

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

819 SCOMM427: INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

ARTICLE XIII

GENERAL PROVISIONS

SECTION 1. DISQUALIFICATION FOR PUBLIC OFFICE

A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law.

SECTION 2. STATEMENT OF ECONOMIC INTERESTS

All candidates for or holders of state offices and all members of a Commission or Board created by this Constitution shall file a verified statement of their economic interests as provided by law. The General Assembly by law may impose a similar requirement upon candidates for, or holders of, offices in units of local government and school districts. Statements shall be filed annually with the Secretary of State and shall be available for inspection by the public. The General Assembly by law shall prescribe a reasonable time for filing the statement. Failure to file a statement within the time prescribed shall result in ineligibility for, or forfeiture of, office. This Section shall not be construed as limiting the authority of any branch of government to establish and enforce ethical standards for that branch. [This Section 2 of Article XIII shall become effective on January 1, 1972. See Transition Schedule Section 1(e).]

SECTION 3. OATH OR AFFIRMATION OF OFFICE

Each prospective holder of a State office or other State position created by this Constitution, before taking office, shall take and subscribe to the following oath or affirmation:

"I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of to the best of my ability."

SECTION 4. SOVEREIGN IMMUNITY ABOLISHED

Except as the General Assembly may provide by law, sovereign immunity in this State is abolished. [This Section 4 of Article XIII shall become effective on January 1, 1972. See Transition Schedule Section 1(e).]

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Section will be implemented if SB 81 and 82 are passed substantially as introduced. SB 81 expands coverage of the Illinois Governmental Ethics Act by requiring more detailed reporting of economic interest. It also provides for public inspection of filed statements. The coverage of the Act is extended to elected local officials. SB 82 creates the Political Spending Act. Both bills are on the fall calendar.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Section will be implemented if HB 3039 and 3040 are passed substantially as introduced. HB 3039 extends the Local Governmental and Governmental Employee Tort Immunity Act to include claims or actions against the state. HB 3040 repeals the Act creating the Court of Claims and provides for dealing with pending actions. Both bills are on the fall calendar.

(cont'd)

Section 4. (cont'd)

HB 2047 provides that actions against the state shall be filed only in the Court of Claims. HB 2048 and 2049 deal with cases involving claims for firemen and policemen killed in the line of duty. Such cases are assigned to the Court of Claims. These bills are on the fall calendar.

The intent of HB 3039 and 3040 appears to be in conflict with that expressed in HB 2047. This conflict should be resolved during the fall session.

SECTION 5. PENSION AND RETIREMENT RIGHTS

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

SECTION 6. CORPORATIONS

Corporate charters shall be granted, amended, dissolved, or extended only pursuant to general laws.

SECTION 7. PUBLIC TRANSPORTATION

Public transportation is an essential public purpose for which public funds may be expended. The General Assembly by law may provide for, aid, and assist public transportation, including the granting of public funds or credit to any corporation or public authority authorized to provide public transportation within the State.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 8. BRANCH BANKING

Branch banking shall be authorized only by law approved by three-fifths of the members voting on the question or a majority of the members elected, whichever is greater, in each house of the General Assembly.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

ARTICLE XIV

CONSTITUTIONAL REVISION

SECTION 1. CONSTITUTIONAL CONVENTION

(a) Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a Constitutional Convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.

(b) If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.

(c) The vote on whether to call a Convention shall be on a separate ballot. A Convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.

(d) The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each Legislative District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.

(e) To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.

(f) The Convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the Convention determines, at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment. Any revision or amendments proposed by the Convention shall be published with explanations, as the Convention provides, at least one month preceding the election.

(g) The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the Convention provides, if approved by a majority of those voting on the question.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

SECTION 2. AMENDMENTS BY GENERAL ASSEMBLY

(a) Amendments to this Constitution may be initiated in either house of the General Assembly. Amendments shall be read in full on three different days in each house and reproduced before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house.

(b) Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors. The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.

(c) The General Assembly shall not submit proposed amendments to more than three Articles of the Constitution at any one election. No amendment shall be proposed or submitted under this Section from the time a Convention is called until after the electors have voted on the revision or amendments, if any, proposed by such Convention.

SECTION 3. CONSTITUTIONAL INITIATIVE FOR LEGISLATIVE ARTICLE

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

Section will be implemented if HB 3043 is passed substantially as introduced. HB 3043 provides for initiative to amend the Legislative Article. The bill is on the fall calendar.

ARTICLE XIV—CONSTITUTIONAL REVISION (concluded)

SECTION 4. AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

The affirmative vote of three-fifths of the members elected to each house of the General Assembly shall be required to request Congress to call a Federal Constitutional Convention, to ratify a proposed amendment to the Constitution of the United States, or to call a State Convention to ratify a proposed amendment to the Constitution of the United States. The General Assembly shall not take action on any proposed amendment to the Constitution of the United States submitted for ratification by legislatures unless a majority of the members of the General Assembly shall have been elected after the proposed amendment has been submitted for ratification. The requirements of this Section shall govern to the extent that they are not inconsistent with requirements established by the United States.

The Task Force believes this section is self-executing or adequately treated by existing statutes and rules.

TRANSITION SCHEDULE

The following Schedule Provisions shall remain part of this Constitution until their terms have been executed. Once each year the Attorney General shall review the following provisions and certify to the Secretary of State which, if any, have been executed. Any provisions so certified shall thereafter be removed from the Schedule and no longer published as part of this Constitution.

Section 1. Delayed Effective Dates.

Section 2. Prospective Operation of Bill of Rights.

Section 3. Election of Executive Officers.

Section 4. Judicial Offices.

Section 5. Local Government.

Section 6. Authorized Bonds.

Section 7. Superintendent of Public Instruction.

Section 8. Cumulative Voting for Directors.

Section 9. General Transition.

Section 10. Accelerated Effective Date.

SECTION 1. DELAYED EFFECTIVE DATES

(a) The provisions of Section 1, 2(a), 2(b), and 2(c) of Article IV shall not apply to the General Assembly elected at the general election in 1970. Notwithstanding Section 6(b) of Article IV, the incumbent Lieutenant Governor for the remainder of his term shall be the President of the Senate with a right to vote when the Senate is equally divided.

(b) Section 9(a) of Article VII shall become effective on December 1, 1971.

(c) Section 2 of Article VIII shall become effective on January 1, 1972.

(d) The second sentence of Section 2 of Article XI shall become effective on January 1, 1972.

(e) Sections 2 and 4 of Article XIII shall become effective on January 1, 1972.

SECTION 2. PROSPECTIVE OPERATION OF BILL OF RIGHTS

Any rights, procedural or substantive, created for the first time by Article I shall be prospective and not retroactive.

SECTION 3. ELECTION OF EXECUTIVE OFFICERS

The Governor, Lieutenant Governor, Attorney General, Secretary of State and Comptroller elected in 1972 shall serve for four years and those elected in 1976 for two years. The Treasurer elected in 1974 shall serve for four years.

SECTION 4. JUDICIAL OFFICES

(a) On the effective date of this Constitution, Associate Judges and magistrates shall become Circuit Judges and Associate Judges, respectively, of their Circuit Courts. All laws and rules of court theretofore applicable to Associate Judges and magistrates shall remain in force and be applicable to the persons in their new offices until changed by the General Assembly or the Supreme Court, as the case may be.

(b) Notwithstanding the provisions of Section 11 of Article VI, magistrates in office on the effective date thereof are eligible to serve as Associate Judges.

(c) Notwithstanding the provisions of Section 18 of Article VI, the Clerk of the Supreme Court and the Clerks of the Appellate Court Districts in office on the effective date of this Constitution shall continue in office until the expiration of their elective terms.

(d) Until otherwise provided by law and except to the extent that the authority is inconsistent with Section 8 of Article VII, the Circuit Courts shall continue to exercise the non-judicial functions vested by law as of December 31, 1963, in county courts or the judges thereof.

SECTION 5. LOCAL GOVERNMENT

(a) The number of members of a county board in a county which, as of the effective date of this Constitution, elects three members at large may be changed only as approved by county-wide referendum. If the number of members of such a county board is changed by county-wide referendum, the provisions of Section 3(a) of Article VII relating to the number of members of a county board shall govern thereafter.

(b) In Cook County, until (1) a method of election of county board members different from the method in existence on the effective date of this Constitution is approved by a majority of votes cast both in Chicago and in the area outside Chicago in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected, the number of members of the Cook County Board shall be fifteen except that the county board may increase the number if necessary to comply with apportionment requirements. If either of the foregoing changes is made, the provisions of Section 3(a) of Article VII shall apply thereafter to Cook County.

(c) Townships in existence on the effective date of this Constitution are continued until consolidated, merged, divided or dissolved in accordance with Section 5 of Article VII.

SECTION 6. AUTHORIZED BONDS

Nothing in Section 9 of Article IX shall be construed to limit or impair the power to issue bonds or other evidences of indebtedness authorized but unissued on the effective date of this Constitution.

SECTION 7. SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 2(b) of Article X shall take effect upon the existence of a vacancy in the Office of Superintendent of Public Instruction but no later than the end of the term of the Superintendent of Public Instruction elected in 1970.

SECTION 8. CUMULATIVE VOTING FOR DIRECTORS

Shareholders of all corporations heretofore organized under any law of this State which requires cumulative voting of shares for corporate directors shall retain their right to vote cumulatively for such directors.

SECTION 9. GENERAL TRANSITION

The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place. All officers filling any office by election or appointment shall continue to exercise the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

SECTION 10. ACCELERATED EFFECTIVE DATE

The effective date of Section 3 of Article IV shall be January 15, 1971.

For purposes of appointing members of a Legislative Redistricting Commission in 1971, the President Pro Tempore of the Senate shall have the appointing power vested by Section 3(b) of Article IV in the President of the Senate.



Number 1 (1971)

EXECUTIVE ORDER

WHEREAS, on December 15, 1970, the electors of Illinois approved by public referendum the proposed Constitution of 1970; and

WHEREAS, the Adoption Schedule of the Constitution of 1970 provides that with certain exceptions the new state charter shall take effect on July 1, 1971; and

WHEREAS, the Sixth Constitutional Convention of the State of Illinois adjourned sine die on September 3, 1970; and

WHEREAS, the 77th General Assembly of the State of Illinois is presently convened in regular session; and

WHEREAS, under the provisions of the Constitution of 1970 the General Assembly is required to implement certain of its provisions prior to July 1, 1971, and is further required to direct considerable legislative attention to such major areas of public concern as revenue and local government; and

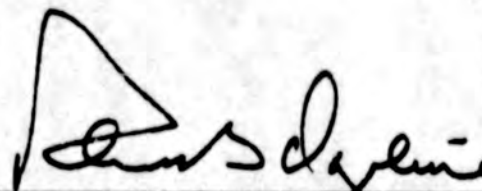
WHEREAS, there is not presently existing any governmental entity established for the purpose of bringing to the General Assembly the expertise of the Convention, the academic community, the concerned citizens of our State necessary to provide continuity to the work product of the Convention and to serve as an information resource for the General Assembly; and

WHEREAS, it is in the public interest that every effective step be taken to avert a constitutional crisis in the task of legislatively implementing the Constitution of 1970;

NOW, THEREFORE, I, RICHARD B. OGILVIE, GOVERNOR OF THE STATE OF ILLINOIS, by and under the powers vested in me by the Constitution of 1870 and the statutes of the State of Illinois, do hereby establish a Citizens Task Force on Constitutional Implementation, with the chairman and membership to be appointed and serve at the pleasure of the Governor, for the purpose of discharging the following responsibilities:

1. To immediately review the Illinois Constitution of 1870, the Illinois Constitution of 1970, and the Laws of Illinois for the purpose of identifying those areas of legislation which will require consideration by the General Assembly prior to June 30, 1971, and those which may be deferred for consideration beyond that date;
2. To make recommendations for the enactment, repeal or amendment of specific statutes where it is appropriate to the purposes of the task force and not inconsistent with the prerogatives of the legislative branch of state government;
3. To work in cooperation with the General Assembly and its agencies as that body may direct and request for the purpose of research and technical assistance incidental to the preparation of legislation necessary to implement the Constitution of 1970; and
4. To advise me as I may from time to time request with regard to the review of enacted legislation awaiting my final action.

Dated at Springfield, Illinois, this 21st day of January, A.D. 1971.



Richard B. Ogilvie
Governor

**APPENDIX C
COMMITTEE ASSIGNMENTS**

Steering Committee

Samuel K. Gove
William S. Hanley
Stanley Johnson
Betty Ann Keegan
Clifford P. Kelley

Committee on Revenue and Financial Administration

Chairman -- Simeon Leland
Members Lester Brann
Paul Giblin
Stanley Johnson
Maurice Scott

Committee on Structure of State Government

Chairman -- Alice Ihrig
Members William S. Hanley
Jeffrey Ladd
Odas Nicholson

Committee on Rights and Legal Procedures

Chairman -- David Davis
Members Al Raby
Charles W. Shuman
Wayne Whalen

Committee on Local Government

Chairman -- John C. Parkhurst
Members Robert Butler
Philip J. Carey
Clifford P. Kelley
Betty Ann Keegan
Troy Kost
L. D. LaFleur
Leonard Gardner
Jack Siegel
Virgil C. Wikoff
John Woods

APPENDIX C (continued)
COMMITTEE RESPONSIBILITIES
1970 Illinois Constitution

Steering Committee: Budget, personnel, policy.

Committee on Rights and Legal Procedures: Articles I,
III, XI, XII and XIII.

Committee on Structure of State Government: Articles IV,
V, VI, X and XIV (Section 3).

Committee on Revenue and Financial Administration: Articles
VIII and IX.

Committee on Local Government: Article VII.

Article II does not appear to require implementing legislation
and is not assigned to any committee.

APPENDIX D

MEMORANDUM

February 20, 1971

RE: Constitution of 1970 -- Powers of 77th General Assembly

FROM: Mr. Wayne W. Whalen

Question: Does the 77th General Assembly have authority to enact, at its regular 1971 session, bills (in anticipation of the effective date of the Constitution of 1970), inconsistent with the Constitution of 1870 but consistent with the Constitution of 1970?

Answer: Although the matter is not free from doubt, and there are no reported Illinois cases dealing directly with the question, the General Assembly does seem to have such authority.

ANALYSIS

1. Sections 9 and 10 of the Transition Schedule of the Constitution of 1970 provide in relevant part:

"Section 9. GENERAL TRANSITION

The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution. The validity of all public and private bonds, debts and contracts, and of all suits, actions and rights of action, shall continue as if no change had taken place"

"Section 10. ACCELERATED EFFECTIVE DATE

**The effective date of Section 3 of Article IV
shall be January 15, 1971.**

*** * * * ***

2. The Preamble and Section 1 of the Adoption

Schedule of the Constitution of 1970 provide:

**"The following Schedule Provisions
shall not be deemed to be a part of this
Constitution except for the limited purpose
of governing the determination of whether
or not this Constitution has been adopted,
the determination of what changes thereto
have been made as a result of the vote on
each of the separately submitted issues,
and the establishment of the general
effective date of this Constitution.**

*** * * * ***

Section 1.

**"Except as otherwise provided in
Section 1 of the Transition Schedule,
this Constitution, if approved by the
electors as provided by the Constitution
of 1870, as amended, shall take effect on
July 1, 1971, and the Constitution of 1870,
as amended, shall thereafter be of no
force and effect except to the extent that
the contingencies provided for in Section 6
of this Adoption Schedule may require."**

**3. As Section 10 of the Transition Schedule indi-
cates, the Constitution of 1970 became effective for
certain purposes prior to July 1, 1971, the date on which**

it becomes generally effective, except for the delayed effective dates provided for by Section 1 of the Transition Schedule. A constitutional provision is generally deemed effective, unless otherwise provided, on the date it is ratified. Druggan v Anderson, 269 U.S. 36, 39 (1925); Richards v Donagho, 66 Ill. 73 (1872); Schall v Bowman, 62 Ill. 321, 329 (1872). Therefore, the intent of the Sixth Illinois Constitutional Convention governs the validity of anticipatory legislation.

4. Although the report of the Committee on Style, Drafting and Submission of the 1970 Constitutional Convention is silent on this subject, the transcript of the debates on the floor of the Convention indicates an intention on the part of the Convention that the 77th General Assembly, at its regular 1971 session, be authorized to take steps implementing provisions of the Constitution of 1970. One delegate stated to the floor of the Convention in explanation of the delayed effective date of the proposed Constitution: "(W)e thought they (the Legislature) could anticipate the effect of the new Constitution...." (Transcript of Sixth Illinois Constitutional Convention, Sept. 1, 1970 at p. 453.) There are no statements contradicting this conclusion.

5. Although there are no reported Illinois cases directly on point, the rule in jurisdictions which have passed upon the question

is that bills can be adopted after ratification, but in anticipation of the effective date, of a new constitutional provision. See cases collected at 171 A. L. R. 1070, 1075 (1947); 16 Am. Jur. 2d "Con. Law" § 181 at p. 409. Even if the anticipatory bill is prohibited under the constitution in effect at the time the anticipatory bill is adopted, but allowed under a constitutional provision which has been ratified, the courts have generally upheld such legislation.

Gaylord v. Beckett, 378 Mich. 273, 144 N.W.2d 460 (1966), appears to be the reported case which bears most closely on the present question. The Michigan legislature passed, and the Governor signed, the Industrial Revenue Bond Act of 1963 in anticipation of an adequate provision of the Michigan Constitution of 1963, which, at the time the Act was passed and signed, had been ratified but was not yet generally effective. In this case to test the constitutionality of the Act, the Supreme Court of Michigan specifically requested counsel to address themselves to the constitutionality of the Act "against the limitations on legislative power contained in the 1908 Constitution, then still in effect." Of the eight justices then sitting on the Supreme Court, four justices concluded that the anticipatory Act was to be tested under the standards of the 1963 Constitution (implying that the lawfulness of the Act under the 1908 Constitution was irrelevant) stating:

"A legislature has power to enact a statute not authorized by the present Constitution where the statute is passed in anticipation of a constitutional amendment authorizing it or provides that it shall take effect upon the adoption of such a constitutional amendment." 144 N.W.2d at 482.

Two justices also concluded that the Act was to be tested under the 1963 Constitution but appeared to base their conclusion on the contention that the Act was "in force" on the effective date of the 1963 Constitution (they did not consider the lawfulness of the Act under the 1908 Constitution). One justice concluded that the Act was unlawful under the 1908 Constitution and therefore beyond the power of the legislature when passed. He stated:

"What these cases mean to me is that the Legislature's acts must be judged in the light of the powers possessed by the Legislature at the time it undertakes to act. With due regard for the fact that the legislative power of a state, unlike the legislative power of Congress, does not depend upon express constitutional grant but, rather, is a broad and comprehensive as necessary to accomplish the legitimate purposes of government except as the people may have imposed restraints upon such power by constitutional limitations... the Constitution in force and effect at the time the Legislature acts must be examined to determine whether the people in fact have forbidden the Legislature so to act. If they have, the legislature act is a nullity, a void, a failure of creation; it is stillborn, dead at birth; it lacks the force of law; it is impotent as a source of rights or of obligations; it signifies an act of futility as devoid of effect as if never attempted; it is no more effective as a law than is a piece of blank paper."

* * *

"* * * When a Legislature purports to enact a statute the subject matter of which is beyond the legislative power of the state as limited by the state's people in their constitution, the principle is applicable and the statute is void ab initio. . . . If it were beyond the powers of the Legislature under the 1908 Constitution, our judicial duty would end with our declaration of the Act's validity. Only if it were not beyond such powers, would Act 62 then have to be tested for its current validity against the limitations contained in the 1963 Constitution." 144 N. W. 2d at 486-87

Finally, one justice concluded that further proceedings were required before the court should attempt to dispose of this issue.

In Druggan v. Anderson, 296 U.S. 36 (1952), the Court, speaking through Justice Holmes, rejected the claim that the National Prohibition Act was unconstitutional because it was passed after Amendment XVIII to the United States Constitution was ratified but prior to the date the Amendment became effective:

""We have no doubt of the authority of Congress to pass the law. Barbour v. Georgia, 249 U.S. 454. Diamond Glue Co. v. United States Glue Co., 187 U.S. 611, 615, 616. Indeed it would be going far to say that while the fate of the Amendment was uncertain Congress could not have passed a law in aid of it, conditioned upon the ratification taking place." 269 U.S. at 39.

See also State v. Herker, 109 Ore. 520, 221 Pac. 808 (1923)

(state constitution had prohibited death penalty; court upheld statute permitting death penalty passed in anticipation of effective date of constitutional amendment permitting death penalty).

In Alabam's Freight Co. v. Hunt, 29 Ariz. 419, 242 Pac. 658 (1926), the plaintiff challenged a workmen's compensation act on the ground that the statute had been passed prior to the effective date of an enabling constitutional amendment. The court held:

"We are of the opinion that the Legislature may pass an act to take effect only upon the adoption of a Constitutional amendment authorizing it, and that its constitutionality is to be tested by the Constitution as it is at the time the law takes effect, and not as when it was passed." 242 Pac. at 659.

The Supreme Court of Illinois has accepted the view that the state constitution represents a limitation on the power of the State, and that, except where so limited (by the state or federal constitutions)

the General Assembly has broad residual power to adopt legislation.

Cf. Thorpe v. Mahin, 43 Ill. 2d 36, 44-5 (1969). Since neither the Constitution of 1870 nor the Constitution of 1970 restricts the power of the General Assembly to pass legislation in anticipation of the effectiveness of constitutional provisions, this doctrine of residual power supports the authority of the General Assembly to adopt such anticipatory legislation. Also see, e.g., In re Opinions of the Justices, 227 Ala. 291, 149 So. 776 (1933).

In Neisel v. Moran, 80 Fla. 98, 85 So. 346 (1920), the court stated:

"The state Legislature has plenary lawmaking power, subject only to the limitations imposed by the state and federal Constitutions, and may enact any anticipatory statutes that are not forbidden by such Constitutions. The state Constitution expressly provides for the enactment of statutes to take effect after their passage and approval and after the final adjournment of the session of the Legislature at which they were enacted. Anticipatory statutes are not forbidden; nor are they contrary to the letter or to the spirit of the state Constitution; but the enactment is expressly contemplated by the Constitution." 85 So. at 349.

There are cases, though apparently none reported in Illinois, where the courts have struck down attempts to revive unconstitutional statutes by a later constitutional amendment where the statute in question was not passed in anticipation of the constitutional amendment and the constitutional amendment did not, by its terms, call for the revival of the statute. See, e.g., Plebset v. Barnwell Drilling Co., 243 La. 874, 148 S. 2d 584, 588 (1963); Little Rock v. Caren, _____ Ark. _____, 381, S. W. 2d 741 (1964); Mathews v. Quinton, 362 P. 2d 932, 938-39 (Alaska, 1961).

6. On the question of whether the Governor should sign an anticipatory bill before or after July 1, the balance seems to tip in favor of signing after July 1. In fairness, it should be noted that none of the anticipatory enactment cases appears to turn on the time the bill is approved by the head of the executive branch of government, and the time of approval issue is not relevant to the rationale of the anticipatory enactment theory.

If the bill were signed before July 1 it would, under Article IV, Section 13 of the Constitution of 1870, become effective July 1, 1971. A delayed effective date provision would require a finding of "emergency" and a 2/3rds majority in order to be operative. Absent such a finding and majority, a July 1 effective date would raise the question of whether the bill or the legislature provisions of the Constitution of 1970 became effective first on July 1, 1971. It would be desirable to avoid that conundrum.

A bill signed by the Governor before July 1, with a post-July 1 effective date, would be a "law" and would therefore seem to gain the benefit of the literal language of the saving clause (which does not apply to bills) of Section 9 of the Transition Schedule of the Constitution of 1970. See Gaylord v. Beckett, *supra* (concurring opinion). The report of the Committee on Style, Drafting and Submission is silent regarding the intention of the saving clause and the matter was not the subject of recorded debate on the floor of the Convention; it seems fair to assume, however, that the delegates were not necessarily attempting to provide for anticipatory legislation when they adopted the saving clause. Rather, the

clause seems clearly to have been intended generally to preserve all existing non-repugnant laws, etc. In Gaylord, however, the bill was signed before the 1963 Constitution became generally effective and two justices relied, at least in part, on the saving clause to sustain the bill.

A bill signed after July 1, would not be covered by the language of the saving clause. A post-July 1 signature, however, would seem to enhance the validity of the bill by withholding, until the Constitution of 1970 is in general effect, the necessary step by which a bill passed in anticipation of that Constitution becomes law. After July 1, 1971, the provisions of Article IV, Section 9 of the Constitution of 1970 regarding the Governor's approval or veto of bills will apply to all such action by the Governor, including action on bills passed at the 1971 regular session of the General Assembly. This seems to indicate an intention on the part of the Constitutional Convention to provide for a bridging of the July 1, 1971 effective date through the enactment of legislation before July 1 and the consideration by the Governor of such legislation after July 1.

7. The Bills probably should, in their preamble, recite that they are being adopted in anticipation of the effective date of the Constitution of 1970. Such Bills should be signed by the Governor after July 1, 1971. It would probably be desirable to have a message from the Governor in connection with his signature adopting the theory of anticipatory enactment referred to in the preamble to the Bills.

APPENDIX E

June 15, 1971

FILE NO. 5-009

CONSTITUTION:

ARTICLE IV, Section 8 (d) : Section 9

**The Honorable Richard B. Ogilvie
Governor
207 State House
Springfield, Illinois 62706**

Dear Governor Ogilvie:

I have your letter of May 19, 1971, as follows:

"I would appreciate receiving the benefit of your opinion as to the effect of Section 9, Article IV of the Constitution of 1970, in terms of its application to legislation enacted by the General Assembly prior to July 1, 1971.

I direct your attention to the following specific questions:

- 1. Does the requirement of Section 9 (a) concerning presentment to the Governor within 30 calendar days after passage of a bill require that legislation be presented to the Governor 30 days from July 1, 1971 when the provision itself becomes effective or does it require presentment of bills 30 days after the actual date of the bill's passage even if it occurred prior to July 1, 1971?**
- 2. As to bills presented to the Governor prior to July 1, 1971 and still held by him on the effective date of the new Constitution, is the terminal date of the Governor's action to be measured by the Constitution of 1870 or by 60-day rule of**

The Honorable Richard B. Ogilvie

Section 9 (b) of the Constitution of 1970? If, in your opinion, the 60-day rule of the 1970 Constitution does apply, are the 60 days to be counted from the actual day of presentment or from the effective date of the new Constitution?

3. With respect to bills passed prior to July 1, 1971, but considered by the Governor on or after that date, may he exercise the powers of review vested in him under Section 9 of the Constitution of 1970, or are his powers limited to those set forth in Article V, Section 16 of the Constitution of 1870?
4. If, prior to July 1, 1971, the Governor returned a vetoed bill to the General Assembly and the General Assembly was still then in session, but subsequently recessed or adjourned prior to July 1, 1971 without having taken action with respect to that veto, do the provisions of Section 9 (c) apply? If so, is the 15 calendar day period to be measured against the day on which the veto message was first journalized or is it measured from July 1, 1971, the effective date of the new Constitution?
5. Under the provisions of Section 9(e), do the 30-day rule concerning presentment and the 60-day rule concerning the Governor's review apply to a bill which is presented to the Governor for certification that the action of the General Assembly conforms to his recommendations?
6. As a general matter, I would appreciate your opinion as to whether the time periods identified in Section 9 are to be measured beginning the count with the actual date the event occurs or with the first full calendar date after the day of the event.

I would also appreciate your construction of Section 8 (d) which requires the Speaker of the House and President of the Senate to sign each bill that passes both houses certifying that procedural requirements for passage have been met.

The Honorable Richard B. Ogilvie

Specifically, I request your opinion on the question whether this provision must be satisfied in the form of bills presented to the Governor after June 30, 1971, even though the bill passed both houses prior to July 1, 1971. If so, will the signatures alone satisfy this requirement or will specific wording of certification be necessary?

Thank you for your continuing courtesies."

At the outset the rules for construction of the Constitution, as stated by the Illinois Supreme Court, should be noted. In the People v. Crawley, 274 Ill 139, 142, the Court said:

"* * * * * The general principles governing the construction of constitutions are the same as those that apply to statutes. * * * * * In construing constitutions, as with statutes, the chief purpose is to give effect to the intent of the makers. * * * In seeking such intention we are to consider the language used by the legislature, the evil to be remedied and the object to be attained. We are not confined to the literal meaning of the words. A thing within the intention is regarded within the statute though not within the letter. A thing within the letter is not within the statute if not within the intention. When the intention can be gathered from the entire document, words may be modified or altered so as to obviate all inconsistency with such intention. When great inconvenience or absurd consequences will result from a particular construction the courts are bound to assume that such consequences are not intended. * * * * *"

In Graham v Dye, 308 Ill 283, 286, the Court said:

The Honorable Richard B. Ogilvie

"* * * * *The intent and meaning of the constitution are to be determined from the language used in its provisions. We said in People v. Stevenson, 281 Ill. 17: 'As a constitution is dependent upon adoption by the people, the language used will be understood in the sense most obvious to the common understanding. The language and words of a constitution unless they be technical words and phrases, will be given effect according to their usual and ordinary signification, and courts will not disregard the plain and ordinary meaning of the words used, to search for some other conjectural intention.' In City of Beardstown v. City of Virginia 76 Ill. 34, the court said, in the construction of the meaning of constitutional provisions the intent is determined from the meaning of the words used, and that when words have a definite meaning it is not allowable to go elsewhere in search of conjecture or resort to subtle or forced construction for the purpose of limiting or extending their meaning and effect.

* * * * *

In People v. Barrett, 370 Ill. 478, 480, the Court said:

"* * * * *

* * * * *It is a well-recognized canon of constitutional construction that the chief purpose sought to be attained is the intention of its framers. In seeking such an intention courts are to consider the language used, the object to be attained or the evil to be remedied. Where the constitutional provisions are not applicable, no limitation exists upon the legislative body. In the construction of the constitution courts should not indulge in speculation apart

The Honorable Richard B. Ogilvie

from the spirit of the document, or apply so strict
a construction as to exclude its real object and
intent. * * * * *

* * * * *

The Constitution of 1970 provides:

ADOPTION SCHEDULE

Section 1

"Except as otherwise provided in Section 1 of the
Transition Schedule, this Constitution, if approved
by the electors as provided by the Constitution of
1870, as amended, shall take effect on July 1, 1971,
and the Constitution of 1870, as amended, shall
thereafter be of no force and effect except to the
extent that the contingencies provided for in
Section 6 of this Adoption Schedule may require."

ARTICLE IV (The Legislature)

Section 8:

"(d) * * * * *

* * * * *

The Speaker of the House of Representatives and
the President of the Senate shall sign each bill
that passes both houses to certify that the procedural
requirements for passage have been met."

Section 9:

"(a) Every bill passed by the General Assembly
shall be presented to the Governor within 30 calendar
days after its passage. The foregoing requirement
shall be judicially enforceable. If the Governor
approves the bill, he shall sign it and it shall be-
come law.

The Honorable Richard B. Ogilvie

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall become law.

(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

(e) The Governor may return a bill together with specific recommendations for change to the house

The Honorable Richard B. Ogilvie

in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bills shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated."

Under Section 1 of the Adoption Schedule, above quoted, any action by the Legislature or the Governor or any time limitations or requirements pertaining to legislation or bills is to be determined by the Constitution of 1870 up to July 1, 1971, and as of that date, to be determined solely by the Constitution of 1970. Based on this conclusion and interpretation, I have the following views on your questions.

The answer to question number 1 of ARTICLE IV, Section 9 (a) requires that a bill passed prior to July 1, 1971, not theretofore presented to the Governor, must be presented to the Governor within 30 calendar days after its passage.

The answer to question number 2 is the provisions of ARTICLE IV, Section 9 (b) of the Constitution of 1970 apply to any bills presented to the Governor less than 10 days (Sundays excepted), prior to July 1, 1971 and still held by him on that

The Honorable Richard B. Ogilvie

date. This means that the Governor has 60 calendar days within which to return the bill after it is presented to him which also means that such 60 days are to be counted from the actual day of presentment of the bill to the Governor. The reference herein to the ten-day period arises from the requirement of Article V, Section 16 of the 1870 Constitution.

The answer to question number 3 is the provisions of Article IV, Section 9 of the Constitution of 1970 applies.

The answer to question 4 is that the provisions of Article IV, Section 9 (c) apply to all vetoed bills returned by the Governor to the General Assembly on or after July 1, 1971 and, as herein-after noted, to a limited extent to certain bills returned by the Governor prior to July 1, 1971. The Constitution of 1870 applies with respect to all vetoed bills returned to the General Assembly up to July 1, 1971 insofar as action of the General Assembly is concerned up to that date. As of July 1, 1971, the provisions of Section 9 (c) of the Constitution of 1970 would apply to any General Assembly action on any vetoed bills then pending and undisposed of in the General Assembly. The fifteen calendar days would in any event be computed from and including the day after

The Honorable Richard B. Ogilvie

the Governor's objections are entered in the journal of the originating house.

The answer to question number 5 is the time limits prescribed in ARTICLE IV, Section 9 (a) and 9 (b) apply as well to a bill presented to the Governor for certification under Section 9(e). It is noted Section 9 (e) provides that when the bill is returned by the Governor to the originating house with specific recommendations for change it shall be considered in the same manner as a vetoed bill except that the specific recommendations may be accepted by a vote of the majority of the elected members to each house. Section 9 (e) further provides that such bills shall be presented again to the Governor for his certification whereupon it shall become law, or if he does not certify, he shall return the bill as a vetoed bill to the originating house. Since Section 9 (e) provides that the bill shall be presented again to the Governor, and since Section 9 (a) and 9 (b) both provide for time limits after a bill is "presented" to the Governor, it is evident that such time limits likewise apply to a bill returned and presented to the Governor pursuant to Section 9 (e) and to the Governor's action thereon with respect to certification.

The Honorable Richard B. Ogilvie

The answer to question number 6 is the time periods specified in ARTICLE IV, Section 9, are to be measured commencing with the calendar day following the day on which the event occurs.

It is observed that the language in Section 9 in connection with and immediately following the periods of time specified uses the word "after". In Webster's New International Dictionary, 2nd Edition, Unabridged, "after" is defined as:

"subsequent to; following the expiration of; in legal consideration where a time is expressed as to be computed, as an act as to be done, after a certain date, the word after is judicially construed as not intended to include the day or period governed by the word after; thus 30 days after April 1 would include the period beginning with April 2d and including May 1st; two months after July would include all of August and September; 10 days after sight of a draft would include ten days subsequent to, and not including, the day of its presentation. But the word may be construed to include the day or period referred to, as where this will plainly give effect to the intention of the user, as in a devise or a statute to subserve public policy, avoid a forfeiture, etc."

In Ballentine's Law Dictionary, Third Edition, "after" is defined as:

"Behind; later in point of time. Where an act is to be performed within a specified period "after" a day named, the general rule is to exclude the day designated and to include the last day of the specified period. 52 Am 31st Time § 27."

The Honorable Richard E. Ogilvie

The answer to the final question is the provisions of ARTICLE IV, Section 8 (d) apply and require the Speaker of the House and President of the Senate to sign each bill that passes both houses certifying that the procedural requirements for passage have been met for all bills that are passed on or after July 1, 1971, and all bills that are passed prior to July 1, 1971, which have not been signed by the Speaker and President as of July 1, 1971, in accordance with the requirements of ARTICLE IV, Section 13 of the Constitution of 1870. ARTICLE IV, Section 8 of the Constitution of 1970 expressly provides that each bill that passes both houses be signed by the Speaker of the House of Representatives and the President of the Senate. That portion of Section 8 reading "to certify that the procedural requirements for passage have been met" does not require that an express statement to such effect be signed. Section 8 does not clearly and expressly say this is required. It says that the officers shall "sign each bill". It does not say that they shall sign a certificate or that they shall certify. It provides, as I interpret it, the effect of their signing of a bill.

The Honorable Richard B. Ogilvie

It is my opinion that only signing of each passed bill by the
Speaker and President is required and that no specific wording
or certification is necessary.

Very truly yours,

ATTORNEY GENERAL

APPENDIX F

WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD
62706
June 16, 1971

FILE NO. S-310

CONSTITUTION:
77th General Assembly
Continuous Body

Honorable Cecil A. Partee
President Pro Tempore
Illinois State Senate
State House
Springfield, Illinois

Honorable W. Robert Blair
Speaker, House of Representatives
State House
Springfield, Illinois

Dear Senator Partee:
Dear Mr. Speaker:

Senator Terrel E. Clarke, Assistant Minority Leader,
has asked the following question:

"Is the 77th General Assembly terminated on the day the 1970 Constitution takes effect, July 1, 1971, or does Section 9 of the Transition Schedule of the Constitution of 1970 permit the 77th General Assembly to function as a continuous body until the Second Wednesday of January, 1973?"

Honorable Cecil A. Partee and
Honorable W. Robert Blair

This is a question of importance which involves both the on-going nature of the General Assembly under Article IV and the broad effects of the Schedules.

My judgment is that the 77th Illinois General Assembly is not terminated on July 1, 1971. Section 9 of the Transition Schedule clearly permits the 77th General Assembly to function as a continuous body until the second Wednesday of January, 1973, at which time the 78th General Assembly shall convene.

Consequently, the 77th General Assembly may, for example, recess prior to July 1, 1971, by adjournment to a time certain after June 30, 1971, should it feel appropriate.

Additionally, the 1970 Constitution requires the 77th General Assembly to convene anew on the second Wednesday of January, 1972.

The obvious and traditional purposes of a schedule in a new constitution are to provide for an orderly transition from the old constitution, and to establish temporary regulations for the interim until new machinery and proceedings are

Honorable Cecil A. Partee and
Honorable W. Robert Blair

constructed. Such purposes are abundantly evident in the
Transition Schedule and Adoption Schedule of the 1970 Illinois
Constitution.

Section 1 of the Adoption Schedule provides:

"Except as otherwise provided by Section 1
of the Transition Schedule, this Constitution,
if approved by the electors as provided by the
Constitution of 1870, as amended, shall take
effect on July 1, 1971, and the Constitution of
1870, as amended, shall thereafter be of no
force and effect except to the extent that the
contingencies provided for in Section 6 of this
Adoption Schedule may require."

This language in no way suggests that the authority, rights
and duties of the 77th General Assembly, initially assumed
under the 1870 Constitution, terminate on July 1, 1971.

It is, rather, the necessary effect of the Schedules and
1970 Constitution to repeal, alter or modify General Assem-
bly authority, rights and duties, and procedures only to the
extent inconsistent with the new constitution. This is clari-
fied by Section 9 of the Transition Schedule, providing for a
general transition:

"The rights and duties of all public bodies
shall remain as if this Constitution had not
been adopted with the exception of such changes
as are contained in this Constitution. All
laws, ordinances, regulations and rules of

Honorable Cecil A. Partee and
Honorable W. Robert Blair

court not contrary to, or inconsistent with,
the provisions of this Constitution shall
remain in force, until they shall expire by
their own limitation or shall be altered or
repealed pursuant to this Constitution. * * *

The 77th General Assembly, being a "public body", cf., 1970
Ill. Const., Art. IV, Sec. 5 (a), retains all rights and duties
which it has under the 1870 Constitution, unless changed by
the 1970 Constitution. Thus, unless so changed, the 77th
General Assembly may continue to function, with the right to
adjourn to a time certain, after June 30, 1971. Cf., Opinions
of Ill. Attorney-General, 1966, pp. 186, 189 (annual sessions;
adjournment to a time certain).

No language in the 1970 Constitution requires term-
ination of the 77th General Assembly on July 1, 1971. To the
contrary, Article IV, Section 5 (a) expressly permits a continu-
ing session:

" * * * The General Assembly shall be a con-
tinuous body during the term for which mem-
bers of the House of Representatives are
elected."

This provision "constitutionally mandates that the General
Assembly shall be a continuous body during each two year term
of the House of Representatives." Committee on Legislative
Article Majority Report, p. 68, Sixth Illinois Constitutional
Convention (1970).

Honorable Cecil A. Parree and
Honorable W. Robert Blair

The 77th General Assembly convened in January, 1971.

It shall be and remains a continuous body during the constitutional term of House members elected thereto, i.e., until the 78th General Assembly is convened on the second Wednesday of January 1973.

It must be emphasized that, whatever the decision of the 77th General Assembly as to continuing the session after June 30, 1971, the 1970 Constitution, Art. IV, Sec. 5(a) additionally requires that Assembly to convene anew on the second Wednesday of January, 1972:

"The General Assembly shall convene each year
on the second Wednesday of January. * * *"

This provision "commits Illinois to annual sessions through providing that the General Assembly shall convene each year on the second Wednesday of January . . ." Committee on Legislative Article Majority Report, p. 68, Sixth Illinois Constitutional Convention (1970).

It "implicitly states that all legislation introduced in the first year of the two year term shall carry over to the second year." Id., at p. 69.

Honorable Cecil A. Partee and
Honorable W. Robert Blair

Article IV, Sec. 5 (b), further, provides for special sessions called by proclamation by either the Governor or presiding officers of both houses in the event the General Assembly has adjourned. Joint proclamation by the presiding officers must issue as provided by law.

The 1971 organization of the 77th General Assembly shall continue as established in January, 1971, until the 78th General Assembly is convened in January, 1973. 1970 Ill. Const., Art. IV, Sec. 6 (b); Committee on Legislative Article Majority Report, p. 74, Sixth Illinois Constitutional Convention (1970).

The 77th General Assembly may on June 30, 1971 adjourn to a time certain in 1971 or 1972. It must convene on the second Wednesday of January, 1972. This Assembly shall function as a continuous body until the second Wednesday of January, 1973.

Very truly yours,

ATTORNEY GENERAL

cc: The Honorable Richard B. Ogilvie
Governor
Honorable Paul Simon
Lieutenant Governor
Honorable Clyde L. Choate
Minority Leader
Honorable Terrel E. Clarke
Assistant Minority Leader

BIBLIOGRAPHY

- Blair, W. Robert, Speaker of the Illinois House of Representatives, A Report To The People: Accomplishments of the 77th General Assembly; The First Six Months, no date.
- Chicago Bar Association; Constitution Committee, Areas of Statutory Implementation Under the 1970 Constitution (mimeographed), no date.
- Citizens' Advisory Committee on Implementation of Comptroller's Office Under the 1970 Illinois Constitution, Progress Report, June 10, 1971.
- Citizens Task Force on Constitutional Implementation, Initial Report: Checklist on Legislative Implementation of the 1970 Illinois Constitution, April 12, 1971.
- _____, Second Report: Checklist on Legislative Implementation of the 1970 Illinois Constitution, June 16, 1971.
- Dixon, Alan J. State Treasurer, State of Illinois Treasurer's Report: Recommendations for Constitutional Implementation for the Office of State Treasurer, August 10, 1971.
- Illinois Legislative Reference Bureau, untitled checklist on areas of statutory change required under the 1970 Illinois Constitution, no date.
- Ladd, Jeffrey, "Requirements for Legislative Action IN RE Deleted Sections of the 1870 Constitution" (a Task Force work paper), no date. (Included in Initial Report, April 12, 1971)
- League of Women Voters of Illinois, Implementing The 1970 Illinois Constitution, February, 1971.
- Lousin, Ann, memorandum to members of the Committee on Constitutional Implementation, House of Representatives, IN RE powers of the 77th General Assembly to Implement or Otherwise Legislate in Regard to the 1970 Constitution, March 22, 1971.
- Pfeifer, Frank M., General Counsel to the Illinois Municipal League, memorandum to Steven Sargent, Executive Direction, IN RE Municipal ordinances under home rule powers, January 4, 1971.
- Scott, William J., Attorney General of Illinois, "Constitution: Article IV, Section 8(d); Section 9" (file no. S-309), June 15, 1971.
- _____, "Constitution: 77th General Assembly Continuous Body" (file no. S-310), June 16, 1971.
- Whalen, Wayne W., Memorandum IN RE Constitution of 1970--Powers of the General Assembly, February 20, 1971.

1 November 1979

SOME COMMENTS made to the panel reviewing the attached paper:

740
32
This paper is primarily a compilation of constitutional amendments reported. Time did not permit intensive analysis of the exact meaning and impact of each within its political jurisdiction. This kind of effort is useful only in identifying broad trends and suggesting topics for further research. My experience has highlighted certain problems in dealing with data of this kind:

1. Amendments vary widely in their significance

This is obvious, of course, but needs continual stressing in works of this sort. For example, an amendment may revamp an entire article--say, the judiciary; it may embrace the Missouri Plan rejecting popular election, adopt unification, establish a commission on judicial qualifications, and abolish jps. Or it may authorize the legislature to exempt from ad valorem taxation commercial shrimping and oyster boats using diesel fuel. In compilations both of these count the same.

2. Adoption Rates have utility---but not a lot

A comparison of amendments proposed with those finally adopted by the people produces an adoption rate. This might be 71.7% in one period and 65.2% in another. Such figures reveal very little and must be used carefully. For examples:

Kansas in 1972--revised its executive article, including joint election of governor and lieutenant governor, eliminated the latter from the legislature, and increased terms to 4 years
--revised its judiciary article, including unification and the Missouri Plan
--removed the prohibition against transportation of convicted persons outside the state

All approved: adoption rate 100%

Wyoming in 1976--repealed a prohibition against any female and any boy under 14 from working in the mines
--eliminated annual census of school children
--authorized the building of a prison for men at Rawlins and for women at any convenient spot

All approved: adoption rate 100%

New Hampshire in 1970--required declaration by civil officers to support the constitutions of the U.S. and New Hampshire
but rejected
--annual sessions
--4-year terms for executive officers
--compensation commission for the legislature

Adoption rate: still 25%

I realize that this is anecdotal and not statistical but it still suggests a problem with this measurement.

3. Watch the local amendments

Several states have this practice although Georgia is by far the worst practitioner. Statewide amendments in Georgia would still include:

- authority to create a public facilities authority for the city of Conyers
- the creation of a downtown Americus authority
- transfer of all existing public library systems, facilities and services located in any county of 600,000 or more to a countywide library system.

A local example:

- to amend the constitution so as to increase the civil jurisdiction of justices of the peace in Lanier County from \$200.00 to \$500.00

4. You can't always tell what's important

Reading cold print far from the political scene may mislead the reader. For example, I noticed that an initiative petitioned amendment to bar the use of "leghold traps" was on the ballot in Ohio—subsequently voted down. I assumed that this must have been the pet project of a fringe group and was handily voted down. However, talking with an Ohioan later I learned that this was the "most divisive issue in Ohio next to Mayor Kucinich." Evidently it divided rural and urban and stimulated the expenditure of great amounts of money on both sides.

5. Things not passed are important too—but watch initiatives

Any review of constitutional change should include not only what was accepted but what was not. Defeated change may indicate directions not favored by the people or it might be a harbinger—like an occasional Supreme Court dissent—of things to come. But take care, particularly with initiative petitions. Generally it takes only about 10% of the qualified voters to get something on the ballot. I suspect you might normally get 10% of 12-year-olds to vote to abolish Christmas. For example, in this paper on page 32—the section on taxation and finance—I have the sentence: "...In Montana, a draconian measure, initiative inspired, carried not only a flat limitation of \$375 million per biennium through fiscal year 1983 but would have ordered a 15% reduction in the amount of federal aid received each year until 1984, after which no further aid could be accepted." After writing this I was troubled and put through a call to Montana's secretary of state. That amendment was overwhelmingly defeated, gathering barely 30% of the vote, obviously a product of a fringe group and suggesting little about current or future thinking in Montana.

Note: I am sure there are numerous errors in the paper. One which has been noted is on page 31, footnote 38a. Texas did not approve the amendment setting the two-thirds rule. Another error is on page 37: Pennsylvania did not vote on, much less approve a provision to submit the question of calling a con con every ten years.

TRENDS IN STATE CONSTITUTION-MAKING
1973-78

John P. Wheeler, Jr.
Hollins College

Southern Political Science Association
Gatlinburg, Tennessee
1 November 1979

INTRODUCTION

Two developments stand out in the history of state constitutional development during the six year period 1973-78. First, the single most dramatic, if not most significant, event occurred in California on 6 June 1978. Voters approved item Number 13 in a list of propositions submitted to referendum, and in so doing sent "shock waves" through American politics, giving impetus to the drive to amend the U.S. Constitution and inspiring and encouraging efforts to bring about similar changes in other state constitutions. California's imposition of stringent restraints upon the state's property taxing power signalled the success and may have indicated a pause in the drive clearly evident since Baker v. Carr¹ and perhaps from the Kestnbaum Commission Report² to make the states more effective, more active units of government, and more viable parts of an integrated federal system.^{2a}

Reform of the judiciary stands out as the other principal characteristic of the period. Although the leading elements in the reform package--except perhaps for commissions on judicial qualifications--have long been parts of the reformer's bundle, the intensity and breadth of change during the brief period is highly significant. Of course, the executive and, to a lesser extent, the legislative branch continued to receive attention but the pace of constitutional change considerably slowed. Having concentrated upon the governorship in an earlier day and upon the

¹369 U.S. 186 (1962).

²Report, Commission on Intergovernmental Relations, June 1955.

^{2a}Author's note: Last minute reflection makes me suspect that I am guilty of hyperbole with this statement. The evidence from so short a period and from so few cases is not now as convincing as it first seemed. While some other states went in the same direction as California none seems to have gone so far.

legislature during the late 1960s, the electorate may have been poised to consider the third of the great triumvirate during the 1970s.

The great activity in the areas of suffrage and elections did not reflect creative effort and positive change but a mopping up operation after the federal onslaught by constitutional amendment, statute, and court decision. Some state action preceded federal reduction of age and destruction of residence requirements but most action came later. Changes in state bills of rights reflected some state acceptance of equal rights amendments where the nation had not. Constitutional action in regard to local government--outside financial concerns--was important only in a limited number of states. And miscellaneous amendments and provisions gave recognition of emerging problems and concerns but did not promise exciting new initiatives. Generalization is always dangerous but these impressions seem supportable.

The purpose of this paper is primarily to summarize and report and secondarily to analyze the constitutional activity at the state level during the six-year period 1973-78. This is a modest effort to continue the inquiries made first by W. Brooke Graves³ covering the quarter of a century through 1965 and carried through 1972 by Albert L. Sturm.⁴ Its data are two revisions⁵ and 841 amendments offered to voters in referenda by the legislature, by constitutional convention, and through initiative

³"State Constitutional Law: A Twenty-Five Year Summary," William and Mary Law Review VIII (Fall, 1966), pp. 1-42.

⁴Trends in State Constitution-Making: 1966-1972, Lexington, Kentucky: The Council on State Governments, 1973.

⁵Louisiana (1974) and Texas (rejected 1975). A number of references will also be made to earlier revisions, particularly Montana (1972), North Dakota (1972), and Illinois (1970).

petition.⁶ The presentation will follow the pattern set in the earlier studies and not the order of relative importance, in terms of changes made, of the areas covered.

THE BILL OF RIGHTS

Civil liberties did not attract heavy attention in the period covered. Perhaps this is influenced by a popular but mistaken notion that the Federal courts have preempted the field and little remains for the states. Indeed some of the few changes in this section--as in the section on suffrage and elections--simply duplicated or adapted federal provisions or rulings.

Anti-discrimination Provisions

The most significant activity involved proposals to bar discrimination based on sex, the popularly tagged "equal rights amendments." Sixteen states constitutions now contain such explicit anti-discriminatory provisions, Connecticut and New Hampshire in 1974 and Massachusetts in 1976 being the last to join the group. Colorado turned back an initiative petition amendment challenging its 1972 equal rights amendment. Meanwhile four states rejected proposals--Florida, New York, New Jersey, and Wisconsin. An interesting footnote to this question is suggested by actions in New Mexico and Hawaii, both of which have had equal rights amendments since 1972. Both passed more specific amendments, Hawaii barring sex-based discrimination in public educational institutions and New Mexico banning such action in regard to qualifications for holding office and for enjoying a veteran's property tax exemption.

⁶The first 8 amendments, all rejected, from Florida's unique Constitutional Commission will also be considered.

Utah (1896) and Wyoming (1890) entered the Union with provisions barring sex discrimination. In the early 1970s, Virginia, Montana, Illinois and in 1974⁷ Louisiana adopted provisions as part of thoroughly revised documents, and Alaska, Connecticut, New Mexico, Pennsylvania, Texas and Washington adopted amendments. A similar provision was in North Dakota's defeated revision of 1972.

Four states with equal rights provisions are among the fifteen which have not approved the proposed amendment to the U.S. Constitution. Actually the existence of a state provision has been used in some states as justification for opposing the national change.

Equal rights amendments seem to promise some coverage beyond the anti-discriminatory restrictions of the U.S. Constitution and federal law. Other state moves against discrimination are likely only to duplicate federal protections or to remove provisions now invalidated by federal actions. Florida in 1974, for example, banned discrimination based upon physical handicaps.⁸ Others have endorsed due process clauses referring specifically to race, color, creed and ethnic origin. Mississippi, Oklahoma, and Missouri have removed provisions calling for racially segregated schools. Tennessee dropped its ban on public funding for schools which integrate and its archaic and obsolete bar to intermarriage. Massachusetts now constitutionally prohibits the assignment of any student to any school on the basis of race, color, creed or ethnic origin, and

⁷The document clearly bars racial discrimination. However, in regard to sex discrimination it is far less clear. It reads: "No law shall arbitrarily, capriciously or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition or political ideas or affiliations." And later another provision uses "arbitrary, capricious, or unreasonable" in referring to discrimination on grounds of age, sex, or physical condition concerning access to public areas, accommodations and facilities.

⁸See also note 7 above.

whether a civil liberty or not, Colorado, through an initiative petition, endorsed an anti-bussing amendment in 1974.

Some states took action to remove language bias from their documents. California converted masculine references to neuter ones, and Nevada excised a reference to "female electors." Hawaii took similar action in 1978. Women escaped a bit of type-casting but lost a guaranteed job when Mississippi repealed the requirement that the state librarian be a woman.

The right to privacy received further support in Louisiana's new constitution and, in 1978, in Hawaii, bringing to five the number of constitutions now giving explicit recognition. Montana's revised constitution contained a statement, and previously Alaska and California had recognized the right. Two proposed constitutions which failed of adoption--in Delaware and North Dakota--also contained a provision on privacy.

"Environmental" Rights

Some new ground is being tentatively tested as a result of increasing concern with environmental matters. Hawaii in 1978 approved a number of amendments concerning the environment, including one which states the rights of persons to a healthful environment and providing the right to sue, subject to regulation by law, to enforce that right. Massachusetts earlier (1972) had authorized eminent domain proceedings to protect the people's right to clean air and water.

Bearing Arms

In 1978, Idaho reinforced the right of its citizens to keep and bear arms and banned any effort to confiscate, license, register or to tax specifically firearms or ammunition. New Mexico moved in the same direction but not quite so explicitly. Meanwhile New Hampshire, in 1978,

refused to guarantee to all persons the right to bear arms in defense of self, family, property and state.⁹

Procedural Rights

Some states are tampering with the jury and some with the procedural right of indictment. The traditional common law jury of twelve had taken shape in England at least by the twelfth century and its antecedents can be traced through the Normans to European origins.¹⁰ Yet the traditional twelve now is questioned. In 1972, Arizona authorized the legislature to fix the size of civil juries, Connecticut authorized six-person juries in non-capital cases, and Michigan in cases in which the potential punishment is less than a year. Oregon authorized six as the minimum number in all cases, but New Mexico, in the only negative vote in the series, refused to go along. More recently, New Jersey and Rhode Island have approved the smaller number in civil cases while North Dakota has approved smaller numbers in all civil and non-felony criminal cases.¹¹

The Fifth Amendment guarantee of indictment by grand jury is another of the few Federal rights not pressed against the states. Currently

⁹Perhaps "leghold traps" are not arms but a majority of Ohio voters agreed after a bitter battle that they should not be constitutionally banned.

¹⁰"Many romantic explanations have been offered of the number twelve--the twelve tribes of Israel, the twelve patriarchs, and the twelve officers of Solomon recorded in the Book of Kings, and the twelve Apostles. Not all of these suggestions are equally happy; the first implies that there may be a thirteenth juror who has got lost somewhere in the corridor and the last that there is a Judas on every jury. It is clear that what was wanted was a number that was large enough to create a formidable body of opinion in favour of the side that won; and doubtless the reason for having twelve instead of ten, eleven or thirteen was much the same as gives twelve pennies to the shilling and which exhibits an early English abhorrence of the decimal system. . ." Sir Patrick Devlin, Trial by Jury, rev. ed. London: Stevens & Sons Limited, 1966, p. 8.

¹¹In 1971 Pennsylvania approved non-unanimous decisions in civil cases.

twenty-eight states permit some or all criminal charges to be brought by the filing of an "information" against the suspect. New York, Oregon, Pennsylvania, and Rhode Island have most recently accepted this although each restricts the change to non-capital cases.

Other procedural rights faced restriction. In 1978, Michigan barred bail in cases involving violent crimes and Nebraska where specific sexual crimes are involved. Texas now denies bail to an accused who has been twice convicted of felony and is on bail when he commits another felony, a restriction that might not seem out of line to many. Georgians in 1978 reflected some evident annoyance with criminals with two amendments which authorize the legislature in criminal cases to impose additional penalties to help pay for law enforcement training and to compensate victims of crime.

SUFFRAGE AND ELECTIONS

This decade has produced a significant expansion of the potential electorates in the states. Unhappily perhaps this did not occur from pressure by internal state forces or through the rejection by state electorates of the old principle that those who hold political power are rather reluctant to share it. Rather the motive force for change has come from Congress and the federal courts. The points of attack were voting age and durational residence requirements.

Voting Age

Title III of the Voting Rights Act of 1970 set the minimum age for voting at 18 in all elections--federal, state and local. Title II required states to make special provision--regardless of state requirements--for voters in presidential elections to qualify 30 days before

the election. There were also liberal provisions for absentee voting.

Oregon and Texas hastily brought original jurisdiction suits in the U.S. Supreme Court against the Attorney General. A court badly divided sustained the legislation in regard to federal elections but struck down the provisions as they touched state and local elections.¹² Congress quickly arranged and passed the Twenty-sixth Amendment; the legislatures showing remarkable powers of reaction in view of their earlier inertia, responded with approval in record time--three months and seven days.

Between 1968 and 1978, thirty-four states considered a total of 49 amendments related to lowering the voting age, passing 30, defeating 19. Much of this activity was moot. Before 1970, only four states had voting ages lower than 21--Georgia and Kentucky at 18, Alaska at 19, and Hawaii at 20. Before the effective date of the XXVI Amendment, Kansas, Maine, Minnesota, Nevada, and Oklahoma had dropped the age to 18, Massachusetts and Montana to 19, and Nebraska to 20. Some states rejected bids to go to 18--Connecticut, Hawaii twice, and Michigan--while Colorado and New Jersey turned down 19. Oddly some states turned down amendments after the adoption of the XXVI Amendment, and Tennessee changed its constitution finally only in 1978.

Residence Requirements

The attack on durational residence requirements came from two directions. First, the federal provision for voting in presidential elections forced the keeping of two sets of records, a nuisance for the

¹²Oregon v. Mitchell, 400 U.S. 112 (1970).

states. Then, and more significantly, the U.S. Supreme Court cut them down.¹³ Using the equal protection clause and the "compelling state interest" concept based upon it the Court ruled six to one that Tennessee's one year state and three-month county residency rules were unconstitutional. The requirements, in the Court's view, adversely affected two constitutional rights--to vote and to travel--and the state had not demonstrated that a "compelling state interest" justified interference. While the court set no firm guidelines as to what might be acceptable, it suggested that Tennessee's 30-day pre-election period for closing registration books seemed ample for completion of the state's administrative tasks. Subsequently Florida and Alaska through statute tried 75-day durational residency requirements only to see these struck down. The strategy shifted from durational residency requirements to questions of registration closing dates. The court with strong dissents accepted 50-day closing periods in Arizona¹⁴ and Georgia¹⁵ because of "special" conditions. However, only Arizona now requires the full 50 days and only two others shut the books more than 30 days before the election--New Mexico (42 days) and Colorado (32 days).

In 1966, thirty-two states set a one-year state residency requirement; only Mississippi demanded more, 2 years. Fifteen set the period at 6 months, and two--New York and Pennsylvania--3 months and 90 days respectively. At the precinct or district level requirements varied from a year (Mississippi) to 10 days, with 28 states opting for 2 months

¹³Dunn v. Blumstein, 405 U.S. 330 (1972).

¹⁴Marston v. Lewis, 410 U.S. 679 (1973).

¹⁵Burns v. Fortson, 410 U.S. 686 (1973).

or less. By 1972, thirteen states had softened their requirements at the state or precinct level or both. Mississippi cut its limits to a year and six months. Six states cut state requirements from a year to 6 months and two--Vermont and Colorado--from a year to three months. Subsequently 14 states produced 16 amendments, moving to the thirty day requirement. Three of these failed of adoption. Other states adjusted by statute.

Other Developments

With the success of the federal actions states have been more inclined to facilitate registering and voting. Virginia has authorized the legislature to provide for absentee registration of persons temporarily outside the country by reason of employment. Before 1974, few states permitted registration by mail; now 22 do, although most of this has resulted from law, not constitutional change. Three states permit registration at the polls. One of the few retrogressive steps was taken in Ohio when voters by constitutional amendment overturned the state's new law permitting registration at the polls.

Maryland, in 1974, authorized the legislature to make provision for absentee voting. Persons on vacation will now be permitted to vote in Delaware, and those whose religious beliefs conflict with voting on a day designated for an election will have special arrangements made by Massachusetts. Connecticut has turned the whole business of registration and most of that of elections over to the legislature, and in the new constitutions the articles on suffrage and elections are among the shortest, vesting extensive discretionary authority in the legislature.

THE LEGISLATURE

One of the most frequently recurring themes of the movement for legislative improvement has been the attempt to increase both the amount and the flexibility of time available to legislatures. This has been achieved in many States by such means as instituting annual rather than biennial sessions, relaxing constitutional restrictions on the length of sessions, giving the legislature the authority to call itself back into special session, imposing deadlines for the various stages of the legislative process so as to avoid logjams and, particularly in recent years, making greater use of pre-session periods. . . .¹⁶

This comment briefly summarizes one major aspect of the move for legislative reform which has been underway since the early 1960s. Most of the specific elements noted were characteristic of the particular period under review. Other elements in the reform collection centered on legislative size, reapportionment machinery, and the working conditions of legislators.

Annual Sessions

In 1967, only 21 states provided constitutionally for annual sessions; in five of these the odd session was restricted to budgetary matters. By 1973, the number had grown to 36, with four placing restrictions on the second year's meeting. By 1978, the number was 37 with four maintaining restrictions to budget matters. So the number of states holding to biennial sessions continues to shrink but resistance is firm among the holdouts. Since 1972, seven states have considered the move to annual sessions, only three have made it--Alabama, Maine, and North Dakota, the latter authorizing the legislature to meet for 80 days anytime during the biennium and not necessarily consecutively. Kentucky

¹⁶The Book of the States, 1974-1975, Lexington, Kentucky: The Council of State Governments, 1974, p. 55.

and Texas once and New Hampshire twice rejected amendments to change. Montana established annual sessions in its revised constitution only to revert to biennial sessions two years later when the voters approved an amendment via the initiative petition route.

However, a word of caution is wise here--as is often the case with constitutional provisions. The lack of authority for annual sessions has not kept all states so restricted from meeting annually. Eight of the 13 states formally without annual sessions managed to meet each year of the biennium 1975-76, either by informal adjustments of the regular sessions or by lengthy special sessions.

Special Sessions

Iowa in 1974, New York in 1975, and Oregon, after previously voting down a proposal, in 1976 approved amendments allowing the legislature to call itself into special session without gubernatorial involvement. This brings to 27 the legislatures with that authority, up from 15 in 1967 and 25 in 1972.¹⁷

Nine states currently require a two-thirds majority of each house to call a special session, five permit a majority to do so, four permit three-fifths, and four others allow a call by the presiding officers. Maine requires a majority vote of each party in each house. The only change attempted during the past few years failed; New Hampshire had sought to reduce the requirement for a call from two-thirds to a majority.

Session Length

Only North Dakota constitutionally changed the length of legislative sessions during this period. In 1976, it extended from 60 to 80 days the

¹⁷Connecticut dropped the provision when it moved from biennial sessions to annual sessions.

time legislators might meet and specified that the days need not be consecutive during the biennium. It also authorized committees to function any time during the two year period. Eighteen states have no restriction on the length of sessions, and of those that do only ten specify limits in "calendar" rather than the more ambiguous and flexible "legislative" days. Presumably these restrictions do not bear as heavily as once thought for serious concern is being voiced about the future of "citizen legislators" in the face of increasing time demands upon them.¹⁸

New Hampshire called for an organizational meeting of the legislature prior to a regular session, and Maine, to narrow the "lame duck" period, moved the legislature's convening date to December from January.

Rules of Procedure

Procedural rule change by constitutional adjustment during this period was rare, and the few instances are relatively insignificant. Nevada now permits the legislature to utilize the consent calendar. Nebraska modified veto provisions to allow the legislature to line item override the governor's line item vetoes, but refused to eliminate the archaic rule that every bill be read at large before vote on final passage.

Legislative Powers

The ^{signal} ~~signal~~ event of this period in regard to expansion of legislative powers has to be the remarkable accomplishment of Louisiana. Long a pariah among pariahs, the example constantly dragged out by reformers to show the end toward which too many others tended (when all knew it was sui generis), the Louisiana constitution had reached, by 1974, the

¹⁸See The Book of the States, 1978-79, p. 5.

appalling length of more than a quarter of a million words. Length alone, of course, is no conclusive measure of the quality of a fundamental law¹⁹ but when it reaches far beyond the bounds of reason there is little risk in making the judgment. Louisiana, in 1974, legislated by constitutional amendment. From 1968 through 1972, Louisiana voters faced 145 amendments referred to them--78 of statewide application but all voted on statewide. In 1976, they faced none, and in 1978 only one. The constitutional convention had pared the document to about 35,000 words--still a lot by comparison with other state constitutions--but back within the bounds of reason. Whatever legislative power Louisiana grants is now back in the legislature.

But the grant of power is far from complete. Take taxation, for example. Not only is legislative action restricted to every other year, but a two-thirds majority of the elected members is required to levy a tax, increase an existing tax, or repeal an existing exemption. "This may be offensive to the purist political scientist, but it is better than legislating by constitutional amendment."²⁰

Another matter, not involving Louisiana at the moment, may promise expansion of a traditional role of legislatures--oversight of the administration. The growth in bureaucracy and the concomitant growth of rule-making have stimulated public concern and legislative reaction. So far by statute, a number of states have given legislatures the power to intervene in administrative action by suspending or disallowing rules.

¹⁹See Frank P. Grad, The State Constitution: Its Function and Form for Our Time, New York: National Municipal League, reprint from Virginia Law Review, June 1968.

²⁰Cecil Morgan, "A New Constitution for Louisiana," National Civic Review LXIII (July, 1976), p. 350.

13

Connecticut has the most stringent law, not only allowing a committee to suspend a rule but creating a bar to its implementation unless the whole legislature overrules the committee. No state yet has given this practice constitutional status, but the question has reached voters in constitutional referenda in Florida and Missouri.

Legislative Terms

Terms for representatives have remained unchanged for nearly three decades. Only four states--Alabama, Louisiana, Maryland and Mississippi--allow house members 4-year terms. The only state to attempt a change recently was Georgia in 1978. Prior to that the latest attempts were in Florida in 1970 and again Georgia in 1968. The Model State Constitution and most reform advocates call for a longer term than two years but two years seems to be the rule. Thirty-eight states grant senators 4-year terms, the exceptions being the six New England states and Arizona, Georgia,²¹ Idaho, New York, North Carolina and South Dakota. The last change in senatorial terms took place in New Jersey in 1970. Three states including New Jersey have devised a scheme for securing effective reapportionment of their senates as soon after a decennial census as possible. All senate seats in New Jersey were up for election in 1972 and will be every ten years thereafter, providing two 4-year terms and one 2-year term each decade. Illinois follows a variation of this scheme. Montana senators will draw lots after each census to determine which half will serve a 2-year term.

Size of Legislatures

The upheavals in size of legislatures precipitated by the

²¹The Georgia amendment which failed in 1978 provided 4-year terms for members of both houses.

reapportionment turmoil have largely subsided. The only significant change in size was promised in Massachusetts by an amendment in 1974, the lower house dropped from 240 to 160 after the 1978 elections. Other than that the drop from 102 to 100 in North Dakota's house is the only change to note.

Recently, New Mexico constitutionally froze its legislature at its present size, 42 senators and 70 representatives. Vermont adopted 150 with single-member districts to be determined by the legislature. New Hampshire's effort to increase its senate from 24 to 36 failed, as did South Dakota's move to reduce its house from 75 to 70.

Despite the numerous changes in legislative size over the past 12 years the totals have remained fairly stable. In 1967, there were 5,632 members of the 49 lower houses, an average of about 115. With Massachusetts' decrease there will now be 5,501, an average of 112. The range has changed slightly from 35-400 to 40-400 with the median remaining at 100. During the same period Senates have changed little, from a total of 1983 to 1981; ranges only inched upward from 18-67 to 20-67, and average senate size remained the same, a bit above 39.

Legislative Salaries

Opinion polls generally show that American legislatures occupy a low rung on the public's ladder of social endorsement. Treatment of amendments and other constitutional efforts aimed at improving the financial lot of legislators give further evidence of this attitude, at least in some states.²² Eight states set legislative salaries in the bedrock of constitutional language. Nebraska twice recently refused

²²Legislative compensation in many states has improved considerably in the 1970s.

to accept amendments giving legislators \$675 a month, a rise from \$400, but finally allowed them to receive some allowances for per diem expenses. Rhode Islanders rejected a salary of \$2,000 which was coupled with a provision that future changes could be made by law with voter approval. New Hampshire's long-standing constitutional salary of \$200 remains firm despite a bid to establish legislative pay at the level of the lowest paid employee in the state's classified service.²³ In 1976, North Dakota voters reaffirmed their support of the existing constitutional pay of \$5 a day. Legislators in Texas tried an interesting approach to get a raise, but it probably was not planned. Undaunted at having failed to get approval through amendment for \$8,400 a year, they came back in 1973 with an amendment calling for \$15,000. That failed too but perhaps softened the public to give them \$600 a month in 1975.

It is interesting to note that total biennial compensation averages \$8,838 in the eight states in which salaries are set in the constitution and \$23,660 in the others.

Yet even in most of the states which are not constitutionally limited legislators are often reluctant to increase their salaries. Their fear of political retribution from unsympathetic voters is usually well founded. The compensation commission has been developed both to get around this obstacle and to provide a more rational basis for determining the proper level of pay. Twenty-six states--seven through constitutional action--have set up commissions. The great majority are advisory only, but some, principally those constitutionally based, require legislative action. Idaho and Maryland, for examples, require positive action for

²³To add insult to injury voters even refused to permit a change in the deadline date for paying mileage!

the legislature to reject; no action means acceptance. It takes a two-thirds vote of each house in Michigan to reject commission recommendations. Only Oklahoma though accepts commission findings as final and binding. Idaho, Washington, and Hawaii are recent adopters of the system through constitutional amendment. North Dakota twice, and Arkansas, California, and New Mexico have turned down the system.²⁴

THE EXECUTIVE

Reform of the executive continued in the traditional pattern although the pace of change eased, as might be expected, during 1973-78. Executive branch reorganization including the shorter ballot, longer terms for governors with increased possibilities for reelection, the tying together of governor and lieutenant governor on the ballot characterized the constitutional changes.

Executive Branch Reorganization

The long term process of executive reorganization set off by Michigan's comprehensive restructuring in 1965 continues. By 1978, twenty-one states had undergone major executive branch reorganization. Much of this activity has been legislative and occasionally executive in origin. However, there are constitutional implications. Constitutions and amendments have mandated reorganization by placing limits upon the number of departments which might be created or continue to exist. In 1972, Idaho and Missouri called for restructuring of their state administrations within 20 and 14 departments, respectively. Louisiana's new constitution set 20 as the maximum including departments headed by eight

²⁴Only in California, among these four, did the legislature currently have the unrestricted power to set salaries.

19

elected officials; legislation in 1975 established 19. Constitutions and amendments can also create and destroy specific offices and departments. The Louisiana constitution allows the legislature by a two-thirds vote to make appointive four of the currently elective positions. Oklahoma eliminated five positions by amendment in 1975; that action provided impetus for the creation of a 15-man Special Commission on the Reorganization of the State Government. Functional integration of the executive departments has been mandated by a 1978 amendment to the Hawaiian constitution.

The proposed Texas constitution which died in 1975 carried two unique features concerning reorganization. First, the governor was required biennially to report to the legislature on the organization and effectiveness of the executive branch, and the legislature in turn was directed to consider any bills on the subject the governor might submit. The other feature would have provided the first constitutional "sunset" provision since the document mandated lives of 10 years for state agencies unless renewed by law.²⁵

The Shorter Ballot

At least since the turn of the century reformers have railed against the large number of elected officials at the state and local level. A large number allegedly offends both the voter's capacity to pass judgment on performance and sound management. Some chipping away continues overall, and a major step was taken by Oklahoma as it abdicated its hold on the most bloated ballot in the country in 1975. The steady trickle of change can be seen in the following figures:

²⁵"Sunset" laws have spread rapidly since they first appeared in 1976. Twenty-four states had such a statute by 1978.

	<u>Number of Officers</u>		
	<u>1967</u>	<u>1973</u>	<u>1979</u>
Constitutional, Elective (no boards or commissions)	300	290	281
All constitutional, Elective	342	339	333
All elective--constitutional and statutory	528	587*	566*

*These increases have occurred primarily in the area of education, both secondary and higher, as boards have increased in number and size.

Since 1972, Illinois and South Dakota have dropped Superintendents of Public Instruction, and Indiana changed the status of the position from constitutional to statutory. Louisiana eliminated the constitutional positions of Controller and Commissioner of Lands. But the big news came from Oklahoma which effective January 1979 eliminated five of the 12 constitutional, elective positions. Dropped were the Commissioners of Labor and of Charities and Corrections, the Secretary of State, and the Chief Mine Inspector, and the office of Examiner and Inspector and that of Auditor were combined. Eleven states had longer ballots but none had more offices both elective and constitutionally preserved. Pennsylvania, in 1978, was the only state to add an office, moving its attorney-general from an appointive status to constitutional and elective. Vermont had refused to take that step earlier.

Governor's Powers

A number of actions affected the powers of various governors. Maine abolished its 155-year-old Executive Council in 1976. Massachusetts increased from three to eight weeks the time after a legislative session opens for the presentation of the executive budget. Hawaii limited the item veto by excluding appropriations for the legislative and judicial

branches, but Illinois rejected an effort to limit the governor's amendatory veto to technical errors. Maine, Tennessee, Washington, and New Hampshire increased the time for the governor to consider bills, from five to ten days, but California refused to extend the period from 12 to 20 days after adjournment. Maryland shifted appointment of the treasurer from the governor to the legislature.

States continued to create, modify and destroy various commissions and agencies. Michigan created a state transportation commission and Hawaii an office of Hawaiian Affairs. Kansas and New Mexico refused to create state boards of education and Oklahoma refused a full time pardon and parole board. Georgia changed a name, from Department of Community Development to Department of Industry and Trade, a matter of little import save that that was the name it abandoned only four years before. Constitutionally most activity of this sort involved adjustments of boards dealing with public education, higher and secondary.

Cabinet Systems

State cabinet systems have come to be noted. The Book of the States, first commenting on this in 1978,²⁶ reports that thirty-six states responded to an inquiry that some kind of a cabinet system functioned. Thirteen of these were based upon statute while the others rested on executive orders or simply tradition. Only Florida, as it has since the nineteenth century, still maintains a constitutional cabinet. Florida voters, in 1978, renewed their support of this unique institution by rejecting an amendment to abolish it, submitted directly by the Florida Constitutional Commission.

²⁶The Book of the States, 1978-79, p. 129.

Terms Of Office

Forty-six states give their governors a four year term. There was no change in this during 1973-78 although of the four holding to two year terms—Rhode Island, Arkansas, Vermont and New Hampshire--the first three tried unsuccessfully to change. (New Hampshire had refused in 1970.) However, reelection prospects were given possibility in three states as Tennessee and Georgia approved two consecutive terms and North Carolina endorsed an absolute two term limit. New Mexico in 1976 rejected such an amendment. The steady progress toward a more reasonable tenure is reflected in the following:

Terms of Office for Governors

	<u>Number of States</u>		
	<u>1967</u>	<u>1973</u>	<u>1979</u>
4-yr term, no immediate succession	11	8	6
4-yr term, 2 consecutive term limitation	9	17	18
4-yr term, absolute 2 term limitation	3	2	3
4-yr term, unlimited succession	16	19	19
2-yr term, 2 consecutive term limitation	4	0	0
2-yr term, unlimited succession	7	4	4

Lieutenant Governors

Four-fifths of the states have constitutional, elected lieutenant governors. Two related changes concerning the election and function of this officer were evident during 1973-78. First, there was a definite

and rapid trend toward tying the election of the lieutenant governor directly to that of the governor. And growing out of that, the second change takes the lieutenant governor out of the legislative process.

Of the 41 lieutenant governors 21 are now elected on a joint ticket with the governor, a jump from six in 1966, and from 19 in 1972, the year Kansas, Minnesota, Montana, and South Dakota joined the list.²⁷ Subsequently Indiana, North Dakota, and Ohio took the step.

Eleven states have relieved the lieutenant governor of the traditional role of presiding over in senate and participating in certain legislative activities, such as the appointment of committees. Ten of these require joint election, and usually that requirement and the relief from legislative duties have come in the same action.²⁸ Only Louisiana among those separately electing the lieutenant governor have relieved him of legislative duties.

THE JUDICIARY

W. Brooke Graves noted that the thorough revision of the judicial structure of New Jersey in 1947 "was not only the first in New Jersey for a century but the first major reorganization of the courts in any state for a very long time."²⁹ That accomplishment evidently stimulated other states for as Graves noted judicial reorganization was accomplished in Colorado, Illinois, Missouri, New York and North Carolina. He cited the serious efforts "to unify the court system, to simplify the judicial structure, to streamline judicial procedure and to make courts more

²⁷Delaware once required joint election but no longer.

²⁸South Dakota in the same referendum treated the question in two parts, passing joint election but defeating relief.

²⁹Graves, op. cit., p. 26.

responsible to present day needs."³⁰

This thrust continued through the 1960s and into the 1970s. Albert L. Sturm viewing the period 1968-72 "cited the substantial progress toward greater professionalization and unification of state judicial systems. . ."³¹ At least 14 states adopted new or revised constitutional articles on the judiciary. Principal concern since 1972 has been with court unification and with the selection and disciplining of judges. Indeed all three moves seem intertwined: tighter organization and greater insulation of judges from the political process seem to call for better policing. In the period 1973-78 substantially revised judicial articles have been adopted in Alabama, Arizona (by initiative petition), North Dakota, Vermont, and West Virginia, and rejected in Tennessee and Washington.

Court Unification

Since 1972, ten more states have "unified" their court systems through constitutional action. Alabama, Georgia, Kentucky, New York, North Dakota, West Virginia, and Wisconsin have embraced unification outright or moved significantly in that direction. Louisiana also has accepted unification while rather pointedly avoiding the label.³² Nevada after rejecting a proposal in 1972 reversed itself four years later. The latest to join the list, New Hampshire, adopted an amendment in 1978 designating its chief justice as administrative head of the court system. Vermont and

³⁰Ibid., p. 27.

³¹Sturm, op. cit., p. 62.

³²See Cecil Morgan, "A New Constitution for Louisiana," National Civic Review LXIII (June, 1974), pp. 347-8.

others have unified through non-constitutional methods.³³ Efforts to unify in Washington failed with the defeat of that state's omnibus article in 1975.

By 1978, all state court systems had some kind of a central administrative office, even Nevada which had adopted the system, then rejected it, only to recreate an office in 1976. Nine of these were established during 1973-78, only three requiring constitutional action--Montane in its new constitution, New York and South Carolina. The other offices were established either by law or by Supreme Court directive. In all, 17 states rest their administrative offices upon a constitutional foundation.

Judicial Disciplining

Probably the most significant development in judicial matters has been the rapid spread and almost universal adoption or adaption of mechanisms for enforcing judicial ethics and generally monitoring the performance of judges. Today, forty-eight states have a specific commission or direct the Supreme Court to perform this task; only Maine and Mississippi continue to rely wholly on the traditional methods of impeachment or recall. The commission on judicial qualifications, as it is usually called, receives complaints about judges and may investigate them, finally making recommendations for action where appropriate to the Supreme Court.

Judicial commissions have been created directly by the constitution or by the legislature under constitutional mandate. The year 1972 produced a bumper crop of actions with Alabama, Georgia, Iowa, Minnesota, North

³³See Larry Berkson and Susan Carbon, Court Unification: History, Politics and Implementation, U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, August 1978.

Carolina and Wyoming creating or laying the foundation for commissions. Subsequently New York, Nevada and North Carolina would complete the forty-eight. Recent constitutional action revamping commissions and their powers took place in several states.

Formal names vary. California, the first to create a commission, in 1960, called it Commission on Judicial Qualifications, but changed it in 1976 to the Commission on Judicial Performance. It is called the Commission on Judicial Conduct in Texas, the Commission on Judicial Disabilities in Maryland, the Judicial Inquiry and Review Commission in Virginia, and simply the Judiciary Commission in the new constitution of Louisiana.

Selection of Judges

The question of the proper way to select judges has been a pre-occupation of reformers for many years. Popular election, gubernatorial appointment, a combination of the two, these in combination with some means of checking the qualifications of candidates or nominees are all possibilities. This question continues to be active despite the absence of conclusive evidence that the method of selection conditions behavior and performance on the bench.

Six states since 1972 have changed the method of selecting judges for their highest court. Florida after moving from partisan to non-partisan elections in the 1960s adopted the Missouri Plan in 1976.³⁴ New York changed from partisan elections and Idaho and Arizona from non-partisan elections to the Missouri Plan, but Louisiana chose to stay with elections. Maine abandoning its executive council moved to require

³⁴Florida rejected an amendment in 1978 extending this to circuit and county judges.

senatorial confirmation of the governor's appointments.

The steadily growing popularity of the Missouri Plan and similar arrangements is reflected in the following table:

METHODS OF SELECTING JUDGES OF HIGHEST COURTS

	<u>Number States</u>		
	<u>1967</u>	<u>1973</u>	<u>1979</u>
Partisan election	15	13	11
Nonpartisan	14	15	11
Missouri plan	9	10	17
Legislature	5	5	4
Governor appoint	7	7	7

The trend is the same for lower courts but less pronounced.

Terms of Judges

Four states adjusted the terms of office for judges on their highest courts in the period 1973-78, five others during 1967-72. There was a perceptible move--both upwards and downwards--to 10 years as an optimum term. Those changes are reflected in the following:

TERMS OF JUDGES

	<u>Number Years</u>		
	<u>1967</u>	<u>1973</u>	<u>1978</u>
Hawaii	7	10	10
Indiana	6	10	10
Louisiana	14	14	10
Maryland	15	15	10
Massachusetts	Life	to Age 70	to Age 70
New Jersey	7 years, then to Life	7, to Life	7, to Age 70
Pennsylvania	21	21	10
South Dakota	6	8	8
Vermont	2	2	6

Currently, twelve states give 10 year terms. Only seven grant more than that, usually 12 years, although New York gives 14, New Hampshire, Massachusetts, and, in practice, New Jersey give to age 70, and Rhode Island shows no inclination to change its life term.

LOCAL GOVERNMENT

Louisiana's acceptance of the Fordham plan of home rule stands out as the most significant constitutional development in a period largely devoid of creative concern with local government. The Fordham plan, endorsed by the Advisory Commission on Intergovernmental Relations and the American Municipal Association, and embedded as the preferred option in the Model State Constitution, frees local government to act in the absence of specific constitutional or statutory restraints. Louisiana's constitutional statement reads:

Subject to and not inconsistent with this constitution, the governing authority of a local governmental subdivision which has no charter or plan of government may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers. Article VI, Section 7.

A proposal for modified home rule for counties and municipalities in Arkansas was part of the proposed constitution defeated in 1970. Partially resurrected by amendment four years later, the new system, effective January 1977, engrafts new powers upon old forms, not fully embracing home rule but allowing a county "through its Quorum court to exercise local legislative authority not denied by the Constitution or by law." There is no choice of governmental structure, and taxing powers

are sharply limited. Separation of powers is invoked, with the county judge--in reality an executive--presiding over the Quorum court--in reality a legislature--with no vote but a veto subject to override. Interestingly, the court may submit to the voters a plan for the creation, consolidation, separation, revision or abandonment of any elective county office.³⁵

Montana's unique requirement for periodic voter review of local government which first appeared in its constitution of 1972 was amended last year to make the step optional rather than mandatory. The provision originally read:

Section 9. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years.

Part (2) was changed to mandate only that the legislature require an election in each local government every ten years, a majority of voters determining whether the step should be taken.³⁶

³⁵See Glen W. Sparrow, "Arkansas Local Governments Begin to Take Control," National Civic Review LXVII (November, 1978), pp. 452-56.

³⁶"Montana's unique experiment requiring a review of local governments in the state ended in 1976 when several elections were held to ratify or reject recommendations of local government study commissions. Two of three prospective city-county consolidations were approved. Twenty-six municipalities changed their form of government, and 15 of those adopted home rule. Four counties adopted a new form of government and two chose home rule. Two service consolidations were adopted, consolidating the municipal police and sheriff's departments. The total of 32 changes in the form of government completed the process of government review in 126 municipalities and 56 counties in Montana." Advisory Commission on Intergovernmental Relations, State Actions in 1976, February, 1977, M-109, p. 18. See also James J. Lopach and Lauren S. McKinsey, "Montana Local Government Review: Reflections on Product and Process," National Civic Review LXVI (July, 1977), pp. 339-45.

Apart from the developments noted above there was the usual plethora of amendments dealing with minute financial matters--taxes, exemptions, debt, investment of funds, expenditures--and the usual tinkering with local government machinery, most of which could be eliminated by an adequate system of home rule.

TAXATION AND FINANCE

Taxation and finance issues were important throughout the period 1973-78 and marked the last year indelibly. On the ballots of the states in 1978 were 16 constitutional proposals which would have limited in some fashion state or local government taxing or spending powers. Other referenda, not constitutional in form, promised considerable impact upon state finances.

The Power to Tax

Proposition 13 went before the voters of California by way of an initiative petition carrying one million signatures and passed by a margin of two-to-one. Its provisions are simple: property taxes may not exceed 1% of assessed valuation; assessments are frozen at 1976 levels with thaws of only 2% a year allowed unless the property is sold, transferred or supports new construction; new taxes on non-property sources may be levied but only by a two-thirds vote of the legislature. Proposition 13 limits local governments as well as the state. The projected economic and political impact of the amendment has been reported and debated too often to require repetition here.

Was Proposition 13 the stimulus or catalyst for action in other states? It is difficult to tell. However, there can be no doubt that the passage of Proposition 13 in June and the attendant publicity had

influence on the other decisions made in November. Nevada³⁷ and Idaho passed Proposition 13 type amendments while Oregon rejected one.

Michigan rejected an initiative petition amendment which would have drastically cut property taxes and instituted a voucher system for financing schools.³⁸ Alabama approved an amendment lowering assessments, and Missouri authorized the legislature to order local government to lower property taxes.

South Dakota chose the route of making it more difficult for taxes to go up. It now bars increases in state taxes on income, sales, or property unless approved by popular initiative or a two-thirds vote of the legislature.^{38a} All of the above actions involved constitutional change and does not cover state action by legislation or initiative.

The Power to Spend

Some states followed the route of expenditure control. New limits in Hawaii and Texas ride with the growth of the states' economies. Hawaii's provision also mandates the return of any surplus money and a prohibition against deficit spending except in an emergency. An initiative petition placed the issue before Michigan voters. Future appropriations are frozen at the current proportion of all state and local taxes and revenues (except federal aid) to personal income. The provision prohibits new taxes or increases without voter approval, and interestingly places a bar to any reduction in current levels of support for local government. Arizona placed a 7% limit on annual increases, an

³⁷Nevada's action must be approved again in 1980 but since it passed by a margin of three-to-one, the outcome hardly seems in doubt.

³⁸The negative action in Oregon and Michigan, however, may have been influenced by other fiscal issues voted upon at the same time.

^{38a}Texas, Louisiana and California also have adopted the two-thirds rule for new or increased taxes.

approach turned down narrowly in Colorado.³⁹ Nebraska rejected a 5% limit on local governments. Other action included an advisory referendum in Illinois on setting a mandatory ceiling on state spending; it passed four-to-one.

All the above also took place in 1978. The rapidity with which the public accepted these new restraints is revealed by actions in the previous biennium.⁴⁰ Both Michigan and Montana rejected amendments brought by initiative petition which would have curbed expenditures. The proposal in Michigan would have limited state and local spending to 8.3% of the personal income of the state. In Montana, a draconian measure, initiative inspired, carried not only a flat limitation of \$375 million per biennium through fiscal year 1983 but would have ordered a 15% reduction in the amount of federal aid received each year until 1984, after which no further aid could be accepted. And an indirect method of control--limiting the number of state employees--was rejected in Florida.⁴¹ Colorado voters had turned back a proposal (via initiative petition) to subject all to voter approval legislative and executive acts requiring new or increased taxes.

But perhaps the handwriting was on the wall in the appearance of these proposals. And certainly 1974-75 was a hard time for those seeking higher taxes. Oregon voters said no to higher income taxes and Washington

³⁹Actually this change for Colorado would probably have resulted in greater spending authority than the current statutory limit permits.

⁴⁰However, 1974 was not a promising year either, in regard to bond issues. Over 90% of the amount sought was rejected by voters.

⁴¹The limit was to be 1% of the estimated population. With 8.4 million people, employment could have totalled 84,000. The total was over 100,000 in 1976.

33

voters to a corporate income tax. A higher sales tax with the exemption of food and drugs was defeated in Arizona. Nevada refused to raise debt limits, and Maryland and Louisiana mandated balanced budgets. So public disillusionment had been building.

Special Note

Now that Californians have settled the question of taxes, they turn this year (1979) to that of appropriations. Tagged by the Wall Street Journal⁴² perhaps appropriately as "Son of Proposition 13" another initiative petitioned amendment is on the ballot for November. Paul Gann of Jarvis-Gann renown has been the central mover behind this effort to put a halt to rising expenditures. This proposal seems far more restrictive than existing limitations in other states. Proposition 4 would allow increases in appropriations over the base year--the twelve months ending the preceding June 30--only for rises in the population and in either the consumer price index or per-capita income of the state, whichever is lower. Excess revenues would have to be returned through lower taxes or fees. The ceiling may be exceeded if approved in a referendum of the governmental unit concerned, but any such increase lasts only four years and must be rolled back unless further voter blessing is forthcoming. There is a provision for exceeding the ceiling in an emergency without a referendum but, to cover all tracks, in such cases the excess is charged against future expenditures and must be repaid within three years.

Odds and Ends

Sixty-five amendments related to direct bond issues or authorizations to issue or to liberalize restraints upon state and local bonded indebtedness. Thirty-two of these passed. Of 18 direct bond issues 11

⁴²Friday, October 12, 1979, p. 12.

involving a total of \$1.5 billion were approved while seven involving \$5.2 billion failed. Of the amount approved \$642 million, about 45%, was for veterans' benefits.

Electorates showed mixed reactions to bond issues and authorizations for industrial development and pollution control, and an outright hostility to transportation facilities, both motorway and other. West Virginians did vote a \$500 million issue for bridges at the beginning of the period but later transportation issues took a beating. In Ohio, in 1975, a huge, \$1.75 billion program of highway development and upgrading failed. A plan to spend \$175 million helping railroad development in Michigan was turned down. Ohio voters also rejected granting authorization to state and local transportation authorities to lend credit and aid to AMTRAK and Conrail. Meanwhile Floridians turned down \$100 million for housing. The only significant social program which passed was New York's increase of \$150 million for its Job Development Authority. Oregon authorized up to one-half of 1% of the value of all assessed property to finance multi-family housing for the elderly, but turned down a similar amount for public water systems. Idaho approved debt for environmental pollution control and for rehabilitating existing electric generating facilities.

Utah removed the requirement of taxpayer status for participation in bond elections,⁴³ and Missouri dropped its vote requirement on approving airport, utility and industrial development bonds from 4/7 to a majority. Idaho meanwhile refused to lower from 2/3 to a majority the vote required in bond elections concerning airport and air navigation

⁴³Such provisions are of doubtful validity in view of the court's ruling in Phoenix v. Kolodziejski, 399 U.S. 209 (1970).

facilities.

Generally speaking the voters became less generous as the period progressed. A particularly bad year was 1978, the high point being perhaps Alabama's approval of \$15 million in bonds for penal institutions.

Forty-one states now tax personal incomes, since New Jersey joined the list by statute in 1976. Tax rates reflect varying degrees of progressiveness from the hardly perceptible scheme in New Jersey—2.0-2.5—to Delaware's scale of 1.6 to 19.8 percent. Three states peg the tax at a percentage of the federal—Vermont at 25%, Rhode Island at 17%, and Nebraska at 16%. Most changes during this period involved increases in the upper limits. About a fifth of the states made such adjustments. Four states, restricted by uniformity classes, have flat rates—Illinois, Massachusetts, Michigan, and Pennsylvania. They have shown no inclination to change them. Massachusetts and Michigan in 1976, as they had previously done in 1968 and 1972, rejected amendments which would have allowed graduated schemes. Alabama legislators have not presented an amendment to raise that state's maximum limit since the 1970 failure to secure voter support for an increase from 5 to 7%. Washington voters in 1973 repeated their 1970 vote and again blocked an effort to permit an income tax. The sweeping authority given Tennessee's last limited convention did not include the tax article, thus preventing consideration of an income tax for another six years.

Missouri boosted its constitutional sales tax from 3% to 3.175% to provide increased funding for bird, fish, game, forestry and wildlife programs. This seems the only instance of an increase in sales taxes by constitutional change during this period. North Dakota voted a reduction from 4% to 3%. More activity was aimed at lifting sales tax

levies from food and prescription drugs, thus easing the regressive impact of the tax. Michigan endorsed an initiative inspired amendment while Arkansas and Missouri balked. Meanwhile legislators in Kansas, Tennessee, Utah, and Washington were actively responding to pressures for exemptions on one or both of the items. Currently there are 45 sales tax states; by 1978, twenty-two exempted food (other than prepared) and thirty-six exempted prescription drugs from the levy.

Voters were mixed in their responses to proposals to utilize the lucrative motor vehicle and fuel revenues for other than highway purposes. California and Massachusetts obtained permission to divert some to mass transit purposes, while Arizona and Florida and Minnesota refused their use for "other transportation" purposes. Michigan voters did beat back an amendment which would have barred using such funds even for highway patrol purposes.

Emerging problems and concerns are often revealed in tax adjustments. Inflationary pressures and rising housing costs plague particularly people on fixed income, more likely the elderly than others. Homestead exemptions are constitutionally based in several states. During 1973-78 twelve amendments came from eight states modifying, usually increasing, benefits for the elderly or the disabled. Rising values of land raised questions about the viability of its use for agricultural, recreational or open space purposes. At least sixteen states made some kind of adjustment in their rules of uniform treatment to permit valuation in terms of actual use rather than pure market value. And the energy crisis has its constitutional implications. Virginia and Nebraska have authorized exemptions also for wind powered facilities. Other states have taken steps in the same direction through statutes. Nevada, for example, is

37

providing tax incentives for systems using wind energy, geothermal resources, and energy derived from solid waste conversions or water power.

CHANGING STATE CONSTITUTIONS

Procedures for changing state constitutions received a bit of attention, involving about 16 states producing 23 amendments; all but four of which passed. None was of immense importance although a few may facilitate the process of change or make the process fairer. Vermont in 1974 reduced its quite ageless requirement of an interval of 10 years between amendments--one which had never been particularly restrictive in view of the simplicity of that state's document--to four years and then passed up the opportunity in 1978 to use it for the first time. Alaska changed the time of submitting amendments from "the next statewide election" to the "next general election," and Pennsylvania endorsed posing the question of a constitutional convention at least every ten years. Idaho, Massachusetts and Maryland simplified their requirements for publicity on pending amendments. Oklahoma eliminated the "silent voter" by changing to a majority voting in the election, but Minnesota rejected a move to lower the requirement for approval in referenda to 55% of those voting on the issue or 50% voting in the election.

Some states took up the problem of keeping constitutions in better shape without resorting to the cumbersome process of constitutional amendment. Maryland was busiest, in 1978 passing two changes. The first made provision for special placement and subsequent dropping when ineffective of new amendments of limited duration. The second dealt with the existing constitution authorizing the removal or correction of obsolete, unconstitutional or duplicative language that relate to technical matters.

But Georgia, South Dakota, and Vermont would not go along with similar efforts. Georgia proposed a special commission to incorporate new amendments into the constitution upon adoption, South Dakota proposed allowing the legislature every ten years to arrange the constitution in orderly fashion deleting obsolete material, and Vermont considered giving similar authority to the Supreme Court. South Carolina in 1974, 1976, 1978 extended the authority of the legislature to submit changes to an entire article as one question, a device it has used successfully in securing revision of its constitution.

Florida had its first experience with amendments produced by its unique constitution based constitutional commission. Florida's constitution which became operative in January 1969 provided for the establishment of a thirty-seven member constitution revision commission ten years after adoption of that constitution and every twenty years thereafter, with responsibility for studying the constitution and the authority for making proposals for change directly to the people. The commission submitted eight amendments, all of which were defeated. One was an omnibus revision proposal and the others specific changes, including abolition of the Florida's unique cabinet, an equal rights amendment, single-member districts, and a Missouri plan for selecting circuit and county court judges, a package of changes which could hardly be called noncontroversial.

MISCELLANEOUS

The period 1973-78 was not one characterized by revolutionary change. There were no bold new departures in substance or structure, indicating future trends for the states. Rather the period seemed one of consolidation after the previous decade of considerable activity, of

extension of gains made toward more effective and responsible government. Perhaps the changes in the area of taxation and finance suggest even reaction.

Concern with the energy problem presented itself in a number of tax concessions made for those investing in devices not dependent upon fossil fuel or in more mundane matters such as residential insulation. The nuclear energy controversy began to have constitutional implications as Colorado established mandatory procedures--including voter approval--for the detonation of nuclear devices but refused to honor an initiative petition amendment which would have placed stringent procedures for approving the construction of nuclear facilities. Hawaii made provision for legislative approval of nuclear plant construction and the disposition of radioactive material.

States continued to expand aid to students in higher education--both public and private--by removing obstacles to grants to private school students or by directly authorizing grant or loan programs. Perhaps the aging of the population accounted for the rather high number of amendments relating to retirement, both public and private. Current economic developments produced adjustments in maximum interest rates permitted by some constitutions.

Gambling attracted an unusual amount of attention with fifteen states producing 20 amendments. New Jersey voters in 1976, after turning down a wider amendment allowing casinos on a local option basis two years earlier, gave approval for them in Atlantic City. They rejected betting on Jai Alai in 1978. Florida voters last year rejected an initiative petition amendment which would have permitted casinos in Dade and Broward counties, the Miami Beach area. Most constitutional activity

though centered around allowing exceptions to state constitutional prohibitions of lotteries to permit charitable and fraternal as well as church groups to set up bingo enterprises. This group included California, Delaware, Kansas, New York, North Dakota, Ohio, Rhode Island, South Carolina, West Virginia, Wisconsin, Oregon, and Georgia. Missouri approved an interesting one permitting games of chance where nothing of value is exchanged for the opportunity to participate or receive a prize. Ohio was the only state in the period to authorize a state lottery to raise revenue for the general fund.

Much of the activity of the period involved the usual tinkering with legislative detail embedded in constitutional documents or with trying to clean up obsolete debris. Oklahoma expressed its continued interest in drinking questions by turning down two amendments which might have facilitated the process. Michigan meanwhile authorized the legislature to regulate drinking by those under 21. A change in South Carolina holds a certain fascination if it reflects little constitution profundity. That state changed its ban on liquor sales from "sunset to sunrise" to "from 7pm to 9am," thus effectively decreasing the period in summers while expanding it perceptibly in winter.

Perhaps someday constitutions will be rid of all references to dueling, for a few more states including Mississippi and Ohio removed that behavior as a bar to holding public office. Mississippi also relieved railroads of a heavy responsibility by repealing the provision that required a railroad to run through a county seat should it otherwise come within three miles of it.

Hawaii's Thirty-four

Hawaii's action in 1978 in approving 34 amendments should not go

unnoticed. The products of a constitutional convention these amendments seem to mark a significant step away from the relatively simple constitution adopted in 1958 and relatively unmarked through the years, even by the 22 sections changed in 1968. This time there seemed greater concern with detail and with the specification of legislative responsibility.

The latter did produce some interesting provisions: that the state and counties conserve, protect and promote development of their natural beauty and resources; the right of persons to a healthful environment and the right to sue to enforce it; for the state management and control of ocean waters and lands within and adjacent to the boundaries of the state and for state-licenses mariculture operations. Hawaii did produce one provision, revolutionary if it actually succeeds, that plain language be required in all government writing.