for such replacement purposes are taxes on or measured by income, such replacement taxes shall not be considered for purposes of the limitations of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 6. EXEMPTIONS FROM PROPERTY TAXATION

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 7. OVERLAPPING TAXING DISTRICTS

The General Assembly may provide by law for fair apportionment of the burden of taxation of property situated in taxing districts that lie in more than one county.

Section will be implemented if SB 130 is passed substantially as introduced. SB 130 provides that in overlapping taxing districts property which lies in 2 or more counties will be valued by applying the lowest level of assessment prevailing in any of the counties. HB 2619 creates a commission to study the problem of taxing districts that lie in more than one county. Both bills are on the fall calendar.

SECTION 8. TAX SALES

(a) Real property shall not be sold for the non-payment of taxes or special assessments without judicial proceedings.

Specific and immediate implementation is not required. The constitutional language, when coupled with existing statutes, appears to be adequate.

(b) The right of redemption from all sales of real estate for the non-payment of taxes or special assessments shall exist in favor of owners and persons interested in such real estate for not less than two years following such sales. Owners, occupants and parties interested shall be given reasonable notice of the sale and the date of expiration of the period of redemption as the General Assembly provides by law.

Section is not implemented. SB 779 passed. It provides for an extended period of redemption by the owner or owners of real property consisting of at least one but not more than four dwelling units where one of the dwelling units is occupied by the owner or owners. SB 779 does not coincide with the wording of this section and is in conflict with the apparent intent. No other bill is pending at this time.

SECTION 9. STATE DEBT

(a) No State debt shall be incurred except as provided in this Section. For the purpose of this Section, "State debt" means bonds or other evidences of indebtedness which are secured by the full faith and credit of the State or are required to be repaid, directly or indirectly, from tax revenue and which are incurred by the State, any department, authority, public corporation or quasi-public corporation of the State, any State college or university, or any other public agency created by the State, but not by units of local government, or school districts.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) State debt for specific purposes may be incurred or the payment of State or other debt guaranteed in such amounts as may be provided either in a law passed by the vote of three-fifths of the members elected to each house of the General Assembly or in a law approved by a majority of the electors voting on the question at the next general election following passage. Any law providing for the incurring or guaranteeing of debt shall set forth the specific purposes and the manner of repayment.

Specific and immediate implementation is not required. This section, when coupled with Article IV and existing statutes, appears to be adequate.

(c) State debt in anticipation of revenues to be collected in a fiscal year may be incurred by law in an amount not exceeding 5% of the State's appropriations for that fiscal year. Such debt shall be retired from the revenues realized in that fiscal year.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(d) State debt may be incurred by law in an amount not exceeding 15% of the State's appropriations for that fiscal year to meet deficits caused by emergencies or failures of revenue. Such law shall provide that the debt be repaid within one year of the date it is incurred.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(e) State debt may be incurred by law to refund outstanding State debt if the refunding debt matures within the term of the outstanding State debt.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(f) The State, departments, authorities, public corporations and quasi-public corporations of the State, the State colleges and universities and other public agencies created by the State, may issue bonds or other evidences of indebtedness which are not secured by the full faith and credit or tax revenue of the State nor required to be repaid, directly or indirectly, from tax revenue, for such purposes and in such amounts as may be authorized by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 10. REVENUE ARTICLE NOT LIMITED

This Article is not qualified or limited by the provisions of Article VII of this Constitution concerning the size of the majorities in the General Assembly necessary to deny or limit the power to tax granted to units of local government.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE X

EDUCATION

SECTION 1. GOAL—FREE SCHOOLS

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

Section will be implemented if HB 1918 is passed substantially as introduced. HB 1918 provides for classes for youth and adults whose education has been interrupted. The bill is on the fall calendar.

Recent court decisions in California suggest that the General Assembly should carefully review the responsibility of the state for financing public education as provided in the last sentence of the section.

SECTION 2. STATE BOARD OF EDUCATION—CHIEF STATE EDUCATIONAL OFFICER

(a) There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The Board shall have such other duties and powers as provided by law.

Section will be implemented if HB 1903, 2106 or 2118 passes substantially as introduced. HB 1903 provides for an interim state board of education. The other bills provide for a permanent board. These bills are on the fall calendar.

(cont'd)

HB 2905 provides for an interim board with the sole power of filling a vacancy in the office of Superintendent of Public Instruction should one occur prior to January, 1973. The bill is on the fall calendar.

(b) The State Board of Education shall appoint a chief state educational officer.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. PUBLIC FUNDS FOR SECTARIAN PURPOSES FORBIDDEN

Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE XI

ENVIRONMENT

SECTION 1. PUBLIC POLICY—LEGISLATIVE RESPONSIBILITY

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. RIGHTS OF INDIVIDUALS

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law. [The second sentence of Section 2 of Article XI shall become effective on January 1, 1972. See Transition Schedule Section 1(d).]

The Task Force believes this section is self-executing. Legislation is desirable to provide for appropriate legal proceedings to pursue the right established in the section.

ARTICLE XII

MILITIA

SECTION 1. MEMBERSHIP

The State militia consists of all able-bodied persons residing in the State except those exempted by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. SUBORDINATION OF MILITARY POWER

The military shall be in strict subordination to the civil power.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. ORGANIZATION, EQUIPMENT AND DISCIPLINE

The General Assembly shall provide by law for the organization, equipment and discipline of the militia in conformity with the laws governing the armed forces of the United States.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. COMMANDER-IN-CHIEF AND OFFICERS

(a) The Governor is commander-in-chief of the organized militia, except when they are in the service of the United States. He may call them out to enforce the laws, suppress insurrection or repel invasion.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) The Governor shall commission militia officers who shall hold their commissions for such time as may be provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 5. PRIVILEGE FROM ARREST

Except in cases of treason, felony or breach of peace, persons going to, returning from or on militia duty are privileged from arrest.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE XIII

GENERAL PROVISIONS

SECTION 1. DISQUALIFICATION FOR PUBLIC OFFICE

A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. STATEMENT OF ECONOMIC INTERESTS

All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch. [This Section 2 of Article XIII shall become effective on January 1, 1972. See Transition Schedule Section 1(e).]

Section will be implemented if SB 81 and 82 are passed substantially as introduced. SB 81 expands coverage of the Illinois Governmental Ethics Act by requiring more detailed reporting of economic interest. It also provides for public inspection of filed statements. The coverage of the Act is extended to elected local officials. SB 82 creates the Political Spending Act. Both bills are on the fall calendar.

SECTION 3. OATH OR AFFIRMATION OF OFFICE

Each prospective holder of a State office or other State position created by this Constitution, before taking office, shall take and subscribe to the following oath or affirmation:

"I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of . . . . . to the best of my ability."

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 4. SOVEREIGN IMMUNITY ABOLISHED

Except as the General Assembly may provide by law, sovereign immunity in this State is abolished. [This Section 4 of Article XIII shall become effective on January 1, 1972. See Transition Schedule Section 1(e).]

Section will be implemented if HB 3039 and 3040 are passed substantially as introduced. HB 3039 extends the Local Governmental and Governmental Employee Tort Immunity Act to include claims or actions against the state. HB 3040 repeals the Act creating the Court of Claims and provides for dealing with pending actions. Both bills are on the fall calendar.
(cont'd)

Section 4. (cont'd)

HB 2047 provides that actions against the state shall be filed only in the Court of Claims. HB 2048 and 2049 deal with cases involving claims for firemen and policemen killed in the line of duty. Such cases are assigned to the Court of Claims. These bills are on the fall calendar.

The intent of HB 3039 and 3040 appears to be in conflict with that expressed in HB 2047. This conflict should be resolved during the fall session

SECTION 5. PENSION AND RETIREMENT RIGHTS

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 6. CORPORATIONS

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 7. PUBLIC TRANSPORTATION

Public transportation is an essential public purpose for which public funds may be expended. The General Assembly by law may provide for, aid, and assist public transportation, including the granting of public funds or credit to any corporation or public authority authorized to provide public transportation within the State.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 8. BRANCH BANKING

Branch banking shall be authorized only by law approved by three-fifths of the members voting on the question or a majority of the members elected, whichever is greater, in each house of the General Assembly.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE XIV

CONSTITUTIONAL REVISION

SECTION 1. CONSTITUTIONAL CONVENTION

(a) Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a Constitutional Convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.

(b) If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.

(c) The vote on whether to call a Convention shall be on a separate ballot. A Convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.

(d) The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each Legislative District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.

(e) To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.

(f) The Convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the Convention determines, at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment. Any revision or amendments proposed by the Convention shall be published with explanations, as the Convention provides, at least one month preceding the election.

(g) The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the Convention provides, if approved by a majority of those voting on the question.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

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SECTION 2. AMENDMENTS BY GENERAL ASSEMBLY

(a) Amendments to this Constitution may be initiated in either house of the General Assembly. Amendments shall be read in full on three different days in each house and reproduced before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors. The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(c) The General Assembly shall not submit proposed amendments to more than three Articles of the Constitution at any one election. No amendment shall be proposed or submitted under this Section from the time a Convention is called until after the electors have voted on the revision or amendments, if any, proposed by such Convention.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 3. CONSTITUTIONAL INITIATIVE FOR LEGISLATIVE ARTICLE

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

Section will be implemented if HB 3043 is passed substantially as introduced. HB 3043 provides for initiative to amend the Legislative Article. The bill is on the fall calendar.

SECTION 4. AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

The affirmative vote of three-fifths of the members elected to each house of the General Assembly shall be required to request Congress to call a Federal Constitutional Convention, to ratify a proposed amendment to the Constitution of the United States, or to call a State Convention to ratify a proposed amendment to the Constitution of the United States. The General Assembly shall not take action on any proposed amendment to the Constitution of the United States submitted for ratification by legislatures unless a majority of the members of the General Assembly shall have been elected after the proposed amendment has been submitted for ratification. The requirements of this Section shall govern to the extent that they are not inconsistent with requirements established by the United States.

TRANSITION SCHEDULE

The following Schedule Provisions shall remain part of this Constitution until their terms have been executed. Once each year the Attorney General shall review the following provisions and certify to the Secretary of State which, if any, have been executed. Any provisions so certified shall thereafter be removed from the Schedule and no longer published as part of this Constitution.

Section 1. Delayed Effective Dates.
Section 2. Prospective Operation of Bill of Rights.
Section 3. Election of Executive Officers.
Section 4. Judicial Offices.
Section 5. Local Government.
Section 6. Authorized Bonds.
Section 7. Superintendent of Public Instruction.
Section 8. Cumulative Voting for Directors.
Section 9. General Transition.
Section 10. Accelerated Effective Date.

SECTION 1. DELAYED EFFECTIVE DATES

(a) The provisions of Section 1, 2(a), 2(b), and 2(c) of Article IV shall not apply to the General Assembly elected at the general election in 1970. Notwithstanding Section 6(b) of Article IV, the incumbent Lieutenant Governor for the remainder of his term shall be the President of the Senate with a right to vote when the Senate is equally divided.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

(b) Section 9(a) of Article VII shall become effective on December 1, 1971.

(c) Section 2 of Article VIII shall become effective on January 1, 1972.

(d) The second sentence of Section 2 of Article XI shall become effective on January 1, 1972.

(e) Sections 2 and 4 of Article XIII shall become effective on January 1, 1972.

SECTION 2. PROSPECTIVE OPERATION OF BILL OF RIGHTS

Any rights, procedural or substantive, created for the first time by Article I shall be prospective and not retroactive.

SECTION 3. ELECTION OF EXECUTIVE OFFICERS

The Governor, Lieutenant Governor, Attorney General, Secretary of State and Comptroller elected in 1972 shall serve for four years and those elected in 1976 for two years. The Treasurer elected in 1974 shall serve for four years.

SECTION 4. JUDICIAL OFFICES

(a) On the effective date of this Constitution, Associate Judges and magistrates shall become Circuit Judges and Associate Judges, respectively, of their Circuit Courts. All laws and rules of court theretofore applicable to Associate Judges and magistrates shall remain in force and be applicable to the persons in their new offices until changed by the General Assembly or the Supreme Court, as the case may be.

(b) Notwithstanding the provisions of Section 11 of Article VI, magistrates in office on the effective date thereof are eligible to serve as Associate Judges.

(c) Notwithstanding the provisions of Section 18 of Article VI, the Clerk of the Supreme Court and the Clerks of the Appellate Court Districts in office on the effective date of this Constitution shall continue in office until the expiration of their elective terms.

(d) Until otherwise provided by law and except to the extent that the authority is inconsistent with Section 8 of Article VII, the Circuit Courts shall continue to exercise the non-judicial functions vested by law as of December 31, 1963, in county courts or the judges thereof.

SECTION 5. LOCAL GOVERNMENT

(a) The number of members of a county board in a county which, as of the effective date of this Constitution, elects three members at large may be changed only as approved by county-wide referendum. If the number of members of such a county board is changed by county-wide referendum, the provisions of Section 3(a) of Article VII relating to the number of members of a county board shall govern thereafter.

(b) In Cook County, until (1) a method of election of county board members different from the method in existence on the effective date of this Constitution is approved by a majority of votes cast both in Chicago and in the area outside Chicago in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected, the number of members of the Cook County Board shall be fifteen except that the county board may increase the number if necessary to comply with apportionment requirements. If either of the foregoing changes is made, the provisions of Section 3(a) of Article VII shall apply thereafter to Cook County.

(c) Townships in existence on the effective date of this Constitution are continued until consolidated, merged, divided or dissolved in accordance with Section 5 of Article VII.

SECTION 6. AUTHORIZED BONDS

Nothing in Section 9 of Article IX shall be construed to limit or impair the power to issue bonds or other evidences of indebtedness authorized but unissued on the effective date of this Constitution.

SECTION 7. SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 2(b) of Article X shall take effect upon the existence of a vacancy in the Office of Superintendent of Public Instruction but no later than the end of the term of the Superintendent of Public Instruction elected in 1970.

SECTION 8. CUMULATIVE VOTING FOR DIRECTORS

Shareholders of all corporations heretofore organized under any law of this State which requires cumulative voting of shares for corporate directors shall retain their right to vote cumulatively for such directors.

SECTION 9. GENERAL TRANSITION

The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their succesors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

SECTION 10. ACCELERATED EFFECTIVE DATE

The effective date of Section 3 of Article IV shall be January 15, 1971.

For purposes of appointing members of a Legislative Redistricting Commission in 1971, the President Pro Tempore of the Senate shall have the appointing power vested by Section 3(b) of Article IV in the President of the Senate.

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

SPRINGFIELD, ILLINOIS

FILED
JUN 21 1971

Number 1 (1971)

EXECUTIVE ORDER

WHEREAS, on December 15, 1970, the electors of Illinois approved by public referendum the proposed Constitution of 1970; and

WHEREAS, the Adoption Schedule of the Constitution of 1970 provides that with certain exceptions the new state charter shall take effect on July 1, 1971; and

WHEREAS, the Sixth Constitutional Convention of the State of Illinois adjourned sine die on September 3, 1970; and

WHEREAS, the 77th General Assembly of the State of Illinois is presently convened in regular session; and

WHEREAS, under the provisions of the Constitution of 1970 the General Assembly is required to implement certain of its provisions prior to July 1, 1971, and is further required to direct considerable legislative attention to such major areas of public concern as revenue and local government; and

WHEREAS, there is not presently existing any governmental entity established for the purpose of bringing to the General Assembly the expertise of the Convention, the academic community, the concerned citizens of our State necessary to provide continuity to the work product of the Convention and to serve as an information resource for the General Assembly; and

WHEREAS, it is in the public interest that every effective step be taken to avert a constitutional crisis in the task of legislatively implementing the Constitution of 1970;

NOW, THEREFORE, I, RICHARD B. OGILVIE, GOVERNOR OF THE STATE OF ILLINOIS, by and under the powers vested in me by the Constitution of 1870 and the statutes of the State of Illinois, do hereby establish a Citizens Task Force on Constitutional Implementation, with the chairman and membership to be appointed and serve at the pleasure of the Governor, for the purpose of discharging the following responsibilities:

1. To immediately review the Illinois Constitution of 1870, the Illinois Constitution of 1970, and the Laws of Illinois for the purpose of identifying those areas of legislation which will require consideration by the General Assembly prior to June 30, 1971, and those which may be deferred for consideration beyond that date;

2. To make recommendations for the enactment, repeal or amendment of specific statutes where it is appropriate to the purposes of the task force and not inconsistent with the prerogatives of the legislative branch of state government;

3. To work in cooperation with the General Assembly and its agencies as that body may direct and request for the purpose of research and technical assistance incidental to the preparation of legislation necessary to implement the Constitution of 1970; and

4. To advise me as I may from time to time request with regard to the review of enacted legislation awaiting my final action.

Dated at Springfield, Illinois, this 21st day of January, A.D. 1971.

Richard B. Ogilvie
Governor

APPENDIX C
COMMITTEE ASSIGNMENTS

Steering Committee

Samuel K. Gove
William S. Hanley
Stanley Johnson
Betty Ann Keegan
Clifford P. Kelley

Committee on Revenue and Financial Administration

Chairman -- Simeon Leland
Members Lester Brann
Paul Giblin
Stanley Johnson
Maurice Scott

Committee on Structure of State Government

Chairman -- Alice Ihrig
Members William S. Hanley
Jeffrey Ladd
Odas Nicholson

Committee on Rights and Legal Procedures

Chairman -- David Davis
Members Al Raby
Charles W. Shuman
Wayne Whalen

Committee on Local Government

Chairman -- John C. Parkhurst
Members Robert Butler
Philip J. Carey
Clifford P. Kelley
Betty Ann Keegan
Troy Kost
L. D. LaFleur
Leonard Gardner
Jack Siegel
Virgil C. Wikoff
John Woods

APPENDIX C (continued)
COMMITTEE RESPONSIBILITIES
1970 Illinois Constitution

Steering Committee: Budget, personnel, policy.

Committee on Rights and Legal Procedures: Articles I, III, XI, XII and XIII.

Committee on Structure of State Government: Articles IV, V, VI, X and XIV (Section 3).

Committee on Revenue and Financial Administration: Articles VIII and IX.

Committee on Local Government: Article VII.

Article II does not appear to require implementing legislation and is not assigned to any committee.

APPENDIX D

MEMORANDUM

February 20, 1971

RE: Constitution of 1970 -- Powers of 77th General Assembly

FROM: Mr. Wayne W. Whalen

Question: Does the 77th General Assembly have authority to enact, at its regular 1971 session, bills (in anticipation of the effective date of the Constitution of 1970), inconsistent with the Constitution of 1870 but consistent with the Constitution of 1970?

Answer: Although the matter is not free from doubt, and there are no reported Illinois cases dealing directly with the question, the General Assembly does seem to have such authority.

ANALYSIS

1. Sections 9 and 10 of the Transition Schedule of the Constitution of 1970 provide in relevant part:

> "Section 9. GENERAL TRANSITION
>
> The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place . . . ."

"Section 10. ACCELERATED EFFECTIVE DATE

The effective date of Section 3 of Article IV shall be January 15, 1971.

* * * * *

2. The Preamble and Section 1 of the Adoption Schedule of the Constitution of 1970 provide:

"The following Schedule Provisions shall not be deemed to be a part of this Constitution except for the limited purpose of governing the determination of whether or not this Constitution has been adopted, the determination of what changes thereto have been made as a result of the vote on each of the separately submitted issues, and the establishment of the general effective date of this Constitution.

* * * * *

Section 1.

"Except as otherwise provided in Section 1 of the Transition Schedule, this Constitution, if approved by the electors as provided by the Constitution of 1870, as amended, shall take effect on July 1, 1971, and the Constitution of 1870, as amended, shall thereafter be of no force and effect except to the extent that the contingencies provided for in Section 6 of this Adoption Schedule may require."

3. As Section 10 of the Transition Schedule indicates, the Constitution of 1970 became effective for certain purposes prior to July 1, 1971, the date on which

it becomes generally effective, except for the delayed effective dates provided for by Section 1 of the Transition Schedule. A constitutional provision is generally deemed effective, unless otherwise provided, on the date it is ratified. Druggan v Anderson, 269 U.S. 36, 39 (1925); Richards v Donagho, 66 Ill. 73 (1872); Schall v Bowman, 62 Ill. 321, 329 (1872). Therefore, the intent of the Sixth Illinois Constitutional Convention governs the validity of anticipatory legislation.

4. Although the report of the Committee on Style, Drafting and Submission of the 1970 Constitutional Convention is silent on this subject, the transcript of the debates on the floor of the Convention indicates an intention on the part of the Convention that the 77th General Assembly, at its regular 1971 session, be authorized to take steps implementing provisions of the Constitution of 1970. One delegate stated to the floor of the Convention in explanation of the delayed effective date of the proposed Constitution: "(W)e thought they (the Legislature) could anticipate the effect of the new Constitution...." (Transcript of Sixth Illinois Constitutional Convention, Sept. 1, 1970 at p. 453.) There are no statements contradicting this conclusion.

5. Although there are no reported Illinois cases directly on point, the rule in jurisdictions which have passed upon the question

is that bills can be adopted after ratification, but in anticipation of the effective date, of a new constitutional provision. See cases collected at 171 A. L. R. 1070, 1075 (1947); 16 Am. Jur. 2d "Con. Law" § 181 at p. 409. Even if the anticipatory bill is prohibited under the constitution in effect at the time the anticipatory bill is adopted, but allowed under a constitutional provision which has been ratified, the courts have generally upheld such legislation.

Gaylord v. Beckett, 378 Mich. 273, 144 N.W. 2d 460 (1966), appears to be the reported case which bears most closely on the present question. The Michigan legislature passed, and the Governor signed, the Industrial Revenue Bond Act of 1963 in anticipation of an adequate provision of the Michigan Constitution of 1963, which, at the time the Act was passed and signed, had been ratified but was not yet generally effective. In this case to test the constitutionality of the Act, the Supreme Court of Michigan specifically requested counsel to address themselves to the constitutionality of the Act "against the limitations on legislative power contained in the 1908 Constitution, then still in effect." Of the eight justices then sitting on the Supreme Court, four justices concluded that the anticipatory Act was to be tested under the standards of the 1963 Constitution (implying that the lawfulness of the Act under the 1908 Constitution was irrelevant) stating:

> "A legislature has power to enact a statute not authorized by the present Constitution where the statute is passed in anticipation of a constitutional amendment authorizing it or provides that it shall take effect upon the adoption of such a constitutional amendment." 144 N.W. 2d at 482.

Two justices also concluded that the Act was to be tested under the 1963 Constitution but appeared to base their conclusion on the contention that the Act was "in force" on the effective date of the 1963 Constitution (they did not consider the lawfulness of the Act under the 1908 Constitution). One justice concluded that the Act was unlawful under the 1908 Constitution and therefore beyond the power of the legislature when passed. He stated:

> "What these cases mean to me is that the Legislature's acts must be judged in the light of the powers possessed by the Legislature at the time it undertakes to act. With due regard for the fact that the legislative power of a state, unlike the legislative power of Congress, does not depend upon express constitutional grant but, rather, is a broad and comprehensive as necessary to accomplish the legitimate purposes of government except as the people may have imposed restraints upon such power by constitutional limitations... the Constitution in force and effect at the time the Legislature acts must be examined to determine whether the people in fact have forbidden the Legislature so to act. If they have, the legislature act is a nullity, a void, a failure of creation; it is stillborn, dead at birth; it lacks the force of law; it is impotent as a source of rights or of obligations; it signifies an act of futility as devoid of effect as if never attempted; it is no more effective as a law than is a piece of blank paper."
>
> * * *
>
> "* * * When a Legislature purports to enact a statute the subject matter of which is beyond the legislative power of the state as limited by the state's people in their constitution, the principle is applicable and the statute is void ab initio. . . . If it were beyond the powers of the Legislature under the 1908 Constitution, our judicial duty would end with our declaration of the Act's validity. Only if it were not beyond such powers, would Act 62 then have to be tested for its current validity against the limitations contained in the 1963 Constitution." 144 N. W. 2d at 486-87

Finally, one justice concluded that further proceedings were required before the court should attempt to dispose of this issue.

In Druggan v. Anderson, 296 U.S. 36 (1952), the Court, speaking through Justice Holmes, rejected the claim that the National Prohibition Act was unconstitutional because it was passed after Amendment XVIII to the United States Constitution was ratified but prior to the date the Amendment became effective:

> "***We have no doubt of the authority of Congress to pass the law. Barbour v. Georgia, 249 U.S. 454. Diamond Glue Co. v. United States Glue Co., 187 U.S. 611, 615, 616. Indeed it would be going far to say that while the fate of the Amendment was uncertain Congress could not have passed a law in aid of it, conditioned upon the ratification taking place." 269 U.S. at 39.

See also State v. Herker, 109 Ore. 520, 221 Pac. 808 (1923) (state constitution had prohibited death penalty; court upheld statute permitting death penalty passed in anticipation of effective date of constitutional amendment permitting death penalty).

In Alabam's Freight Co. v. Hunt, 29 Ariz. 419, 242 Pac. 658 (1926), the plaintiff challenged a workmen's compensation act on the ground that the statute had been passed prior to the effective date of an enabling constitutional amendment. The court held:

> "We are of the opinion that the Legislature may pass an act to take effect only upon the adoption of a Constitutional amendment authorizing it, and that its constitutionality is to be tested by the Constitution as it is at the time the law takes effect, and not as when it was passed." 242 Pac. at 659.

The Supreme Court of Illinois has accepted the view that the state constitution represents a limitation on the power of the State, and that, except where so limited (by the state or federal constitutions)

the General Assembly has broad residual power to adopt legislation. Cf. Thorpe v. Mahin, 43 Ill. 2d 36, 44-5 (1969). Since neither the Constitution of 1870 nor the Constitution of 1970 restricts the power of the General Assembly to pass legislation in anticipation of the effectiveness of constitutional provisions, this doctrine of residual power supports the authority of the General Assembly to adopt such anticipatory legislation. Also see, e.g., In re Opinions of the Justices, 227 Ala. 291, 149 So. 776 (1933).

In Neisel v. Moran, 80 Fla. 98, 85 So. 346 (1920), the court stated:

> "The state Legislature has plenary lawmaking power, subject only to the limitations imposed by the state and federal Constitutions, and may enact any anticipatory statutes that are not forbidden by such Constitutions. The state Constitution expressley provides for the enactment of statutes to take effect after their passage and approval and after the final adjournment of the session of the Legislature at which they were enacted. Anticipatory statutes are not forbidden; nor are they contrary to the letter or to the spirit of the state Constitution; but the enactment is expressly contemplated by the Constitution." 85 So. at 349.

There are cases, though apparently none reported in Illinois, where the courts have struck down attempts to revive unconstitutional statutes by a later constitutional amendment where the statute in question was not passed in anticipation of the constitutional amendment and the constitutional amendment did not, by its terms, call for the revivial of the statute. See, e.g., Plebset v. Barnwell Drilling Co., 243 La. 874, 148 S. 2d 584, 588 (1963); Little Rock v. Caren, _____ Ark. _____, 381, S.W. 2d 741 (1964); Mathews v. Quinton, 362 P. 2d 932, 938-39 (Alaska, 1961).

6. On the question of whether the Governor should sign an anticipatory bill before or after July 1, the balance seems to tip in favor of signing after July 1. In fairness, it should be noted that none of the anticipatory enactment cases appears to turn on the time the bill is approved by the head of the executive branch of government, and the time of approval issue is not relevant to the rationale of the anticipatory enactment theory.

If the bill were signed before July 1 it would, under Article IV, Section 13 of the Constitution of 1870, become effective July 1, 1971. A delayed effective date provision would require a finding of "emergency" and a 2/3rds majority in order to be operative. Absent such a finding and majority, a July 1 effective date would raise the question of whether the bill or the legislature provisions of the Constitution of 1970 became effective first on July 1, 1971. It would be desirable to avoid that conundrum.

A bill signed by the Governor before July 1, with a post-July 1 effective date, would be a "law" and would therefore seem to gain the benefit of the literal language of the saving clause (which does not apply to bills) of Section 9 of the Transition Schedule of the Constitution of 1970. See Gaylord v. Beckett, supra (concurring opinion). The report of the Committee on Style, Drafting and Submission is silent regarding the intention of the saving clause and the matter was not the subject of recorded debate on the floor of the Convention; it seems fair to assume, however, that the delegates were not necessarily attempting to provide for anticipatory legislation when they adopted the saving clause. Rather, the

clause seems clearly to have been intended generally to preserve all existing non-repugnant laws, etc. In Gaylord, however, the bill was signed before the 1963 Constitution became generally effective and two justices relied, at least in part, on the saving clause to sustain the bill.

A bill signed after July 1, would not be covered by the language of the saving clause. A post-July 1 signature, however, would seem to enhance the validity of the bill by withholding, until the Constitution of 1970 is in general effect, the necessary step by which a bill passed in anticipation of that Constitution becomes law. After July 1, 1971, the provisions of Article IV, Section 9 of the Constitution of 1970 regarding the Governor's approval or veto of bills will apply to all such action by the Governor, including action on bills passed at the 1971 regular session of the General Assembly. This seems to indicate an intention on the part of the Constitutional Convention to provide for a bridging of the July 1, 1971 effective date through the enactment of legislation before July 1 and the consideration by the Governor of such legislation after July 1.

7. The Bills probably should, in their preamble, recite that they are being adopted in anticipation of the effective date of the Constitution of 1970. Such Bills should be signed by the Governor after July 1, 1971, It would probably be desirable to have a message from the Governor in connection with his signature adopting the theory of anticipatory enactment referred to in the preamble to the Bills.

APPENDIX E

June 15, 1971

FILE NO. S-[illegible]09

CONSTITUTION:
ARTICLE IV, Section 8 (d) : Section 9

The Honorable Richard B. Ogilvie
Governor
207 State House
Springfield, Illinois 62706

Dear Governor Ogilvie:

I have your letter of May 19, 1971, as follows:

"I would appreciate receiving the benefit of your opinion as to the effect of Section 9, Article IV of the Constitution of 1970, in terms of its application to legislation enacted by the General Assembly prior to July 1, 1971.

I direct your attention to the following specific questions:

1. Does the requirement of Section 9 (a) concerning presentment to the Governor within 30 calendar days after passage of a bill require that legislation be presented to the Governor 30 days from July 1, 1971 when the provision itself becomes effective or does it require presentment of bills 30 days after the actual date of the bill's passage even if it occurred prior to July 1, 1971?

2. As to bills presented to the Governor prior to July 1, 1971 and still held by him on the effective date of the new Constitution, is the terminal date of the Governor's action to be measured by the Constitution of 1870 or by 60-day rule of

Section 9 (b) of the Constitution of 1970? If, in your opinion, the 60-day rule of the 1970 Constitution does apply, are the 60 days to be counted from the actual day of presentment or from the effective date of the new Constitution?

3. With respect to bills passed prior to July 1, 1971, but considered by the Governor on or after that date, may he exercise the powers of review vested in him under Section 9 of the Constitution of 1970, or are his powers limited to those set forth in Article V, Section 16 of the Constitution of 1870?

4. If, prior to July 1, 1971, the Governor returned a vetoed bill to the General Assembly and the General Assembly was still then in session, but subsequently recessed or adjourned prior to July 1, 1971 without having taken action with respect to that veto, do the provisions of Section 9 (c) apply? If so, is the 15 calendar day period to be measured against the day on which the veto message was first journalized or is it measured from July 1, 1971, the effective date of the new Constitution?

5. Under the provisions of Section 9(e), do the 30-day rule concerning presentment and the 60-day rule concerning the Governor's review apply to a bill which is presented to the Governor for certification that the action of the General Assembly conforms to his recommendations?

6. As a general matter, I would appreciate your opinion as to whether the time periods identified in Section 9 are to be measured beginning the count with the actual date the event occurs or with the first full calendar date after the day of the event.

I would also appreciate your construction of Section 8 (d) which requires the Speaker of the House and President of the Senate to sign each bill that passes both houses certifying that procedural requirements for passage have been met.

Specifically, I request your opinion on the question whether this provision must be satisfied in the form of bills presented to the Governor after June 30, 1971, even though the bill passed both houses prior to July 1, 1971. If so, will the signatures alone satisfy this requirement or will specific wording of certification be necessary?

Thank you for your continuing courtesies."

At the outset the rules for construction of the Constitution, as stated by the Illinois Supreme Court, should be noted. In the People v. Crawley, 274 Ill 139, 142, the Court said:

"* * * * * The general principles governing the construction of constitutions are the same as those that apply to statutes. * * * * * * In construing constitutions, as with statutes, the chief purpose is to give effect to the intent of the makers. * * * In seeking such intention we are to consider the language used by the legislature, the evil to be remedied and the object to be attained. We are not confined to the literal meaning of the words. A thing within the intention is regarded within the statute though not within the letter. A thing within the letter is not within the statute if not within the intention. When the intention can be gathered from the entire document, words may be modified or altered so as to obviate all inconsistency with such intention. When great inconvenience or absurd consequences will result from a particular construction the courts are bound to assume that such consequences are not intended. *"

In Graham v Dye, 308 Ill 283, 286, the Court said:

The Honorable Richard B. Ogilvie

"* * * * *The intent and meaning of the constitution are to be determined from the language used in its provisions. We said in People v. Stevenson, 281 Ill. 17: 'As a constitution is dependent upon adoption by the people, the language used will be understood in the sense most obvious to the common understanding. The language and words of a constitution unless they be technical words and phrases, will be given effect according to their usual and ordinary signification, and courts will not disregard the plain and ordinary meaning of the words used, to search for some other conjectural intention.' In City of Beardstown v. City of Virginia 76 Ill. 34, the court said, in the construction of the meaning of constitutional provisions the intent is determined from the meaning of the words used, and that when words have a definite meaning it is not allowable to go elsewhere in search of conjecture or resort to subtle or forced construction for the purpose of limiting or extending their meaning and effect.

* *

In People v. Barrett, 370 Ill. 478, 480, the Court said:

"* *'

* * * * * * * * * *It is a well-recognized canon of constitutional construction that the chief purpose sought to be attained is the intention of its framers. In seeking such an intention courts are to consider the language used, the object to be attained or the evil to be remedied. Where the constitutional provisions are not applicable, no limitation exists upon the legislative body. In the construction of the constitution courts should not indulge in speculation apart

from the spirit of the document, or apply so strict a construction as to exclude its real object and intent. *

* *"

The Constitution of 1970 provides:

ADOPTION SCHEDULE
Section 1

"Except as otherwise provided in Section 1 of the Transition Schedule, this Constitution, if approved by the electors as provided by the Constitution of 1870, as amended, shall take effect on July 1, 1971, and the Constitution of 1870, as amended, shall thereafter be of no force and effect except to the extent that the contingencies provided for in Section 6 of this Adoption Schedule may require."

ARTICLE IV (The Legislature)
Section 8:

"(d) *

* *

The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met."

Section 9:

"(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law.

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall be come law.

(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

(e) The Governor may return a bill together with specific recommendations for change to the house

> in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bills shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated."

Under Section 1 of the Adoption Schedule, above quoted, any action by the Legislature or the Governor or any time limitations or requirements pertaining to legislation or bills is to be determined by the Constitution of 1870 up to July 1, 1971, and as of that date, to be determined solely by the Constitution of 1970. Based on this conclusion and interpretation, I have the following views on your questions.

The answer to question number 1 of ARTICLE IV, Section 9 (a) requires that a bill passed prior to July 1, 1971, not theretofore presented to the Governor, must be presented to the Governor within 30 calendar days after its passage.

The answer to question number 2 is the provisions of ARTICLE IV, Section 9 (b) of the Constitution of 1970 apply to any bills presented to the Governor less than 10 days (Sundays excepted), prior to July 1, 1971 and still held by him on that

date. This means that the Governor has 60 calendar days within which to return the bill after it is presented to him which also means that such 60 days are to be counted from the actual day of presentment of the bill to the Governor. The reference herein to the ten-day period arises from the requirement of Article V, Section 16 of the 1870 Constitution.

The answer to question number 3 is the provisions of Article IV, Section 9 of the Constitution of 1970 applies.

The answer to question 4 is that the provisions of Article IV, Section 9 (c) apply to all vetoed bills returned by the Governor to the General Assembly on or after July 1, 1971 and, as hereinafter noted, to a limited extent to certain bills returned by the Governor prior to July 1, 1971. The Constitution of 1870 applies with respect to all vetoed bills returned to the General Assembly up to July 1, 1971 insofar as action of the General Assembly is concerned up to that date. As of July 1, 1971, the provisions of Section 9 (c) of the Constitution of 1970 would apply to any General Assembly action on any vetoed bills then pending and undisposed of in the General Assembly. The fifteen calendar days would in any event be computed from and including the day after

the Governor's objections are entered in the journal of the originating house.

The answer to question number 5 is the time limits prescribed in ARTICLE IV, Section 9 (a) and 9 (b) apply as well to a bill presented to the Governor for certification under Section 9(e). It is noted Section 9 (e) provides that when the bill is returned by the Governor to the originating house with specific recommendations for change it shall be considered in the same manner as a vetoed bill except that the specific recommendations may be accepted by a vote of the majority of the elected members to each house. Section 9 (e) further provides that such bills shall be presented again to the Governor for his certification whereupon it shall become law, or if he does not certify, he shall return the bill as a vetoed bill to the originating house. Since Section 9 (e) provides that the bill shall be presented again to the Governor, and since Section 9 (a) and 9 (b) both provide for time limits after a bill is "presented" to the Governor, it is evident that such time limits likewise apply to a bill returned and presented to the Governor pursuant to Section 9 (e) and to the Governor's action thereon with respect to certification.

The Honorable Richard B. Ogilvie

The answer to question number 6 is the time periods specified in ARTICLE IV, Section 9, are to be measured commencing with the calendar day following the day on which the event occurs. It is observed that the language in Section 9 in connection with and immediately following the periods of time specified uses the word "after". In Webster's New International Dictionary, 2nd Edition, Unabridged, "after" is defined as:

> "subsequent to; following the expiration of; in legal consideration where a time is expressed as to be computed, as an act as to be done, after a certain date, the word after is judicially construed as not intended to include the day or period governed by the word after; thus 30 days after April 1 would include the period beginning with April 2d and including May 1st; two months after July would include all of August and September; 10 days after sight of a draft would include ten days subsequent to, and not including, the day of its presentation. But the word may be construed to include the day or period referred to, as where this will plainly give effect to the intention of the user, as in a devise or a statute to subserve public policy, avoid a forfeiture, etc."

In Ballentine's Law Dictionary, Third Edition, "after" is defined as:

> "Behind; later in point of time. Where an act is to be performed within a specified period "after" a day named, the general rule is to exclude the day designated and to include the last day of the specified period. 52 Am 31st Time § 27."

The answer to the final question is the provisions of ARTICLE IV, Section 8 (d) apply and require the Speaker of the House and President of the Senate to sign each bill that passes both houses certifying that the procedural requirements for passage have been met for all bills that are passed on or after July 1, 1971, and all bills that are passed prior to July 1, 1971, which have not been signed by the Speaker and President as of July 1, 1971, in accordance with the requirements of ARTICLE IV, Section 13 of the Constitution of 1870. ARTICLE IV, Section 8 of the Constitution of 1970 expressly provides that each bill that passes both houses be signed by the Speaker of the House of Representatives and the President of the Senate. That portion of Section 8 reading "to certify that the procedural requirements for passage have been met" does not require that an express statement to such effect be signed. Section 8 does not clearly and expressly say this is required. It says that the officers shall "sign each bill". It does not say that they shall sign a certificate or that they shall certify. It provides, as I interpret it, the effect of their signing of a bill.

The Honorable Richard B. Ogilvie

It is my opinion that only signing of each passed bill by the Speaker and President is required and that no specific wording or certification is necessary.

Very truly yours,

ATTORNEY GENERAL

APPENDIX F

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706
June 16, 1971

FILE NO. S-310

CONSTITUTION:
77th General Assembly
Continuous Body

Honorable Cecil A. Partee
President Pro Tempore
Illinois State Senate
State House
Springfield, Illinois

Honorable W. Robert Blair
Speaker, House of Representatives
State House
Springfield, Illinois

Dear Senator Partee:
Dear Mr. Speaker:

Senator Terrel E. Clarke, Assistant Minority Leader, has asked the following question:

> "Is the 77th General Assembly terminated on the day the 1970 Constitution takes effect, July 1, 1971, or does Section 9 of the Transition Schedule of the Constitution of 1970 permit the 77th General Assembly to function as a continuous body until the Second Wednesday of January, 1973?"

Honorable Cecil A. Partee and
Honorable W. Robert Blair

This is a question of importance which involves both the on-going nature of the General Assembly under Article IV and the broad effects of the Schedules.

My judgment is that the 77th Illinois General Assembly is not terminated on July 1, 1971. Section 9 of the Transition Schedule clearly permits the 77th General Assembly to function as a continuous body until the second Wednesday of January, 1973, at which time the 78th General Assembly shall convene.

Consequently, the 77th General Assembly may, for example, recess prior to July 1, 1971, by adjournment to a time certain after June 30, 1971, should it feel appropriate.

Additionally, the 1970 Constitution requires the 77th General Assembly to convene anew on the second Wednesday of January, 1972.

The obvious and traditional purposes of a schedule in a new constitution are to provide for an orderly transition from the old constitution, and to establish temporary regulations for the interim until new machinery and proceedings are

constructed. Such purposes are abundantly evident in the Transition Schedule and Adoption Schedule of the 1970 Illinois Constitution.

Section 1 of the Adoption Schedule provides:

> "Except as otherwise provided by Section 1 of the Transition Schedule, this Constitution, if approved by the electors as provided by the Constitution of 1870, as amended, shall take effect on July 1, 1971, and the Constitution of 1870, as amended, shall thereafter be of no force and effect except to the extent that the contingencies provided for in Section 6 of this Adoption Schedule may require."

This language in no way suggests that the authority, rights and duties of the 77th General Assembly, initially assumed under the 1870 Constitution, terminate on July 1, 1971.

It is, rather, the necessary effect of the Schedules and 1970 Constitution to repeal, alter or modify General Assembly authority, rights and duties, and procedures only to the extent inconsistent with the new constitution. This is clarified by Section 9 of the Transition Schedule, providing for a general transition:

> "The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of

> court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. * * *"

The 77th General Assembly, being a "public body", cf., 1970 Ill. Const., Art. IV, Sec. 5 (a), retains all rights and duties which it has under the 1870 Constitution, unless changed by the 1970 Constitution. Thus, unless so changed, the 77th General Assembly may continue to function, with the right to adjourn to a time certain, after June 30, 1971. Cf., Opinions of Ill. Attorney-General, 1966, pp. 186, 189 (annual sessions; adjournment to a time certain).

No language in the 1970 Constitution requires termination of the 77th General Assembly on July 1, 1971. To the contrary, Article IV, Section 5 (a) expressly permits a continuing session:

> " * * * The General Assembly shall be a continuous body during the term for which members of the House of Representatives are elected."

This provision "constitutionally mandates that the General Assembly shall be a continuous body during each two year term of the House of Representatives." Committee on Legislative Article Majority Report, p. 68, Sixth Illinois Constitutional Convention (1970).

The 77th General Assembly convened in January, 1971. It shall be and remains a continuous body during the constitutional term of House members elected thereto, i.e., until the 78th General Assembly is convened on the second Wednesday of January 1973.

It must be emphasized that, whatever the decision of the 77th General Assembly as to continuing the session after June 30, 1971, the 1970 Constitution, Art. IV, Sec. 5(a) additionally requires that Assembly to convene anew on the second Wednesday of January, 1972:

> "The General Assembly shall convene each year on the second Wednesday of January. * * *"

This provision "commits Illinois to annual sessions through providing that the General Assembly shall convene each year on the second Wednesday of January . . ." Committee on Legislative Article Majority Report, p. 68, Sixth Illinois Constitutional Convention (1970).

It "implicitly states that all legislation introduced in the first year of the two year term shall carry over to the second year." Id., at p. 69.

Honorable Cecil A. Partee and
Honorable W. Robert Blair

Article IV, Sec. 5 (b), further, provides for special sessions called by proclamation by either the Governor or presiding officers of both houses in the event the General Assembly has adjourned. Joint proclamation by the presiding officers must issue as provided by law.

The 1971 organization of the 77th General Assembly shall continue as established in January, 1971, until the 78th General Assembly is convened in January, 1973. 1970 Ill. Const., Art. IV, Sec. 6 (b); Committee on Legislative Article Majority Report, p. 74, Sixth Illinois Constitutional Convention (1970).

The 77th General Assembly may on June 30, 1971 adjourn to a time certain in 1971 or 1972. It must convene on the second Wednesday of January, 1972. This Assembly shall function as a continuous body until the second Wednesday of January, 1973.

Very truly yours,

ATTORNEY GENERAL

cc: The Honorable Richard B. Ogilvie
Governor
Honorable Paul Simon
Lieutenant Governor
Honorable Clyde L. Choate
Minority Leader
Honorable Terrel E. Clarke
Assistant Minority Leader

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1 November 1979

SOME COMMENTS made to the panel reviewing the attached paper:

This paper is primarily a compilation of constitutional amendments reported. Time did not permit intensive analysis of the exact meaning and impact of each within its political jurisdiction. This kind of effort is useful only in identifying broad trends and suggesting topics for further research. My experience has highlighted certain problems in dealing with data of this kind:

1. Amendments vary widely in their significance

This is obvious, of course, but needs continual stressing in works of this sort. For example, an amendment may revamp an entire article--say, the judiciary; it may embrace the Missouri Plan rejecting popular election, adopt unification, establish a commission on judicial qualifications, and abolish jps. Or it may authorize the legislature to exempt from ad valorem taxation commercial shrimping and oyster boats using diesel fuel. In compilations both of these count the same.

2. Adoption Rates have utility---but not a lot

A comparison of amendments proposed with those finally adopted by the people produces an adoption rate. This might be 71.7% in one period and 65.2% in another. Such figures reveal very little and must be used carefully. For examples:

Kansas in 1972--revised its executive article, including joint election of governor and lieutenant governor, eliminated the latter from the legislature, and increased terms to 4 years
--revised its judiciary article, including unification and the Missouri Plan
--removed the prohibition against transportation of convicted persons outside the state

All approved: adoption rate 100%

Wyoming in 1976--repealed a prohibition against any female and any boy under 14 from working in the mines
--eliminated annual census of school children
--authorized the building of a prison for men at Rawlings and for women at any convenient spot

All approved: adoption rate 100%

New Hampshire in 1970--required declaration by civil officers to support the constitutions of the U.S. and New Hampshire
but rejected
--annual sessions
--4-year terms for executive officers
--compensation commission for the legislature

Adoption rate: still 25%

I realize that this is anecdotal and not statistical but it still suggests a problem with this measurement.

3. Watch the local amendments

Several states have this practice although Georgia is by far the worst practitioner. Statewide amendments in Georgia would still include:

—authority to create a public facilities authority for the city of Conyers
—the creation of a downtown Americus authority
—transfer of all existing public library systems, facilities and services located in any county of 600,000 or more to a countywide library system.

A local example:

—to amend the constitution so as to increase the civil jurisdiction of justices of the peace in Lanier County from $200.00 to $500.00

4. You can't always tell what's important

Reading cold print far from the political scene may mislead the reader. For example, I noticed that an initiative petitioned amendment to bar the use of "leghold traps" was on the ballot in Ohio—subsequently voted down. I assumed that this must have been the pet project of a fringe group and was handily voted down. However, talking with an Ohioan later I learned that this was the "most divisive issue in Ohio next to Mayor Kucinich." Evidently it divided rural and urban and stimulated the expenditure of great amounts of money on both sides.

5. Things not passed are important too--but watch initiatives

Any review of constitutional change should include not only what was accepted but what was not. Defeated change may indicate directions not favored by the people or it might be a harbinger—like an occasional Supreme Court dissent--of things to come. But take care, particularly with initiative petitions. Generally it takes only about 10% of the qualified voters to get something on the ballot. I suspect you might normally get 10% of 12-year-olds to vote to abolish Christmas. For example, in this paper on page 32—the section on taxation and finance—I have the sentence: "...In Montana, a draconian measure, initiative inspired, carried not only a flat limitation of $375 million per biennium through fiscal year 1983 but would have ordered a 15% reduction in the amount of federal aid received each year until 1984, after which no further aid could be accepted." After writing this I was troubled and put through a call to Montana's secretary of state. That amendment was overwhelmingly defeated, gathering barely 30% of the vote, obviously a product of a fringe group and suggesting little about current or future thinking in Montana.

Note: I am sure there are numerous errors in the paper. One which has been noted is on page 31, footnote 38a. Texas did not approve the amendment setting the two-thirds rule. Another error is on page 37: Pennsylvania did not vote on, much less approve a provision to submit the question of calling a con con every ten years.

TRENDS IN STATE CONSTITUTION-MAKING
1973-78

John P. Wheeler, Jr.
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Southern Political Science Association
Gatlinburg, Tennessee
1 November 1979

INTRODUCTION

Two developments stand out in the history of state constitutional development during the six year period 1973-78. First, the single most dramatic, if not most significant, event occurred in California on 6 June 1978. Voters approved item Number 13 in a list of propositions submitted to referendum, and in so doing sent "shock waves" through American politics, giving impetus to the drive to amend the U.S. Constitution and inspiring and encouraging efforts to bring about similar changes in other state consitutions. California's imposition of stringent restraints upon the state's property taxing power signalled the success and may have indicated a pause in the drive clearly evident since Baker v. Carr[1] and perhaps from the Kestnbaum Commission Report[2] to make the states more effective, more active units of government, and more viable parts of an integrated federal system.[2a]

Reform of the judiciary stands out as the other principal characteristic of the period. Although the leading elements in the reform package--except perhaps for commissions on judicial qualifications--have long been parts of the reformer's bundle, the intensity and breadth of change during the brief period is highly significant. Of course, the executive and, to a lesser extent, the legislative branch continued to receive attention but the pace of constitutional change considerably slowed. Having concentrated upon the governorship in an earlier day and upon the

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[1] 369 U.S. 186 (1962).

[2] Report, Commission on Intergovernmental Relations, June 1955.

[2a] Author's note: Last minute reflection makes me suspect that I am guilty of hyperbole with this statement. The evidence from so short a period and from so few cases is not now as convincing as it first seemed. While some other states went in the same direction as California none seems to have gone so far.

legislature during the late 1960s, the electorate may have been poised to consider the third of the great triumvirate during the 1970s.

The great activity in the areas of suffrage and elections did not reflect creative effort and positive change but a mopping up operation after the federal onslaught by constitutional amendment, statute, and court decision. Some state action preceded federal reduction of age and destruction of residence requirements but most action came later. Changes in state bills of rights reflected some state acceptance of equal rights amendments where the nation had not. Constitutional action in regard to local government--outside financial concerns--was important only in a limited number of states. And miscellaneous amendments and provisions gave recognition of emerging problems and concerns but did not promise exciting new initiatives. Generalization is always dangerous but these impressions seem supportable.

The purpose of this paper is primarily to summarize and report and secondarily to analyze the constitutional activity at the state level during the six-year period 1973-78. This is a modest effort to continue the inquiries made first by W. Brooke Graves[3] covering the quarter of a century through 1965 and carried through 1972 by Albert L. Sturm.[4] Its data are two revisions[5] and 841 amendments offered to voters in referenda by the legislature, by constitutional convention, and through initiative

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[3]"State Constitutional Law: A Twenty-Five Year Summary," William and Mary Law Review VIII (Fall, 1966), pp. 1-42.

[4]Trends in State Constitution-Making:1966-1972, Lexington, Kentucky: The Council on State Governments, 1973.

[5]Louisiana (1974) and Texas (rejected 1975). A number of references will also be made to earlier revisions, particularly Montana (1972), North Dakota (1972), and Illinois (1970).

petition.[6] The presentation will follow the pattern set in the earlier studies and not the order of relative importance, in terms of changes made, of the areas covered.

THE BILL OF RIGHTS

Civil liberties did not attract heavy attention in the period covered. Perhaps this is influenced by a popular but mistaken notion that the Federal courts have preempted the field and little remains for the states. Indeed some of the few changes in this section--as in the section on suffrage and elections--simply duplicated or adapted federal provisions or rulings.

Anti-discrimination Provisions

The most significant activity involved proposals to bar discrimination based on sex, the popularly tagged "equal rights amendments." Sixteen states constitutions now contain such explicit anti-discriminatory provisions, Connecticut and New Hampshire in 1974 and Massachusetts in 1976 being the last to join the group. Colorado turned back an initiative petition amendment challenging its 1972 equal rights amendment. Meanwhile four states rejected proposals--Florida, New York, New Jersey, and Wisconsin. An interesting footnote to this question is suggested by actions in New Mexico and Hawaii, both of which have had equal rights amendments since 1972. Both passed more specific amendments, Hawaii barring sex-based discrimination in public educational institutions and New Mexico banning such action in regard to qualifications for holding office and for enjoying a veteran's property tax exemption.

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[6] The first 8 amendments, all rejected, from Florida's unique Constitutional Commission will also be considered.

Utah (1896) and Wyoming (1890) entered the Union with provisions barring sex discrimination. In the early 1970s, Virginia, Montana, Illinois and in 1974[7] Louisiana adopted provisions as part of thoroughly revised documents, and Alaska, Connecticut, New Mexico, Pennsylvania, Texas and Washington adopted amendments. A similar provision was in North Dakota's defeated revision of 1972.

Four states with equal rights provisions are among the fifteen which have not approved the proposed amendment to the U.S. Constitution. Actually the existence of a state provision has been used in some states as justification for opposing the national change.

Equal rights amendments seem to promise some coverage beyond the anti-discriminatory restrictions of the U.S. Constitution and federal law. Other state moves against discrimination are likely only to duplicate federal protections or to remove provisions now invalidated by federal actions. Florida in 1974, for example, banned discrimination based upon physical handicaps.[8] Others have endorsed due process clauses referring specifically to race, color, creed and ethnic origin. Mississippi. Oklahoma, and Missouri have removed provisions calling for racially segregated schools. Tennessee dropped its ban on public funding for schools which integrate and its archaic and obsolete bar to intermarriage. Massachusetts now constitutionally prohibits the assignment of any student to any school on the basis of race, color, creed or ethnic origin, and

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[7]The document clearly bars racial discrimination. However, in regard to sex discrimination it is far less clear. It reads: "No law shall arbitrarily, capriciously or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition or political ideas or affiliations." And later another provision uses "arbitrary, capricious, or unreasonable" in referring to discrimination on grounds of age, sex, or physical condition concerning access to public areas, accommodations and facilities.

[8]See also note 7 above.

whether a civil liberty or not, Colorado, through an initiative petition, endorsed an anti-bussing amendment in 1974.

Some states took action to remove language bias from their documents. California converted masculine references to neuter ones, and Nevada excised a reference to "female electors." Hawaii took similar action in 1978. Women escaped a bit of type-casting but lost a guaranteed job when Mississippi repealed the requirement that the state librarian be a woman.

The right to privacy received further support in Louisiana's new constitution and, in 1978, in Hawaii, bringing to five the number of constitutions now giving explicit recognition. Montana's revised constitution contained a statement, and previously Alaska and California had recognized the right. Two proposed constitutions which failed of adoption--in Delaware and North Dakota--also contained a provision on privacy.

"Environmental" Rights

Some new ground is being tentatively tested as a result of increasing concern with environmental matters. Hawaii in 1978 approved a number of amendments concerning the environment, including one which states the rights of persons to a healthful environment and providing the right to sue, subject to regulation by law, to enforce that right. Massachusetts earlier (1972) had authorized eminent domain proceedings to protect the people's right to clean air and water.

Bearing Arms

In 1978, Idaho reinforced the right of its citizens to keep and bear arms and banned any effort to confiscate, license, register or to tax specifically firearms or ammunition. New Mexico moved in the same direction but not quite so explicitly. Meanwhile New Hampshire, in 1978,

refused to guarantee to all persons the right to bear arms in defense of self, family, property and state.[9]

Procedural Rights

Some states are tampering with the jury and some with the procedural right of indictment. The traditional common law jury of twelve had taken shape in England at least by the twelfth century and its antecedents can be traced through the Normans to European origins.[10] Yet the traditional twelve now is questioned. In 1972, Arizona authorized the legislature to fix the size of civil juries, Connecticut authorized six-person juries in non-capital cases, and Michigan in cases in which the potential punishment is less than a year. Oregon authorized six as the minimum number in all cases, but New Mexico, in the only negative vote in the series, refused to go along. More recently, New Jersey and Rhode Island have approved the smaller number in civil cases while North Dakota has approved smaller numbers in all civil and non-felony criminal cases.[11]

The Fifth Amendment guarantee of indictment by grand jury is another of the few Federal rights not pressed against the states. Currently

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[9]Perhaps "leghold traps" are not arms but a majority of Ohio voters agreed after a bitter battle that they should not be constitutionally banned.

[10]"Many romantic explanations have been offered of the number twelve--the twelve tribes of Israel, the twelve patriarchs, and the twelve officers of Solomon recorded in the Book of Kings, and the twelve Apostles. Not all of these suggestions are equally happy; the first implies that there may be a thirteenth juror who has got lost somewhere in the corridor and the last that there is a Judas on every jury. It is clear that what was wanted was a number that was large enough to create a formidable body of opinion in favour of the side that won; and doubtless the reason for having twelve instead of ten, eleven or thirteen was much the same as gives twelve pennies to the shilling and which exhibits an early English abhorrence of the decimal system. . ." Sir Patrick Devlin, Trial by Jury, rev. ed. London: Stevens & Sons Limited, 1966, p. 8.

[11]In 1971 Pennsylvania approved non-unanimous decisions in civil cases.

twenty-eight states permit some or all criminal charges to be brought by the filing of an "information" against the suspect. New York, Oregon, Pennsylvania, and Rhode Island have most recently accepted this although each restricts the change to non-capital cases.

Other procedural rights faced restriction. In 1978, Michigan barred bail in cases involving violent crimes and Nebraska where specific sexual crimes are involved. Texas now denies bail to an accused who has been twice convicted of felony and is on bail when he commits another felony, a restriction that might not seem out of line to many. Georgians in 1978 reflected some evident annoyance with criminals with two amendments which authorize the legislature in criminal cases to impose additional penalties to help pay for law enforcement training and to compensate victims of crime.

SUFFRAGE AND ELECTIONS

This decade has produced a significant expansion of the potential electorates in the states. Unhappily perhaps this did not occur from pressure by internal state forces or through the rejection by state electorates of the old principle that those who hold political power are rather reluctant to share it. Rather the motive force for change has come from Congress and the federal courts. The points of attack were voting age and durational residence requirements.

Voting Age

Title III of the Voting Rights Act of 1970 set the minimum age for voting at 18 in all elections--federal, state and local. Title II required states to make special provision--regardless of state requirements--for voters in presidential elections to qualify 30 days before

the election. There were also liberal provisions for absentee voting.

Oregon and Texas hastily brought original jurisdiction suits in the U.S. Supreme Court against the Attorney General. A court badly divided sustained the legislation in regard to federal elections but struck down the provisions as they touched state and local elections.[12] Congress quickly arranged and passed the Twenty-sixth Amendment; the legislatures showing remarkable powers of reaction in view of their earlier inertia, responded with approval in record time--three months and seven days.

Between 1968 and 1978, thirty-four states considered a total of 49 amendments related to lowering the voting age, passing 30, defeating 19. Much of this activity was moot. Before 1970, only four states had voting ages lower than 21--Georgia and Kentucky at 18, Alaska at 19, and Hawaii at 20. Before the effective date of the XXVI Amendment, Kansas, Maine, Minnesota, Nevada, and Oklahoma had dropped the age to 18, Massachusetts and Montana to 19, and Nebraska to 20. Some states rejected bids to go to 18--Connecticut, Hawaii twice, and Michigan--while Colorado and New Jersey turned dow 19. Oddly some states turned down amendments after the adoption of the XXVI Amendment, and Tennessee changed its constitution finally only in 1978.

Residence Requirements

The attack on durational residence requirements came from two directions. First, the federal provision for voting in presidential elections forced the keeping of two sets of records, a nuisance for the

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[12] Oregon v. Mitchell, 400 U.S. 112 (1970).

states. Then, and more significantly, the U.S. Supreme Court cut them down.[13] Using the equal protection clause and the "compelling state interest" concept based upon it the Court ruled six to one that Tennessee's one year state and three-month county residency rules were unconstitutional. The requirements, in the Court's view, adversely affected two constitutional rights--to vote and to travel—and the state had not demonstrated that a "compelling state interest" justified interference. While the court set no firm guidelines as to what might be acceptable, it suggested that Tennessee's 30-day pre-election period for closing registration books seemed ample for completion of the state's administrative tasks. Subsequently Florida and Alaska through statute tried 75-day durational residency requirements only to see these struck down. The strategy shifted from durational residency requirements to questions of registration closing dates. The court with strong dissents accepted 50-day closing periods in Arizona[14] and Georgia[15] because of "special" conditions. However, only Arizona now requires the full 50 days and only two others shut the books more than 30 days before the election--New Mexico (42 days) and Colorado (32 days).

In 1966, thirty-two states set a one-year state residency requirement; only Mississippi demanded more, 2 years. Fifteen set the period at 6 months, and two--New York and Pennsylvania--3 months and 90 days respectively. At the precinct or district level requirements varied from a year (Mississippi) to 10 days, with 28 states opting for 2 months

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[13] Dunn v. Blumstein, 405 U.S. 330 (1972).

[14] Marston v. Lewis, 410 U.S. 679 (1973).

[15] Burns v. Fortson, 410 U.S. 686 (1973).

or less. By 1972, thirteen states had softened their requirements at the state or precinct level or both. Mississippi cut its limits to a year and six months. Six states cut state requirements from a year to 6 months and two--Vermont and Colorado--from a year to three months. Subsequently 14 states produced 16 amendments, moving to the thirty day requirement. Three of these failed of adoption. Other states adjusted by statute.

Other Developments

With the success of the federal actions states have been more inclined to facilitate registering and voting. Virginia has authorized the legislature to provide for absentee registration of persons temporarily outside the country by reason of employment. Before 1974, few states permitted registration by mail; now 22 do, although most of this has resulted from law, not constitutional change. Three states permit registration at the polls. One of the few retrogressive steps was taken in Ohio when voters by constitutional amendment overturned the state's new law permitting registration at the polls.

Maryland, in 1974, authorized the legislature to make provision for absentee voting. Persons on vacation will now be permitted to vote in Delaware, and those whose religious beliefs conflict with voting on a day designated for an election will have special arrangements made by Massachusetts. Connecticut has turned the whole business of registration and most of that of elections over to the legislature, and in the new constitutions the articles on suffrage and elections are among the shortest, vesting extensive discretionary authority in the legislature.

THE LEGISLATURE

> One of the most frequently recurring themes of the movement for legislative improvement has been the attempt to increase both the amount and the flexibility of time available to legislatures. This has been achieved in many States by such means as instituting annual rather than biennial sessions, relaxing constitutional restrictions on the length of sessions, giving the legislature the authority to call itself back into special session, imposing deadlines for the various stages of the legislative process so as to avoid logjams and, particularly in recent years, making greater use of pre-session periods. . . .[16]

This comment briefly summarizes one major aspect of the move for legislative reform which has been underway since the early 1960s. Most of the specific elements noted were characteristic of the particular period under review. Other elements in the reform collection centered on legislative size, reapportionment machinery, and the working conditions of legislators.

Annual Sessions

In 1967, only 21 states provided constitutionally for annual sessions; in five of these the odd session was restricted to budgetary matters. By 1973, the number had grown to 36, with four placing restrictions on the second year's meeting. By 1978, the number was 37 with four maintaining restrictions to budget matters. So the number of states holding to biennial sessions continues to shrink but resistance is firm among the holdouts. Since 1972, seven states have considered the move to annual sessions, only three have made it--Alabama, Maine, and North Dakota, the latter authorizing the legislature to meet for 80 days anytime during the biennium and not necessarily consecutively. Kentucky

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[16] The Book of the States, 1974-1975, Lexington, Kentucky: The Council of State Governments, 1974, p. 55.

and Texas once and New Hampshire twice rejected amendments to change. Montana established annual sessions in its revised constitution only to revert to biennial sessions two years later when the voters approved an amendment via the initiative petition route.

However, a word of caution is wise here--as is often the case with constitut onal provisions. The lack of authority for annual sessions has not kept all states so restricted from meeting annually. Eight of the 13 states formally without annual sessions managed to meet each year of the biennium 1975-76, either by informal adjustments of the regular sessions or by lengthy special sessions.

Special Sessions

Iowa in 1974, New York in 1975, and Oregon, after previously voting down a proposal, in 1976 approved amendments allowing the legislature to call itself into special session without gubernatorial involvement. This brings to 27 the legislatures with that authority, up from 15 in 1967 and 25 in 1972.[17]

Nine states currently require a two-thirds majority of each house to call a special session, five permit a majority to do so, four permit three-fifths, and four others allow a call by the presiding officers. Maine requires a majority vote of each party in each house. The only change attempted during the past few years failed; New Hampshire had sought to reduce the requirement for a call from two-thirds to a majority.

Session Length

Only North Dakota constitutionally changed the length of legislative sessions during this period. In 1976, it extended from 60 to 80 days the

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[17]Connecticut dropped the provision when it moved from biennial sessions to annual sessions.

time legislators might meet and specified that the days need not be consecutive during the biennium. It also authorized committees to function any time during the two year period. Eighteen states have no restriction on the length of sessions, and of those that do only ten specify limits in "calendar" rather than the more ambiguous and flexible "legislative" days. Presumably these restrictions do not bear as heavily as once thought for serious concern is being voiced about the future of "citizen legislators" in the face of increasing time demands upon them.[18]

New Hampshire called for an organizational meeting of the legislature prior to a regular session, and Maine, to narrow the "lame duck" period, moved the legislature's convening date to December from January.

Rules of Procedure

Procedural rule change by constitutional adjustment during this period was rare, and the few instances are relatively insignificant. Nevada now permits the legislature to utilize the consent calendar. Nebraska modified veto provisions to allow the legislature to line item override the governor's line item vetoes, but refused to eliminate the archaic rule that every bill be read at large before vote on final passage.

Legislative Powers

The ~~signal~~ simple event of this period in regard to expansion of legislative powers has to be the remarkable accomplishment of Louisiana. Long a pariah among pariahs, the example constantly dragged out by reformers to show the end toward which too many others tended (when all knew it was sui generis), the Louisiana constitution had reached, by 1974, the

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[18]See The Book of the States, 1978-79, p. 5.

appalling length of more than a quarter of a million words. Length alone, of course, is no conclusive measure of the quality of a fundamental law[19] but when it reaches far beyond the bounds of reason there is little risk in making the judgment. Louisiana, in 1974, legislated by constitutional amendment. From 1968 through 1972, Louisiana voters faced 145 amendments referred to them--78 of statewide application but all voted on statewide. In 1976, they faced none, and in 1978 only one. The constitutional convention had pared the document to about 35,000 words--still a lot by comparison with other state constitutions--but back within the bounds of reason. Whatever legislative power Louisiana grants is now back in the legislature.

But the grant of power is far from complete. Take taxation, for example. Not only is legislative action restricted to every other year, but a two-thirds majority of the elected members is required to levy a tax, increase an existing tax, or repeal an existing exemption. "This may be offensive to the purist political scientist, but it is better than legislating by constitutional amendment."[20]

Another matter, not involving Louisiana at the moment, may promise expansion of a traditional role of legislatures--oversight of the administration. The growth in bureaucracy and the concommitant growth of rule-making have stimulated public concern and legislative reaction. So far by statute, a number of states have given legislatures the power to intervene in administrative action by suspending or disallowing rules.

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[19]See Frank P. Grad, The State Constitution: Its Function and Form for Our Time, New YOrk: National Municipal League, reprint from Virginia Law Review, June 1968.

[20]Cecil Morgan, "A New Constitution for Louisiana," National Civic Review LXIII (July, 1976), p. 350.

Connecticut has the most stringent law, not only allowing a committee to suspend a rule but creating a bar to its implementation unless the whole legislature overrules the committee. No state yet has given this practice constitutional status, but the question has reached voters in constitutional referenda in Florida and Missouri.

Legislative Terms

Terms for representatives have remained unchanged for nearly three decades. Only four states--Alabama, Louisiana, Maryland and Mississippi--allow house members 4-year terms. The only state to attempt a change recently was Georgia in 1978. Prior to that the latest attempts were in Florida in 1970 and again Georgia in 1968. The Model State Constitution and most reform advocates call for a longer term than two years but two years seems to be the rule. Thirty-eight states grant senators 4-year terms, the exceptions being the six New England states and Arizona, Georgia,[21] Idaho, New York, North Carolina and South Dakota. The last change in senatorial terms took place in New Jersey in 1970. Three states including New Jersey have devised a scheme for securing effective reapportionment of their senates as soon after a decennial census as possible. All senate seats in New Jersey were up for election in 1972 and will be every ten years thereafter, providing two 4-year terms and one 2-year term each decade. Illinois follows a variation of this scheme. Montana senators will draw lots after each census to determine which half will serve a 2-year term.

Size of Legislatures

The upheavals in size of legislatures precipitated by the

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[21]The Georgia amendment which failed in 1978 provided 4-year terms for members of both houses.

reapportionment turmoil have largely subsided. The only significant change in size was promised in Massachusetts by an amendment in 1974, the lower house dropped from 240 to 160 after the 1978 elections. Other than that the drop from 102 to 100 in North Dakota's house is the only change to note.

Recently, New Mexico constitutionally froze its legislature at its present size, 42 senators and 70 representatives. Vermont adopted 150 with single-member districts to be determined by the legislature. New Hampshire's effort to increase its senate from 24 to 36 failed, as did South Dakota's move to reduce its house from 75 to 70.

Despite the numerous changes in legislative size over the past 12 years the totals have remained fairly stable. In 1967, there were 5,632 members of the 49 lower houses, an average of about 115. With Massachusett's decrease there will now be 5,501, an average of 112. The range has changed slightly from 35-400 to 40-400 with the median remaining at 100. During the same period Senates have changed little, from a total of 1983 to 1981; ranges only inched upward from 18-67 to 20-67, and average senate size remained the same, a bit above 39.

Legislative Salaries

Opinion polls generally show that American legislatures occupy a low rung on the public's ladder of social endorsement. Treatment of amendments and other constitutional efforts aimed at improving the financial lot of legislators give further evidence of this attitude, at least in some states.[22] Eight states set legislative salaries in the bedrock of constitutional language. Nebraska twice recently refused

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[22]Legislative compensation in many states has improved considerably in the 1970s.

to accept amendments giving legislators $675 a month, a rise from $400, but finally allowed them to receive some allowances for per diem expenses. Rhode Islanders rejected a salary of $2,000 which was coupled with a provision that future changes could be made by law with voter approval. New Hampshire's long-standing constitutional salary of $200 remains firm despite a bid to establish legislative pay at the level of the lowest paid employee in the state's classified service.[23] In 1976, North Dakota voters reaffirmed their support of the existing constitutional pay of $5 a day. Legislators in Texas tried an interesting approach to get a raise, but it probably was not planned. Undaunted at having failed to get approval through amendment for $8,400 a year, they came back in 1973 with an amendment calling for $15,000. That failed too but perhaps softened the public to give them $600 a month in 1975.

It is interesting to note that total biennial compensation averages $8,888 in the eight states in which salaries are set in the constitution and $23,660 in the others.

Yet even in most of the states which are not constitutionally limited legislators are often reluctant to increase their salaries. Their fear of political retribution from unsympathetic voters is usually well founded. The compensation commission has been developed both to get around this obstacle and to provide a more rational basis for determining the proper level of pay. Twenty-six states--seven through constitutional action--have set up commissions. The great majority are advisory only, but some, principally those constitutionally based, require legislative action. Idaho and Maryland, for examples, require positive action for

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[23]To add insult to injury voters even refused to permit a change in the deadline date for paying mileage!

the legislature to reject; no action means acceptance. It takes a two-thirds vote of each house in Michigan to reject commission recommendations. Only Oklahoma though accepts commission findings as final and binding. Idaho, Washington, and Hawaii are recent adopters of the system through constitutional amendment. North Dakota twice, and Arkansas, California, and New Mexico have turned down the system.[24]

THE EXECUTIVE

Reform of the executive continued in the traditional pattern although the pace of change eased, as might be expected, during 1973-78. Executive branch reorganization including the shorter ballot, longer terms for governors with increased possibilities for reelection, the tying together of governor and lieutenant governor on the ballot characterized the constitutional changes.

Executive Branch Reorganization

The long term process of executive reorganization set off by Michigan's comprehensive restructuring in 1965 continues. By 1978, twenty-one states had undergone major executive branch reorganization. Much of this activity has been legislative and occasionally executive in origin. However, there are constitutional implications. Constitutions and amendments have mandated reorganization by placing limits upon the number of departments which might be created or continue to exist. In 1972, Idaho and Missouri called for restructuring of their state administrations within 20 and 14 departments, respectively. Louisiana's new constitution set 20 as the maximum including departments headed by eight

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[24]Only in California, among these four, did the legislature currently have the unrestricted power to set salaries.

elected officials; legislation in 1975 established 19. Constitutions and amendments can also create and destroy specific offices and departments. The Louisiana constitution allows the legislature by a two-thirds vote to make appointive four of the currently elective positions. Oklahoma eliminated five positions by amendment in 1975; that action provided impetus for the creation of a 15-man Special Commission on the Reorganization of the State Government. Functional integration of the executive departments has been mandated by a 1978 amendment to the Hawaiian constitution.

The proposed Texas constitution which died in 1975 carried two unique features concerning reorganization. First, the governor was required biennially to report to the legislature on the organization and effectiveness of the executive branch, and the legislature in turn was directed to consider any bills on the subject the governor might submit. The other feature would have provided the first constitutional "sunset" provision since the document mandated lives of 10 years for state agencies unless renewed by law.[25]

The Shorter Ballot

At least since the turn of the century reformers have railed against the large number of elected officials at the state and local level. A large number allegedly offends both the voter's capacity to pass judgment on performance and sound management. Some chipping away continues overall, and a major step was taken by Oklahoma as it abdicated its hold on the most bloated ballot in the country in 1975. The steady trickle of change can be seen in the following figures:

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[25]"Sunset" laws have spread rapidly since they first appeared in 1976. Twenty-four states had such a statute by 1978.

	Number of Officers		
	1967	1973	1979
Constitutional, Elective (no boards or commissions)	300	290	281
All constitutional, Elective	342	339	333
All elective--constitutional and statutory	528	587*	566*

*These increases have occurred primarily in the area of education, both secondary and higher, as boards have increased in number and size.

Since 1972, Illinois and South Dakota have dropped Superintendents of Public Instruction, and Indiana changed the status of the position from constitutional to statutory. Louisiana eliminated the constitutional positions of Controller and Commissioner of Lands. But the big news came from Oklahoma which effective January 1979 eliminated five of the 12 constitutional, elective positions. Dropped were the Commissioners of Labor and of Charities and Corrections, the Secretary of State, and the Chief Mine Inspector, and the office of Examiner and Inspector and that of Auditor were combined. Eleven states had longer ballots but none had more offices both elective and constitutionally preserved. Pennsylvania, in 1978, was the only state to add an office, moving its attorney-general from an appointive status to constitutional and elective. Vermont had refused to take that step earlier.

Governor's Powers

A number of actions affected the powers of various governors. Maine abolished its 155-year-old Executive Council in 1976. Massachusetts increased from three to eight weeks the time after a legislative session opens for the presentation of the executive budget. Hawaii limited the item veto by excluding appropriations for the legislative and judicial

branches, but Illinois rejected an effort to limit the governor's amendatory veto to technical errors. Maine, Tennessee, Washington, and New Hampshire increased the time for the governor to consider bills, from five to ten days, but California refused to extend the period from 12 to 20 days after adjournment. Maryland shifted appointment of the treasurer from the governor to the legislature.

States continued to create, modify and destroy various commissions and agencies. Michigan created a state transportation commission and Hawaii an office of Hawaiian Affairs. Kansas and New Mexico refused to create state boards of education and Oklahoma refused a full time pardon and parole board. Georgia changed a name, from Department of Community Development to Department of Industry and Trade, a matter of little import save that that was the name it abandoned only four years before. Constitutionally most activity of this sort involved adjustments of boards dealing with public education, higher and secondary.

Cabinet Systems

State cabinet systems have come to be noted. The Book of the States, first commenting on this in 1978,[26] reports that thirty-six states responded to an inquiry that some kind of a cabinet system functioned. Thirteen of these were based upon statute while the others rested on executive orders or simply tradition. Only Florida, as it has since the nineteenth century, still maintains a constitutional cabinet. Florida voters, in 1978, renewed their support of this unique institution by rejecting an amendment to abolish it, submitted directly by the Florida Constitutional Commission.

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[26]The Book of the States, 1978-79, p. 129.

Terms Of Office

Forty-six states give their governors a four year term. There was no change in this during 1973-78 although of the four holding to two year terms—Rhode Island, Arkansas, Vermont and New Hampshire--the first three tried unsuccessfully to change. (New Hampshire had refused in 1970.) However, reelection prospects were given possibility in three states as Tennessee and Georgia approved two consecutive terms and North Carolina endorsed an absolute two term limit. New Mexico in 1976 rejected such an amendment. The steady progress toward a more reasonable tenure is reflected in the following:

Terms of Office for Governors

	Number of States		
	1967	1973	1979
4-yr term, no immediate succession	11	8	6
4-yr term, 2 consecutive term limitation	9	17	18
4-yr term, absolute 2 term limitation	3	2	3
4-yr term, unlimited succession	16	19	19
2-yr term, 2 consecutive term limitation	4	0	0
2-yr term, unlimited succession	7	4	4

Lieutenant Governors

Four-fifths of the states have constitutional, elected lieutenant governors. Two related changes concerning the election and function of this officer were evident during 1973-78. First, there was a definite

and rapid trend toward tying the election of the lieutenant governor directly to that of the governor. And growing out of that, the second change takes the lieutenant governor out of the legislative process.

Of the 41 lieutenant governors 21 are now elected on a joint ticket with the governor, a jump from six in 1966, and from 19 in 1972, the year Kansas, Minnesota, Montana, and South Dakota joined the list.[27] Subsequently Indiana, North Dakota, and Ohio took the step.

Eleven states have relieved the lieutenant governor of the traditional role of presiding over in senate and participating in certain legislative activities, such as the appointment of committees. Ten of these require joint election, and usually that requirement and the relief from legislative duties have come in the same action.[28] Only Louisiana among those separately electing the lieutenant governor have relieved him of legislative duties.

THE JUDICIARY

W. Brooke Graves noted that the thorough revision of the judicial structure of New Jersey in 1947 "was not only the first in New Jersey for a century but the first major reorganization of the courts in any state for a very long time."[29] That accomplishment evidently stimulated other states for as Graves noted judicial reorganization was accomplished in Colorado, Illinois, Missouri, New York and North Carolina. He cited the serious efforts "to unify the court system, to simplify the judicial structure, to streamline judicial procedure and to make courts more

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[27]Delaware once required joint election but no longer.

[28]South Dakota in the same referendum treated the question in two parts, passing joint election but defeating relief.

[29]Graves, op. cit., p. 26.

responsible to present day needs."[30]

This thrust continued through the 1960s and into the 1970s. Albert L. Sturm viewing the period 1968-72 "cited the substantial progress toward greater professionalization and unification of state judicial systems. . ."[31] At least 14 states adopted new or revised constitutional articles on the judiciary. Principal concern since 1972 has been with court unification and with the selection and disciplining of judges. Indeed all three moves seem intertwined: tighter organization and greater insulation of judges from the political process seem to call for better policing. In the period 1973-78 substantially revised judicial articles have been adopted in Alabama, Arizona (by initiative petition), North Dakota, Vermont, and West Virginia, and rejected in Tennessee and Washington.

Court Unification

Since 1972, ten more states have "unified" their court systems through constitutional action. Alabama, Georgia, Kentucky, New York, North Dakota, West Virginia, and Wisconsin have embraced unification outright or moved significantly in that direction. Louisiana also has accepted unification while rather pointedly avoiding the label.[32] Nevada after rejecting a proposal in 1972 reversed itself four years later. The latest to join the list, New Hampshire, adopted an amendment in 1978 designating its chief justice as administrative head of the court system. Vermont and

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[30] Ibid., p. 27.

[31] Sturm, op. cit., p. 62.

[32] See Cecil Morgan, "A New Constitution for Louisiana," National Civic Review LXIII (June, 1974), pp. 347-8.

others have unified through non-constitutional methods.[33] Efforts to unify in Washington failed with the defeat of that state's omnibus article in 1975.

By 1978, all state court systems had some kind of a central administrative office, even Nevada which had adopted the system, then rejected it, only to recreate an office in 1976. Nine of these were established during 1973-78, only three requiring constitutional action--Montana in its new constitution, New York and South Carolina. The other offices were established either by law or by Supreme Court directive. In all, 17 states rest their administrative offices upon a constitutional foundation.

Judicial Disciplining

Probably the most significant development in judicial matters has been the rapid spread and almost universal adoption or adaption of mechanisms for enforcing judicial ethics and generally monitoring the performance of judges. Today, forty-eight states have a specific commission or direct the Supreme Court to perform this task; only Maine and Mississippi continue to rely wholly on the traditional methods of impeachment or recall. The commission on judicial qualifications, as it is usually called, receives complaints about judges and may investigate them, finally making recommendations for action where appropriate to the Supreme Court.

Judicial commissions have been created directly by the constitution or by the legislature under constitutional mandate. The year 1972 produced a bumper crop of actions with Alabama, Georgia, Iowa, Minnesota, North

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[33]See Larry Berkson and Susan Carbon, Court Unification: History, Politics and Implementation, U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, August 1978.

Carolina and Wyoming creating or laying the foundation for commissions. Subsequently New York, Nevada and North Carolina would complete the forty-eight. Recent constitutional action revamping commissions and their powers took place in several states.

Formal names vary. California, the first to create a commission, in 1960, called it Commission on Judicial Qualifications, but changed it in 1976 to the Commission on Judicial Performance. It is called the Commission on Judicial Conduct in Texas, the Commission on Judicial Disabilities in Maryland, the Judicial Inquiry and Review Commission in Virginia, and simply the Judiciary Commission in the new constitution of Louisiana.

Selection of Judges

The question of the proper way to select judges has been a preoccupation of reformers for many years. Popular election, gubernatorial appointment, a combination of the two, these in combination with some means of checking the qualifications of candidates or nominees are all possibilities. This question continues to be active despite the absence of conclusive evidence that the method of selection conditions behavior and performance on the bench.

Six states since 1972 have changed the method of selecting judges for their highest court. Florida after moving from partisan to non-partisan elections in the 1960s adopted the Missouri Plan in 1976.[34] New York changed from partisan elections and Idaho and Arizona from non-partisan elections to the Missouri Plan, but Louisiana chose to stay with elections. Maine abandoning its executive council moved to require

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[34]Florida rejected an amendment in 1978 extending this to circuit and county judges.

senatorial confirmation of the governor's appointments.

The steadily growing popularity of the Missouri Plan and similar arrangements is reflected in the following table:

METHODS OF SELECTING JUDGES OF HIGHEST COURTS

	Number States		
	1967	1973	1979
Partisan election	15	13	11
Nonpartisan	14	15	11
Missouri plan	9	10	17
Legislature	5	5	4
Governor anpoint	7	7	7

The trend is the same for lower courts but less pronounced.

Terms of Judges

Four states adjusted the terms of office for judges on their highest courts in the period 1973-78, five others during 1967-72. There was a perceptible move--both upwards and downwards--to 10 years as an optimum term. Those changes are reflected in the following:

TERMS OF JUDGES

	Number Years		
	1967	1973	1978
Hawaii	7	10	10
Indiana	6	10	10
Louisiana	14	14	10
Maryland	15	15	10
Massachusetts	Life	to Age 70	to Age 70
New Jersey	7 years, then to Life	7, to Life	7, to Age 70
Pennsylvania	21	21	10
South Dakota	6	8	8
Vermont	2	2	6

Currently, twelve states give 10 year terms. Only seven grant more than that, usually 12 years, although New York gives 14, New Hampshire, Massachusetts, and, in practice, New Jersey give to age 70, and Rhode Island shows no inclination to change its life term.

LOCAL GOVERNMENT

Louisiana's acceptance of the Fordham plan of home rule stands out as the most significant constitutional development in a period largely devoid of creative concern with local government. The Fordham plan, endorsed by the Advisory Commission on Intergovernmental Relations and the American Municipal Association, and embedded as the preferred option in the Model State Constitution, frees local government to act in the absence of specific constitutional or statutory restraints. Louisiana's constitutional statement reads:

> Subject to and not inconsistent with this constitution, the governing authority of a local governmental subdivision which has no charter or plan of government may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers. Article VI, Section 7.

A proposal for modified home rule for counties and municipalities in Arkansas was part of the proposed constitution defeated in 1970. Partially resurrected by amendment four years later, the new system, effective January 1977, engrafts new powers upon old forms, not fully embracing home rule but allowing a county "through its Quorum court to exercise local legislative authority not denied by the Constitution or by law." There is no choice of governmental structure, and taxing powers

are sharply limited. Separation of powers is invoked, with the county judge--in reality an executive—presiding over the Quorum court--in reality a legislature—with no vote but a veto subject to override. Interestingly, the court may submit to the voters a plan for the creation, consolidation, separation, revision or abandonment of any elective county office.[35]

Montana's unique requirement for periodic voter review of local government which first appeared in its constitution of 1972 was amended last year to make the step optional rather than mandatory. The provision originally read:

> Section 9. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.
> (2) The legislature shall require a review procedure once every ten years.

Part (2) was changed to mandate only that the legislature require an election in each local government every ten years, a majority of voters determining whether the step should be taken.[36]

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[35]See Glen W. Sparrow, "Arkansas Local Governments Begin to Take Control," National Civic Review LXVII (November, 1978), pp. 452-56.

[36]"Montana's unique experiment requiring a review of local governments in the state ended in 1976 when several elections were held to ratify or reject recommendations of local government study commissions. Two of three prospective city-county consolidations were approved. Twenty-six municipalities changed their form of government, and 15 of those adopted home rule. Four counties adopted a new form of government and two chose home rule. Two service consolidations were adopted, consolidating the municipal police and sheriff's departments. The total of 32 changes in the form of government completed the process of government review in 126 municipalities and 56 counties in Montana." Advisory Commission on Intergovernmental Relations, State Actions in 1976, February, 1977, M-109, p. 18. See also James J. Lopach and Lauren S. McKinsey, "Montana Local Government Review: Reflections on Product and Process," National Civic Review LXVI (July, 1977), pp. 339-45.

Apart from the developments noted above there was the usual plethora of amendments dealing with minute financial matters--taxes, exemptions, debt, investment of funds, expenditures--and the usual tinkering with local government machinery, most of which could be eliminated by an adequate system of home rule.

TAXATION AND FINANCE

Taxation and finance issues were important throughout the period 1973-78 and marked the last year indelibly. On the ballots of the states in 1978 were 16 constitutional proposals which would have limited in some fashion state or local government taxing or spending powers. Other referenda, not constitutional in form, promised considerable impact upon state finances.

The Power to Tax

Proposition 13 went before the voters of California by way of an initiative petition carrying one million signatures and passed by a margin of two-to-one. Its provisions are simple: property taxes may not exceed 1% of assessed valuation; assessments are frozen at 1976 levels with thaws of only 2% a year allowed unless the property is sold, transferred or supports new construction; new taxes on non-property sources may be levied but only by a two-thirds vote of the legislature. Proposition 13 limits local governments as well as the state. The projected economic and political impact of the amendment has been reported and debated too often to require repetition here.

Was Proposition 13 the stimulus or catalyst for action in other states? It is difficult to tell. However, there can be no doubt that the passage of Proposition 13 in June and the attendant publicity had

influence on the other decisions made in November. Nevada[37] and Idaho passed Proposition 13 type amendments while Oregon rejected one. Michigan rejected an initiative petition amendment which would have drastically cut property taxes and instituted a voucher system for financing schools.[38] Alabama approved an amendment lowering assessments, and Missouri authorized the legislature to order local government to lower property taxes.

South Dakota chose the route of making it more difficult for taxes to go up. It now bars increases in state taxes on income, sales, or property unless approved by popular initiative or a two-thirds vote of the legislature.[38a] All of the above actions involved constitutional change and does not cover state action by legislation or initiative.

The Power to Spend

Some states followed the route of expenditure control. New limits in Hawaii and Texas ride with the growth of the states' economies. Hawaii's provision also mandates the return of any surplus money and a prohibition against deficit spending except in an emergency. An initiative petition placed the issue before Michigan voters. Future appropriations are frozen at the current proportion of all state and local taxes and revenues (except federal aid) to personal income. The provision prohibits new taxes or increases without voter approval, and interestingly places a bar to any reduction in current levels of support for local government. Arizona placed a 7% limit on annual increases, an

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[37]Nevada's action must be approved again in 1980 but since it passed by a margin of three-to-one, the outcome hardly seems in doubt.

[38]The negative action in Oregon and Michigan, however, may have been influenced by other fiscal issues voted upon at the same time.

[38a]Texas, Louisiana and California also have adopted the two-thirds rule for new or increased taxes.

approach turned down narrowly in Colorado.[39] Nebraska rejected a 5% limit on local governments. Other action included an advisory referendum in Illinois on setting a mandatory ceiling on state spending; it passed four-to-one.

All the above also took place in 1978. The rapidity with which the public accepted these new restraints is revealed by actions in the previous biennium.[40] Both Michigan and Montana rejected amendments brought by initiative petition which would have curbed expenditures. The proposal in Michigan would have limited state and local spending to 8.3% of the personal income of the state. In Montana, a draconian measure, initiative inspired, carried not only a flat limitation of $375 million per biennium through fiscal year 1983 but would have ordered a 15% reduction in the amount of federal aid received each year until 1984, after which no further aid could be accepted. And an indirect method of control--limiting the number of state employees--was rejected in Florida.[41] Colorado voters had turned back a proposal (via initiative petition) to subject all to voter approval legislative and executive acts requiring new or increased taxes.

But perhaps the handwriting was on the wall in the appearance of these proposals. And certainly 1974-75 was a hard time for those seeking higher taxes. Oregon voters said no to higher income taxes and Washington

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[39]Actually this change for Colorado would probably have resulted in greater spending authority than the current statutory limit permits.

[40]However, 1974 was not a promising year either, in regard to bond issues. Over 90% of the amount sought was rejected by voters.

[41]The limit was to be 1% of the estimated population. With 8.4 million people, employment could have totalled 84,000. The total was over 100,000 in 1976.

voters to a corporate income tax. A higher sales tax with the exemption of food and drugs was defeated in Arizona. Nevada refused to raise debt limits, and Maryland and Louisiana mandated balanced budgets. So public disillusionment had been building.

Special Note

Now that Californians have settled the question of taxes, they turn this year (1979) to that of appropriations. Tagged by the Wall Street Journal[42] perhaps appropriately as "Son of Proposition 13" another initiative petitioned amendment is on the ballot for November. Paul Gann of Jarvis-Gann renown has been the central mover behind this effort to put a halt to rising expenditures. This proposal seems far more restrictive than existing limitations in other states. Proposition 4 would allow increases in appropriations over the base year--the twelve months ending the preceding June 30--only for rises in the population and in either the consumer price index or per-capita income of the state, whichever is lower. Excess revenues would have to be returned through lower taxes or fees. The ceiling may be exceeded if approved in a referendum of the governmental unit concerned, but any such increase lasts only four years and must be rolled back unless further voter blessing is forthcoming. There is a provision for exceeding the ceiling in an emergency without a referendum but, to cover all tracks, in such cases the excess is charged against future expenditures and must be repaid within three years.

Odds and Ends

Sixty-five amendments related to direct bond issues or authorizations to issue or to liberalize restraints upon state and local bonded indebtedness. Thirty-two of these passed. Of 18 direct bond issues 11

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[42]Friday, October 12, 1979, p. 12.

involving a total of $1.5 billion were approved while seven involving $5.2 billion failed. Of the amount approved $642 million, about 45%, was for veterans' benefits.

Electorates showed mixed reactions to bond issues and authorizations for industrial development and pollution control, and an outright hostility to transportation facilities, both motorway and other. West Virginians did vote a $500 million issue for bridges at the beginning of the period but later transportation issues took a beating. In Ohio, in 1975, a huge, $1.75 billion program of highway development and upgrading failed. A plan to spend $175 million helping railroad development in Michigan was turned down. Ohio voters also rejected granting authorization to state and local transportation authorities to lend credit and aid to AMTRAK and Conrail. Meanwhile Floridians turned down $100 million for housing. The only significant social program which passed was New York's increase of $150 million for its Job Development Authority. Oregon authorized up to one-half of 1% of the value of all assessed property to finance multi-family housing for the elderly, but turned down a similar amount for public water systems. Idaho approved debt for environmental pollution control and for rehabilitating existing electric generating facilities.

Utah removed the requirement of taxpayer status for participation in bond elections,[43] and Missouri dropped its vote requirement on approving airport, utility and industrial development bonds from 4/7 to a majority. Idaho meanwhile refused to lower from 2/3 to a majority the vote required in bond elections concerning airport and air navigation

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[43]Such provisions are of doubtful validity in view of the court's ruling in Phoenix v. Kolodziejski, 399 U.S. 209 (1970).

facilities.

Generally speaking the voters became less generous as the period progressed. A particularly bad year was 1978, the high point being perhaps Alabama's approval of $15 million in bonds for penal institutions.

Forty-one states now tax personal incomes, since New Jersey joined the list by statute in 1976. Tax rates reflect varying degrees of progressiveness from the hardly perceptible scheme in New Jersey--2.0-2.5--to Delaware's scale of 1.6 to 19.8 percent. Three states peg the tax ' a percentage of the federal--Vermont at 25%, Rhode Island at 17%, and Nebraska at 16%. Most changes during this period involved increases in the upper limits. About a fifth of the states made such adjustments. Four states, restricted by uniformity classes, have flat rates--Illinois, Massachusetts, Michigan, and Per ylvania. They have shown no inclination to change them. Massachusetts and Michigan in 1976, as they had previously done in 1968 and 1972, rejected amendments which would have allowed graduated schemes. Alabama legislators have not presented an amendment to raise that state's maximum limit since the 1970 failure to secure voter support for an increase from 5 to 7%. Washington voters in 1973 repeated their 1970 vote and again blocked an effort to permit an income tax. The sweeping authority given Tennessee's last limited convention did not include the tax article, thus preventing consideration of an income tax for another six years.

Missouri boosted its constitutional sales tax from 3% to 3.175% to provide increased funding for bird, fish, game, forestry and wildlife programs. This seems the only instance of an increase in sales taxes by constitutional change during this period. North Dakota voted a reduction from 4% to 3%. More activity was aimed at lifting sales tax

levies from food and prescription drugs, thus easing the regressive impact of the tax. Michigan endorsed an initiative inspired amendment while Arkansas and Missouri balked. Meanwhile legislators in Kansas, Tennessee, Utah, and Washington were actively responding to pressures for exemptions on one or both of the items. Currently there are 45 sales tax states; by 1978, twenty-two exempted food (other than prepared) and thirty-six exempted prescription drugs from the levy.

Voters were mixed in their responses to proposals to utilize the lucrative motor vehicle and fuel revenues for other than highway purposes. California and Massachusetts obtained permission to divert some to mass transit purposes, while Arizona and Florida and Minnesota refused their use for "other transportation" purposes. Michigan voters did beat back an amendment which would have barred using such funds even for highway patrol purposes.

Emerging problems and concerns are often revealed in tax adjustments. Inflationary pressures and rising housing costs plague particularly people on fixed income, more likely the elderly than others. Homestead exemptions are constitutionally based in several states. During 1973-78 twelve amendments came from eight states modifying, usually increasing, benefits for the elderly or the disabled. Rising values of land raised questions about the viability of its use for agricultural, recreational or open space purposes. At least sixteen states made some kind of adjustment in their rules of uniform treatment to permit valuation in terms of actual use rather than pure market value. And the energy crisis has its constitutional implications. Virginia and Nebraska have authorized exemptions also for wind powered facilities. Other states have taken steps in the same direction through statutes. Nevada, for example, is

providing tax incentives for systems using wind energy, geothermal resources, and energy derived from solid waste conversions or water power.

CHANGING STATE CONSTITUTIONS

Procedures for changing state consitutions received a bit of attention, involving about 16 states producing 23 amendments; all but four of which passed. None was of immense importance although a few may facilitate the process of change or make the process fairer. Vermont in 1974 reduced its quite ageless requirement of an interval of 10 years between amendments--one which had never been particularly restrictive in view of the simplicity of that state's document--to four years and then passed up the opportunity in 1978 to use it for the first time. Alaska changed the time of submitting amendments from "the next statewide election" to the "next general election," and Pennsylvania endorsed posing the question of a constitutional convention at least every ten years. Idaho, Massachusetts and Maryland simplified their requirements for publicity on pending amendments. Oklahoma eliminated the "silent voter" by changing to a majority voting in the election, but Minnesota rejected a move to lower the requirement for approval in referenda to 55% of those voting on the issue or 50% voting in the election.

Some states took up the problem of keeping constitutions in better shape without resorting to the cumbersome process of constitutional amendment. Maryland was busiest, in 1978 passing two changes. The first made provision for special placement and subsequent dropping when ineffective of new amendments of limited duration. The second dealt with the existing constitution authorizing the removal or correction of obsolete, unconstitutional or duplicative language that relate to technical matters.

but Georgia, South Dakota, and Vermont would not go along with similar efforts. Georgia proposed a special commission to incorporate new amendments into the constitution upon adoption, South Dakota proposed allowing the legislature every ten years to arrange the constitution in orderly fashion deleting obsolete material, and Vermont considered giving similar authority to the Supreme Court. South Carolina in 1974, 1976, 1978 extended the authority of the legislature to submit changes to an entire article as one question, a device it has used successfully in securing revision of its constitution.

Florida had its first experience with amendments produced by its unique constitution based constitutional commission. Florida's constitution which became operative in January 1969 provided for the establishment of a thirty-seven member constitution revision commission ten years after adoption of that constitution and every twenty years thereafter, with responsibility for studying the constitution and the authority for making proposals for change directly to the people. The commission submitted eight amendments, all of which were defeated. One was an omnibus revision proposal and the others specific changes, including abolition of the Florida's unique cabinet, an equal rights amendment, single-member districts, and a Missouri plan for selecting circuit and county court judges, a package of changes which could hardly be called noncontroversial.

MISCELLANEOUS

The period 1973-78 was not one characterized by revolutionary change. There were no bold new departures in substance or structure, indicating future trends for the states. Rather the period seemed one of consolidation after the previous decade of considerable activity, of

extension of gains made toward more effective and responsible government. Perhaps the changes in the area of taxation and finance suggest even reaction.

Concern with the energy problem presented itself in a number of tax concessions made for those investing in devices not dependent upon fossil fuel or in more mundane matters such as residential insulation. The nuclear energy controversy began to have constitutional implications as Colorado established mandatory procedures--including voter approval—for the detonation of nuclear devices but refused to honor an initiative petition amendment which would have placed stringent procedures for approving the construction of nuclear facilities. Hawaii made provision for legislative approval of nuclear plant construction and the disposition of radioactive material.

States continued to expand aid to students in higher education--both public and private--by removing obstacles to grants to private school students or by directly authorizing grant or loan programs. Perhaps the aging of the population accounted for the rather high number of amendments relating to retirement, both public and private. Current economic developments produced adjustments in maximum interest rates permitted by some constitutions.

Gambling attracted an unusual amount of attention with fifteen states producing 20 amendments. New Jersey voters in 1976, after turning down a wider amendment allowing casinos on a local option basis two years earlier, gave approval for them in Atlantic City. They rejected betting on Jai Alai in 1978. Florida voters last year rejected an initiative petition amendment which would have permitted casinos in Dade and Broward counties, the Miami Beach area. Most constitutional activity

though centered around allowing exceptions to state constitutional prohibitions of lotteries to permit charitable and fraternal as well as church groups to set up bingo enterprises. This group included California, Delaware, Kansas, New York, North Dakota, Ohio, Rhode Island, South Carolina, West Virginia, Wisconsin, Oregon, and Georgia. Missouri approved an interesting one permitting games of chance where nothing of value is exchanged for the opportunity to participate or receive a prize. Ohio was the only state in the period to authorize a state lottery to raise revenue for the general fund.

Much of the activity of the period involved the usual tinkering with legislative detail embedded in constitutional documents or with trying to clean up obsolete debris. Oklahoma expressed its continued interest in drinking questions by turning down two amendments which might have facilitated the process. Michigan meanwhile authorized the legislature to regulate drinking by those under 21. A change in South Carolina holds a certain fascination if it reflects little constitution profundity. That state changed its ban on liquor sales from "sunset to sunrise" to "from 7pm to 9am," thus effectively decreasing the period in summers while expanding it perceptibly in winter.

Perhaps someday constitutions will be rid of all references to duelling, for a few more states including Mississippi and Ohio removed that behavior as a bar to holding public office. Mississippi also relieved railroads of a heavy responsibility by repealing the provision that required a railroad to run through a county seat should it otherwise come within three miles of it.

Hawaii's Thirty-four

Hawaii's action in 1978 in approving 34 amendments should not go

unnoticed. The products of a constitutional convention these amendments seem to mark a significant step away from the relatively simple constitution adopted in 1958 and relatively unmarked through the years, even by the 22 sections changed in 1968. This time there seemed greater concern with detail and with the specification of legislative responsibility. The latter did produce some interesting provisions: that the state and counties conserve, protect and promote development of their natural beauty and resources; the right of persons to a healthful environment and the right to sue to enforce it; for the state management and control of ocean waters and lands within and adjacent to the boundaries of the state and for state-licenses mariculture operations. Hawaii did produce one provision, revolutionary if it actually succeeds, that plain language be required in all government writing.