

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2

815 SCOM 127: INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

(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.

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 Legisla-

ture 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

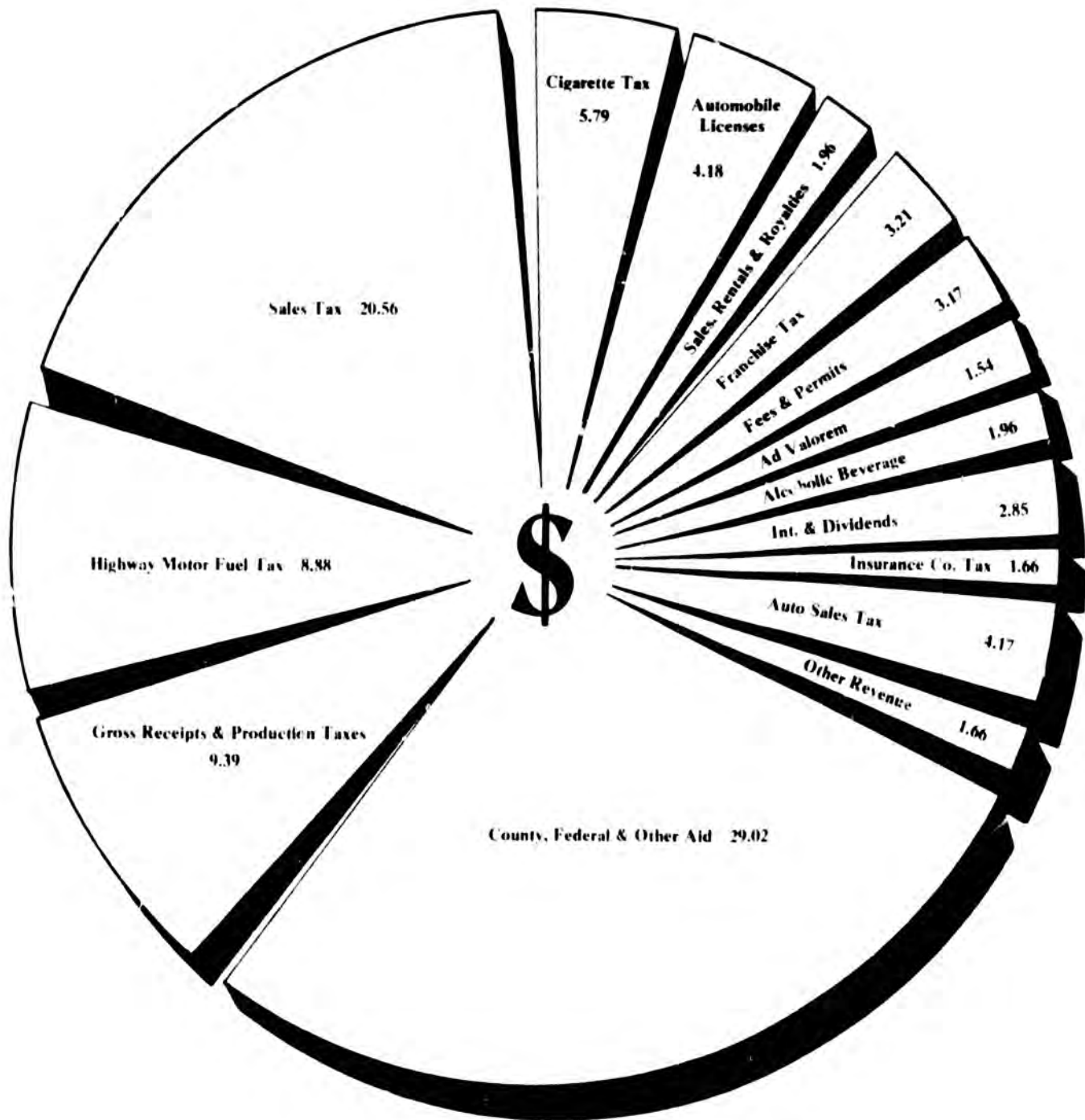
1876 Constitution places no restraint upon the mode and method of taxation other than those restraints imposed on the property tax. This is reflected by the fact that 97 percent of state revenue is now obtained from sources other than ad valorem taxes on property.

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 tax agencies. 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 VII, 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 prohibi-

tion 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 qualify 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 ineligible 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

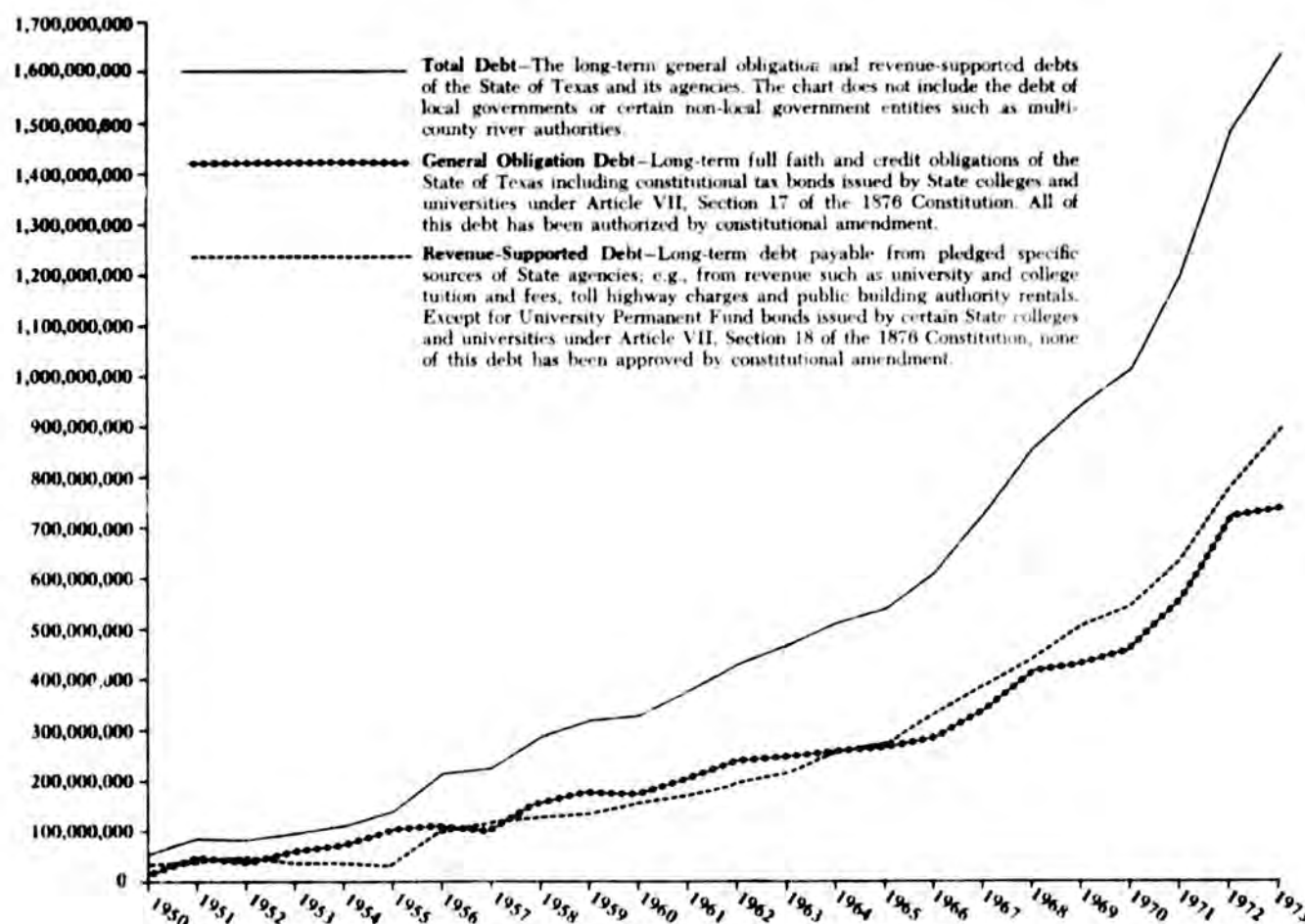
not "debt" under the new Section 5. The change in the meaning of debt is made to require a statewide referendum for the approval of state borrowing which now occurs without any election.

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 longstanding 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 subter-

fuge 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 in-

stallations, 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 "unequivocally" 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 "unequivocally" 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).

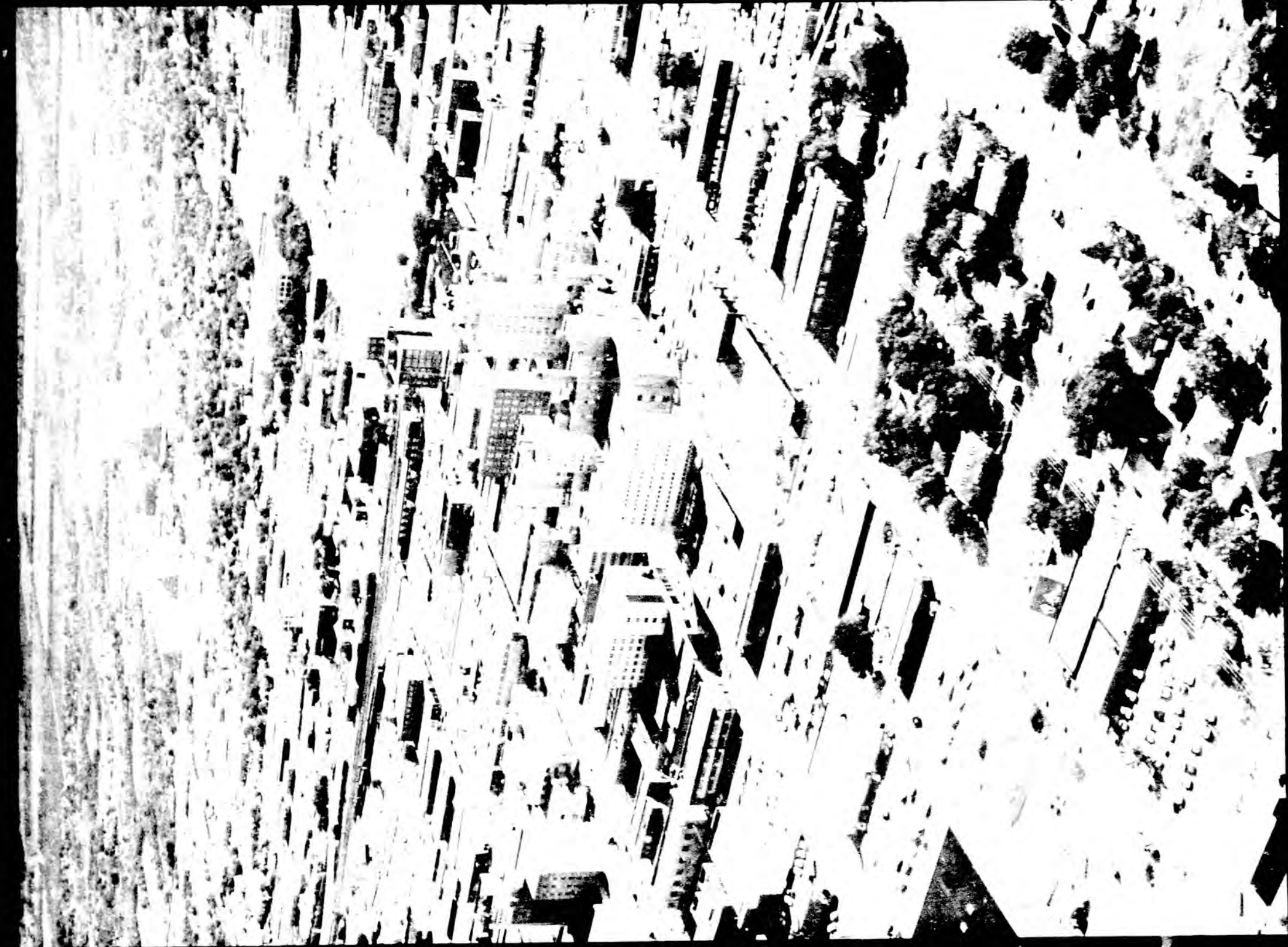
Some authorities argue that the public purpose limitation has become the current law of Texas. Recent court decisions and attorney general opinions have utilized "public purpose" language to uphold expenditures, but

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 "unequivocally" 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 Com-

mission 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 re-

placed 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 pro-

posed 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 nat-

ural 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 possibility 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 Rebate-ment 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

H. 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 Legislature
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 apart
propriated for the establishment and
maintenance of the University of Texas, together
all the principal of the proceeds of
same heretofore made, or hereafter to be
and all grants, donations and appropria
that may hereafter be made by the
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
sums belonging to the fund as may now

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 Gen-

eral 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.F. 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



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



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



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



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



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. 6683 Lakewood Blvd., Dallas, Texas 75214



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



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



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



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



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.



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



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



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



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



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



YARBROUGH, 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



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

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.

Judiciary Committee

Leon Jaworski, *Chairman*

Andrew Jefferson, *Vice-Chairman*

Roy R. Barrera

Bill Bass

Mark Martin

Executive Branch Committee

Preston Shirley, *Chairman*

Mary Beth Brient, *Vice-Chairman*

William Donnell

Raymond Nasher

Don Rives

Legislative Committee

Zan Holmes, Jr., *Chairman*

Loys D. Barbour, *Vice-Chairman*

George Beto

W. James Kronzer, Jr.

Ralph Yarborough

Finance Committee

Beeman Fisher, *Chairman*

Mark McLaughlin, *Vice-Chairman*

Mike F. Frost

Faye Holub

Janice C. May

Local Government

Barbara Culver, *Chairman*

Bill Hartman, *Vice-Chairman*

Tony Bonilla

Sibyl Hamilton

E. L. Oakes, Jr.

General Provisions Committee

Honore Ligard, *Chairman*

Leroy Jeffers, *Vice-Chairman*

Ann S. Chappell

Page Keeton

Jim Weatherby

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.

Sec. 7

Qualifications of Representatives.

Sec. 8

Each House Judge of Qualifications and Election; Contests.

Sec. 9

President Pro Tempore of Senate; Speaker of House of Representatives.

Sec. 10

Quorum; Adjournments From Day to Day; Compelling Attendance.

Sec. 11

Rules of Procedure; Expulsion of Member.

Sec. 12

Journals of Proceedings; Entering Yeas and Nays.

Sec. 13

Vacancies; Writs of Election.

Sec. 14

Privileged From Arrest.

Sec. 15

Disrespectful or Disorderly Conduct; Obstruction of Proceedings.

Sec. 16

Open Sessions.

Sec. 17

Adjournments.

Sec. 18

Ineligibility for Certain Other Offices; Interest in Contracts.

Sec. 19

Ineligibility of Persons Holding Other Offices.

Sec. 20

Collectors of Taxes; Persons Entrusted with Public Moneys; Ineligibility.

Sec. 21

Words Spoken in Debate.

Revised:

See Article III, Section 3(a), The Legislature.

Reworded:

See Article III, Section 3(b), The Legislature.

Reworded:

See Article III, Section 8(a), The Legislature.

Reworded:

See Article III, Section 8(c) and (d), The Legislature.

Reworded:

See Article III, Section 8(f), The Legislature.

Revised:

See Article III, Section 8(b) and (h), The Legislature.

Reworded:

See Article III, Section 8(g), The Legislature.

Revised:

See Article III, Section 4(d), The Legislature.

Statutory:

See Transition Schedule, Section 2.

Deleted.**Revised:**

See Article III, Section 7(b), The Legislature.

Reworded:

See Article III, Section 7(c), The Legislature.

Revised:

See Article III, Section 10(a), (b), and (d), The Legislature.

Revised:

See Article III, Section 3(d), The Legislature.

Statutory.**Reworded:**

See Article III, Section 9, The Legislature.

Sec. 22

Disclosure of Private Interest in Measure or Bill; Not to Vote.

Sec. 23

Removal From District or County From Which Elected.

Sec. 23a

John Tarleton Contract Validated.

Sec. 24

Compensation and Expenses of Members of Legislature.

Sec. 25

Senatorial Districts.

Sec. 26

Apportionment of Members of House of Representatives.

Sec. 26a

Counties With More Than Seven Representatives.

Sec. 27

Elections.

Sec. 28

Time For Apportionment; Apportionment by Legislative Redistricting Board.

Sec. 29

Enacting Clause of Laws.

Sec. 30

Laws Passed by Bill; Amendments Changing Purpose.

Sec. 31

Origination in Either House; Amendment.

Sec. 32

Reading on Three Several Days; Suspension of Rule.

Sec. 33

Revenue Bills.

Sec. 34

Defeated Bills and Resolutions.

Sec. 35

Subjects and Titles of Bills.

Reworded:

See Article III, Section 10(c), The Legislature.

Revised:

See Article X, Section 2, General Provisions.

Statutory.**Revised:**

See Article III, Section 6, The Legislature.

Revised:

See Article III, Section 5(b), (c), and (d), The Legislature.

Revised:

See Article III, Section 5(b), (c), and (d), The Legislature.

Deleted.**Reworded:**

See Article III, Section 4(a), The Legislature.

Revised:

See Article III, Section 5(a), (e), (f), (g), and (h), The Legislature.

Statutory.**Reworded:**

See Article III, Section 11(a) and (b), The Legislature.

Reworded:

See Article III, Section 11(b), The Legislature.

Reworded:

See Article III, Section 11(f), The Legislature.

Revised:

See Article III, Section 11(b), The Legislature.

Reworded:

See Article III, Section 11(g), The Legislature.

Revised:

See Article III, Section 11(c), The Legislature.

Sec. 36

Revival or Amendment by Reference; Reenactment and Publication at Length.

Sec. 37

Reference to Committee and Report.

Sec. 38

Signing Bills and Joint Resolutions; Entry on Journals.

Sec. 39

Time of Taking Effect of Laws; Emergencies; Entry on Journal.

Sec. 40

Special Sessions; Subjects of Legislation; Duration.

Sec. 41

Elections by Senate and House of Representatives.

Sec. 42

Laws Carrying Provisions of Constitution Into Effect.

Sec. 43

Revision of Laws.

Sec. 44

Compensation of Public Officers, Servants, Agents and Contractors; Extra Compensation; Unauthorized Claims; Unauthorized Employment.

Sec. 45

Change of Venue in Civil and Criminal Cases.

Sec. 46

Vagrant Laws.

Sec. 47

Lotteries and Gift Enterprises.

Sec. 48

Taxes; Restrictions on Levy; Permissible Purposes.

Sec. 48a

Fund For Retirement, Disability and Death Benefits for Employees of Public Schools, Colleges and Universities.

Sec. 48b

Teacher Retirement System of Texas.

Sec. 48d

Rural Fire Prevention Districts.

Reworded:

See Article III, Section 11(d), The Legislature.

Revised:

See Article III, Section 11(e), The Legislature.

Reworded:

See Article III, Section 11(h), The Legislature.

Revised:

See Article III, Section 11(i), The Legislature.

Revised:

See Article IV, Section 11, The Executive.

Revised:

See Article III, Section 8(e), The Legislature.

Repealed August 5, 1969.

Statutory.**Revised:**

See Article VIII, Section 7, Finance.

Statutory.

Repealed August 5, 1969.

Revised:

See Article X, Section 19, General Provisions.

Repealed August 5, 1969.

Revised:

See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Revised:

See Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Statutory:

See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Sec. 49
State Debt.

Sec. 49a
Financial Statement and Estimate by Comptroller of Public Accounts; Limitation of Appropriations; Bonds.

Sec. 49b
Veterans' Land Program.

Sec. 49c
Texas Water Development Board; Bond Issue; Texas Water Development Fund.

Sec. 49d
Acquisition and Development of Water Storage Facilities; Filtration, Treatment and Transportation of Water; Enlargement of Reservoirs.

Sec. 49d-1
Additional Texas Water Development Bonds.

Sec. 49e
Texas Park Development Fund.

Sec. 50
Loan or Pledge of Credit of State.

Sec. 50a
State Medical Education Board; State Medical Education Fund; Purpose.

Sec. 50b
Student Loans.

Sec. 50b-1
Additional Student Loans.

Sec. 51
Grants of Public Money Prohibited; Exceptions.

Sec. 51a
Assistance Grants and Medical Care for Needy Aged, Disabled and Blind Persons, and Needy Children; Federal Funds; Supplemental Appropriations.

Sec. 51b
State Building Commission; State Building Fund.

Sec. 51c
Aid or Compensation to Persons Improperly Fined or Imprisoned.

Revised:
See Article VIII, Section 5, Finance.

Reworded:
See Article VIII, Section 6(c) and (d), Finance.

Statutory:
See Transition Schedule, Sections 3 and 16.

Statutory:
See Transition Schedule, Sections 3 and 16.

Statutory:
See Transition Schedule, Sections 3 and 16.

Statutory:
See Transition Schedule, Sections 3 and 16.

Statutory:
See Transition Schedule, Section 3.

Revised:
See Article VIII, Section 7, Finance.

Statutory.

Statutory:
See Transition Schedule, Section 3.

Statutory:
See Transition Schedule, Section 3.

Revised:
See Article VIII, Section 7, Finance.

Statutory.

Statutory.

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.

Sec. 19

Seal of State.

Sec. 20

Commissions.

Sec. 21

Secretary of State.

Sec. 22

Attorney General.

Sec. 23

Comptroller of Public Accounts; Treasurer; Commissioner of General Land Office; Fees, Costs and Perquisites.

Sec. 24

Accounts and Reports; Information To, and Inspection By, Governor; Perjury.

Sec. 25

Custodians of Public Funds; Breaches of Trust and Duty.

Sec. 26

Notaries Public.

Article V

The Judiciary

Sec. 1

Judicial Power; Courts in Which Vested.

Sec. 1a

Retirement, Censure, and Removal of Justices and Judges; State Judicial Qualifications Commission.

Sec. 2

Supreme Court; Justices; Sections; Eligibility; Election; Vacancies.

Sec. 3

Jurisdiction of Supreme Court; Writs; Sessions; Clerk.

Sec. 3a

Sessions of Court.

Sec. 4

Court of Criminal Appeals; Judges.

Deleted.

Reworded:

See Article IV, Section 26, The Executive.

Reworded:

See Article IV, Section 26, The Executive.

Revised:

See Article IV, Sections 2, 7, and 20, The Executive.

Revised:

See Article IV, Sections 2, 7, and 21, The Executive.

Revised:

See Article IV, Sections 1, 2, 7, 22, and 23, The Executive.

Revised:

See Article IV, Section 14, The Executive.

Revised:

See Article X, Sections 6 and 7, General Provisions.

Statutory.

Revised:

See Article V, Section 1, The Judiciary.

Revised:

See Article V, Sections 10 and 11, The Judiciary; Article X, Section 21, General Provisions; Transition Schedule, Section 11.

Revised:

See Article V, Sections 2(a), 7, 8(d), and 9, The Judiciary.

Reworded:

See Article V, Section 13(a), The Judiciary.

Statutory.

Deleted:

See Transition Schedule, Section 19.

Sec. 5

Jurisdiction of Court of Criminal Appeals; Terms of Court; Clerk.

Sec. 6

Courts of Civil Appeals; Transfer of Cases; Terms of Judges.

Sec. 7

Judicial Districts; District Judges; Terms or Sessions; Absence, Disability or Disqualification of Judge.

Sec. 8

Jurisdiction of District Court.

Sec. 9

Clerk of District Court.

Sec. 10

Trial by Jury.

Sec. 11

Disqualification of Judges; Exchange of Districts; Holding Court for Other Judges.

Sec. 12

Judges to be Conservators of the Peace; Style of Writs and Process; Prosecutions in Name of State; Conclusion.

Sec. 13

Number of Grand and Petit Jurors; Number Concurring.

Sec. 14

Judicial Districts and Time of Holding Court Fixed by Ordinance.

Sec. 15

County Court; County Judge.

Sec. 16

County Courts; Jurisdiction; Appeals to Court of Civil Appeals and Court of Criminal Appeals; Disqualification of Judge.

Sec. 17

Terms of County Court; Prosecutions; Juries.

Sec. 18

Division of Counties into Precincts; Election of Constable and Justice of the Peace; County Commissioners and County Commissioners Court.

Deleted:

See Transition Schedule, Section 19.

Revised:

See Article V, Sections 3, 7, 8(d), and 9, The Judiciary.

Reworded:

See Article V, Section 13(a), The Judiciary.

Revised:

See Article V, Sections 4, 7, 8(f), and 9, The Judiciary.

Statutory:

See Transition Schedule, Section 19.

Revised:

See Article IX, Section 3(b), Local Government.

Revised:

See Article V, Section 14(e), The Judiciary.

Statutory.

Statutory.

Revised:

See Article V, Section 14(a) and (b), The Judiciary.

Deleted.

Revised:

See Article V, Sections 5, 7, 8(f), and 9, The Judiciary.

Statutory:

See Transition Schedule, Section 19.

Revised:

See Article V, Section 14(c), The Judiciary.

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(1), 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.

Sec. 1b

Residence Homestead Exemption.

Sec. 1c

Effectiveness of Resolution.

Sec. 1d

Assessment of Lands Designated for Agricultural Use.

Sec. 1e

Abolition of Ad Valorem Property Tax.

Sec. 2

Occupation Taxes; Equality and Uniformity; Exemptions from Taxation.

Sec. 3

General Laws; Public Purposes.

Sec. 4

Surrender Suspension of Taxing Power.

Sec. 5

Railroad Property; Liability to Municipal Taxation.

Sec. 6

Withdrawal of Money from Treasury; Duration of Appropriation.

Sec. 7

Borrowing, Withholding or Diverting Special Funds.

Sec. 7a

Revenues From Motor Vehicle Registration Fees and Taxes on Motor Fuels and Lubricants; Purposes for Which Used.

Sec. 8

Railroad Companies; Assessment and Collection of Taxes.

Sec. 9

Maximum State Tax; County, City and Town Levies; County Funds; Local Road Laws.

Sec. 10

Release from Payment of Taxes.

Sec. 11

Place of Assessment; Value of Property Not Rendered by Owner.

Statutory.

Revised:

See Article VIII, Section 2(b) and (d), Finance.

Deleted.

Statutory:

See Transition Schedule, Section 7.

Revised:

See Article VIII, Section 1, Finance.

Revised:

See Article VIII, Sections 1 and 2(c) and (f), Finance.

Revised:

See Article VIII, Sections 1 and 7, Finance.

Revised:

See Article VIII, Section 1, Finance.

Statutory.

Reworded:

See Article VIII, Section 6(a) and (b), Finance.

Statutory.

Revised:

See Article VIII, Section 3, Finance.

Reworded:

See Article VII, Section 4, Education.

Statutory.

Statutory:

See Transition Schedule, Section 6.

Statutory.

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.

Sec. 5

City of Amarillo; Wichita County; Jefferson County; Creation of Hospital Districts.

Sec. 6

Lamar County Hospital District; Abolition; Transfer of Assets.

Sec. 7

Hidalgo County; Hospital District; Creation; Tax Rate.

Sec. 8

County Commissioners Precinct No. 4 of Comanche County; Hospital District; Creation; Tax Rate.

Sec. 9

Hospital Districts; Creation, Operation, Powers, Duties and Dissolution.

Sec. 10

Sec. 11

Hospital Districts; Ochiltree, Castro, Hansford and Hopkins Counties; Creation, Taxes.

Sec. 12

Airport Authorities.

Sec. 13

Participation of Municipalities and Other Political Subdivisions in Establishment of Mental Health, Mental Retardation or Public Health Services.

**Article X
Railroads**

Sec. 1

Construction and Operation of Road; Connections.

Sec. 2

Public Highways; Common Carriers; Regulation of Tariffs, Correction of Abuses and Prevention of Discrimination and Extortion; Means and Agencies.

Sec. 3 through 9

Article XI

Municipal Corporations

Sec. 1

Counties as Legal Subdivisions

Statutory:

See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Statutory:

See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Statutory.

Statutory:

See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Statutory:

See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Statutory:

See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Vacant.

Statutory:

See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Statutory:

See Article IX, Section 7, Local Government; Transition Schedule, Section 3.

Statutory.

Repealed August 5, 1969.

Statutory.

Repealed August 5, 1969.

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 <i>Existing Rights of Property and of Action; Rights or Actions Not Revived.</i>	See Transition Schedule, Section 2.
Sec. 19 <i>Qualifications of Jurors.</i>	Reworded: See Article V, Section 14(d), The Judiciary.
Sec. 20 <i>Mixed Alcoholic Beverages; Intoxicating Liquors.</i>	Revised: See Article X, Section 17, General Provisions.
Sec. 21 <i>Public Printing and Binding; Repairs and Furnishings; Contracts.</i>	Statutory.
Sec. 22 <i>Fence Laws.</i>	Statutory.
Sec. 23 <i>Regulation of Live Stock; Protection of Stock Raisers; Inspections; Brands.</i>	Statutory.
Sec. 24 <i>Roads and Bridges.</i>	Statutory.
Sec. 25 <i>Drawbacks and Rebatement to Carriers, Shippers, Merchants, Etc.</i>	Statutory.
Sec. 26 <i>Homicide; Liability in Damages.</i>	Statutory.
Sec. 27 <i>Vacancies Filled for Unexpired Term.</i>	Reworded: See Article X, Section 5, General Provisions.
Sec. 28 <i>Wages Not Subject to Garnishment.</i>	Reworded: See Article X, Section 14, General Provisions.
Sec. 29 <i>Barratry.</i>	Repealed August 5, 1969.
Sec. 30 <i>Duration of Offices; Railroad Commission.</i>	Statutory.
Sec. 30a <i>Members of Boards; Terms of Office.</i>	Revised: See Article IV, Section 25, The Executive.
Sec. 30b <i>Civil Service Offices; Duration.</i>	Deleted.
Sec. 31 <i>Practitioners of Medicine.</i>	Retained: See Article X, Section 18, General Provisions.
Sec. 32 <i>Board of Health and Vital Statistics.</i>	Repealed August 5, 1969.

Sec. 33 <i>Salary or Compensation Payments to Agents, Officers or Appointees Holding Other Offices; Exceptions; Non-Elective Officers and Employees.</i>	Statutory: See Transition Schedule, Section 17.
Sec. 34 <i>Leases and Sales to United States Government for Military Purposes.</i>	Repealed August 5, 1969.
Sec. 35 <i>Protection of Laborers on Public Buildings and Public Works.</i>	Repealed August 5, 1969.
Sec. 36 <i>Payment or Funding of Amounts Due Teachers.</i>	Repealed August 5, 1969.
Sec. 37 <i>Liens of Mechanics, Artisans and Material Men.</i>	Reworded: See Article X, Section 20, General Provisions.
Sec. 38 <i>Commissioner of Insurance, Statistics and History.</i>	Repealed August 5, 1969.
Sec. 39 <i>Appropriations for Historical Memorials.</i>	Statutory.
Sec. 40 <i>Holding More than One Office; Exceptions; Right to Vote.</i>	Statutory: See Transition Schedule, Section 17.
Sec. 41 <i>Bribery and Acceptance of Bribes.</i>	Revised: See Article X, Sections 6 and 7, General Provisions.
Sec. 42 <i>Intestate Asylum.</i>	Repealed August 5, 1969.
Sec. 43 <i>Exemptions from Public Duty or Service.</i>	Statutory.
Sec. 44 <i>County Treasurer and County Surveyor.</i>	Revised: See Article IX, Section 3(b), Local Government.
Sec. 45 <i>Historical Records, Rolls, Correspondence and Other Documents.</i>	Repealed August 5, 1969.
Sec. 46 <i>Militia.</i>	Repealed August 5, 1969.
Sec. 47 <i>Conscientious Scruples as to Bearing Arms.</i>	Statutory.
Sec. 48 <i>Existing Laws to Continue in Force.</i>	See Transition Schedule, Section 2.
Sec. 49 <i>Protection of Personal Property from Forced Sale.</i>	Reworded: See Article X, Section 13, General Provisions.

Sec. 50 <i>Homestead; Protection from Forced Sale; Mortgages, Trust Deeds and Liens.</i>	Revised: See Article X, Section 12, General Provisions.
Sec. 51 <i>Amount and Value of Homestead; Uses.</i>	Revised: See Article X, Section 12(b), General Provisions.
Sec. 52 <i>Descent and Distribution of Homestead; Restrictions on Partition.</i>	Revised: See Article X, Section 12(c), General Provisions.
Sec. 53 <i>Process and Writs Not Executed at Adoption of Constitution.</i>	See Transition Schedule, Section 2.
Sec. 54 <i>Indigent Lunatics, Custody and Maintenance.</i>	Repealed August 5, 1969.
Sec. 55 <i>Pensions to Soldiers and Volunteers; Signers of Declaration of Independence; Widows.</i>	Repealed August 5, 1969.
Sec. 56 <i>Appropriations for Development and Dissemination of Information Concerning Texas Resources.</i>	Statutory.
Sec. 57 <i>Public Lands for State Capitol and Public Buildings.</i>	Repealed August 5, 1969.
Sec. 58 <i>Prison System.</i>	Repealed August 5, 1969.
Sec. 59 <i>Conservation and Development of Natural Resources; Conservation and Reclamation Districts.</i>	Statutory: See Article X, Section 10, General Provisions; Article IX, Section 7, Local Government; Transition Schedule, Section 3.
Sec. 60 <i>Texas Centennial.</i>	Repealed August 5, 1969.
Sec. 61 <i>Compensation of District, County and Precinct Officers; Salary or Fee Basis; Disposition of Fees.</i>	Revised: See Article IX, Section 9, Local Government.
Sec. 62 <i>State and County Retirement, Disability and Death Compensation Funds.</i>	Revised: See Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 63 <i>Teachers and Employees Retirement Systems, Service Credit.</i>	Revised: See Article X, Section 21, General Provisions; Transition Schedule, Section 11.
Sec. 64 <i>Terms of Office, Certain Offices.</i>	Statutory: See Transition Schedule, Section 13.

Sec. 65

Transition from Two-Year to Four-Year Terms of Office.

Sec. 66

Texas Rangers; Retirement and Disability Pension System for Rangers Ineligible for Membership in Employees Retirement System.

Statutory:

See Transition Schedule, Section 13.

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**

<i>Public Hearing</i>	<i>Date</i>	<i>Number Attending</i>	<i>Number Testifying</i>
Amarillo	April 25	334	52
Lubbock	April 26	199	49
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 each public hearing (excluding committee hearings) was 212

Average number testifying (excluding committee hearings) was 36

*Includes those testifying before committees.

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