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The Historical and Political Context of Articles VIII and XII of the Ohio Constitution of 1851

Since this committee has received recommendations to take certain action in regard to specific provisions of the existing Constitution, it seems particularly appropriate to review the historical and political context in which the provisions of Articles VIII and XII of the Ohio Constitution of 1851 arose, and also to review, to some extent, the development of certain of these sections as reflected in the debates of the Constitutional Convention of 1850-1851, because the principal outlines of Articles VIII and XII of the present Constitution were determined at that time, and a clearer understanding of the forces which motivated their insertion into the 1851 Constitution seems essential to any decision concerning the disposition of them which this Committee might decide to recommend.

In 1800, on the eve of her statehood, Ohio had a population of approximately 45,000 and spent approximately $25,000 per year on its government. The population was concentrated largely in communities on the Ohio River or on rivers which eventually flowed into it, such as the Miami, the Scioto, the Muskingum, the Tuscarawas, and the Hocking. The people, of course, were engaged principally in farming. Their access to markets was extremely limited because no road network existed by means of which they could export their agricultural products to the population centers of the East and receive finished manufactured products from them. In the years before 1825, Ohio's principal market connecting it with the rest of the country was New Orleans, which was reached by means of the Ohio and Mississippi Rivers. This route was not only physically dangerous, in that cargo was often either stolen or lost to the perils of navigation, but also often financially unrewarding, since New Orleans business interests realized the disadvantage under which Ohioans were operating in that market. During this period, overland trade with the East consisted largely of cattle which were herded over the mountains for sale in eastern cities.

Given these harsh economic realities, there had long been an interest in the possibility of developing either a road network to connect Ohio with the eastern states, or a canal network to accomplish the same thing. However, as might be expected, Ohio at the time was a region deficient in capital. So, even though there had been talk of the possibility of building a canal for quite some time before, it was not until 1822 that the General Assembly appointed a canal commission to survey possible routes for a canal connecting Lake Erie with the Ohio River. Undoubtedly, the impetus for the 1822 legislation was the fact that the Erie Canal was being built in the State of New York at the time. This canal, which was opened in 1825, linked the Hudson River with the eastern end of Lake Erie. While it was not the first canal to be financed by public funds in the United States, it was the largest state-financed undertaking of its type to that time. Thomas Worthington, a U. S. senator from Ohio, was one of the principal supporters of federal aid for its construction. Although this aid did not materialize, Worthington's position indicated a clear understanding of the potential impact of the completion of the Erie Canal on the economic life of Ohio.

The commission issued its report, known as the Williams Report, in January, 1825. This report was, as the following passage shows, endorsed by David Bates, one of the chief engineers of the Erie Canal project. Beginning at page 25 of Ohio Canal Era, published by the Ohio University Press in 1969, Dartmouth historian Harry N. Scheiber summarizes this report as follows:

> "Against the background of rising optimism at Columbus in early January, the canal commission finally produced its report. Its recommendation, fully endorsed by David Bates, was for construction of two canals. The main "Ohio Canal" was planned to run up the Scioto valley to a point south of Columbus, thence to the east where it would meet the tributaries of the Muskingum. From there, the commission declared, it might run to Lake Erie either along the Black River or down the Cuyahoga. The report estimated the cost of construction at $2.8 to $4 million. The second canal, termed the "Miami Canal," was planned on a 66-mile route from Cincinnati through Middletown to Dayton, at an estimated cost of $673,000. Once state finances permitted, the commission asserted, the state might well extend the canal northward to the Maumee River, near the Michigan and Indiana borders, and run down the Maumee to Lake Erie.

> In a second set of recommendations, the board asked for establishment of a newly constituted canal commission to supervise construction of the canals and, once completed, their operation. It proposed that the agency be authorized to seize lands and materials for the canals, to establish the specific locations along generalized routes recommended in the report, to engage engineers and other staff, and to establish tolls and regulate traffic on the completed works. But financing of the public works, the board asserted, should be left to a separate commission, empowered to issue bonds backed by the credit of the state. The concept of separate agencies for administering finance and construction was founded on the example of New York, which had adopted such a system eight years earlier, upon authorizing the Erie Canal project.
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> The report also proposed a major tax revision, which would assess lands ad valorem, instead of merely classifying lands without reference to market value, as was then the system. Ad valorem taxation not only would increase state revenues, but would also place a larger (and fairer) share of the tax burden on localities where land values rose quickly because of the canals. Finally, the report recommended creation of a sinking fund to pay the principal of the canal debt, the fund to be accumulated from a special state canal tax on land and by allocation of other revenues as needed."

The Constitution of 1802 placed no impediment in the way of the General Assembly in regard to its decision as to the method to be used in financing a canal project. As far as this writer can determine, there were only three provisions in that Constitution with regard to the manner in which the Legislature was to handle monetary affairs and with regard to its power to impose--or rather not to impose--a certain type of tax. Its Article I, referring to the legislature, contained the following two provisions:

> "Section 21. No money shall be drawn from the treasury, but in consequence of appropriations made by law."
>
> "Section 22. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with the laws, annually."

Further, a section of Article VIII of that Constitution, the article which constituted the Bill of Rights, provided as follows:

> "Section 23. That the levying taxes by the poll is grievous and oppressive; therefore, the legislature shall never levy a poll tax for county of State purposes."

On February 3, 1825 the General Assembly enacted "an act establishing an equitable mode of levying the taxes of this state." On the next day, it enacted "an Act to

provide for the internal improvement of the State of Ohio by navigable canals." (The latter act is attached as Appendix A). These two laws carried into effect the recommendations of the original canal commission. Their impact on the future of the state cannot be overestimated.

The tax imposed by the new tax law was essentially a real property tax. However, Section 1 of the act, which defined the objects of taxation, included among these the capital of all merchants and exchange brokers employed within this state. Section 2 of the act, which defined exemptions, contained those exemptions which one would expect to find in a tax law, and also "gristmills and sawmills; all woolen and cotton manufacturies, all manufacturies of paper, salt, iron, or glass, all distilleries, tanneries, and all nail factories."

The resentment caused by the inclusion of the capital of merchants and exchange brokers in the tax base, while the capital of banks and corporations was not mentioned--and in fact, not taxed--found expression 25 years later in the Constitution of 1851, which contained specific provisions in regard to taxing banks and other corporations. The exemption provisions of the law, on the other hand, illustrate the essentially pragmatic approach to lawmaking which was characteristic of the period. This pragmatism probably explains the failure to tax bank capital, which was always scarce, and also the failure to tax capital invested in railroads when railroad companies were organized in the 1830s and 1840s, since these were thought necessary for the growth of the state.

The 1825 canal law authorized the construction of two canals, one on the Muskingum-Scioto route between the Ohio River and Lake Erie, by way of the Licking Summit, and the other on the Maumee-Miami line between Cincinnati and the Mad River at or near Dayton. It separated administrative responsibility from fiscal responsibility by establishing a board of canal commissioners, who oversaw the day-to-day operation, and the commissioners of the canal fund, who were responsible for carrying out most

of the fiscal provisions of the law. Section 3 of this act established a "canal fund", which was to "consist of such appropriations, grants and donations as may be made for that purpose by the legislature of this state and by any individuals, and also all moneys which may be raised by the sale of stock as hereinafter provided, and the taxes by this act specifically pledged for the payment of the interest upon such stocks". Section 4 authorized the commissioners of the canal fund to issue certain "transferable certificates of stock," redeemable at the pleasure of the state between 1850 and 1875. These "stocks," therefore, had some attributes of bonds. Section 5 contained the fateful promise "that for the payment of interest, and the final redemption of the principal and the sums of money to be borrowed under the provisions of this act, there shall be, and are hereby irrevocably pledged and appropriated "the proceeds of the tolls collected on the canals, all rents and profits, and certain sums remaining in the treasury of the state, as well as specified amounts of taxes to be raised in the future. Section 5 also contained what proved to be a fatal error, namely making the auditor of state responsible for determining the percent of taxation necessary to carry out the pledges made in the act. During the next quarter century this provision and provisions similar to it in other statutes on the same subject, were seldom if ever carried out. Instead the auditor, often with the knowledge and urging of both the Governor and the Legislature, resorted to the diversion of funds originally intended for other purposes instead of imposing additional taxes sufficient to pay the interest, and failed to accumulate funds in the sinking fund to pay the principal as it became due.

Section 5 of the 1825 canal law authorized canal commissioners to borrow $400,000 in that year for the purpose of constructing the canals and $600,000 in any year during the progress of the work contemplated by the statute.

The first phase of the canal construction, which began on July 4, 1825, progressed well. As a consequence, the General Assembly authorized the borrowing of larger sums

than originally contemplated in the canal law of 1825. It authorized the borrowing of $1,000,000 in 1826 and $1.2 million each in 1827 and 1828. The 1828 loans were advertised as the "final" loans.However, rising costs, particularly in wages and because of changes in design, made it mandatory to issue an additional $600,000 worth of stocks in 1830 and $100,000 in 1832. The full length of the Miami Canal was completed in December 1828, and the final link of the Ohio Canal, near Portsmouth, was completed in October 1832. Ths cost of this phase of construction was within the limits of the original estimate.

It was during this first period that Ohio began what turned into a habit: it borrowed money to pay interest. The first of these loans was of the school funds which were derived from the sale of school land set apart by Congress for the support of common schools when Ohio was admitted to the Union. These funds belonged to the counties, but were paid into the state treasury and the state pledged to pay 6% interest on them forever. The first three of these funds, amounting to a mere $45,506, were borrowed in 1827. They were repaid with interest at the end of the year. The same procedure was followed in 1828, 1829, and 1830. Then, on March 2, 1831 the General Assembly passed "an act to establish a fund for the support of common schools", and by Section 9 of that act proceeded to apply all such funds to defraying the expenses of constructing the canals then authorized! The total of the funds so diverted amounted to over $1.5 million by 1848.

The first phase of construction of the canals had hardly ended when the clamor for expansion of internal improvements forced the state into a second phase, beginning with the authorization of a series of new canal projects in 1836, and the so-called "Loan Law" or "Plunder Law" of 1837.

Also, in 1836 Ohio received approximately $2 million as its share of the surplus in the U. S. Treasury which was being distributed to the states. Ohio distributed these funds to the counties, which were authorized to loan the money to any incorporated company for the construction of a canal, railroad, turnpike, road or other

internal improvement in the county. In 1838, this act was amended to permit investment of these funds "for the promotion of internal improvements", and small sums were thereafter lent to the state for canal purposes. These sums were subsequently absorbed into the so-called "irreducible debt" of the state, referred to in the Auditor's Report for 1848, attached as Appendix B.

The expansion of the state's system of internal improvements which was begun in 1836 was, much more than the first phase, motivated by a political ideology instead of economic necessity. The ideology was that of Jacksonian egalitarianism, which held that government had an obligation to extend benefits equally to all its citizens. The proponents of further expansion argued that the course of "partial legislation" which had been followed until that time was intolerable, that a well-planned transportation system would be self-liquidating, that, at any rate, "indirect benefits" would justify the investment, and that an adquate transportation system was"essential to the honor and dignity of the state".

On page 109, Scheiber states:

> "Even though it probably gained strength from egalitarian ideals, the coalition which finally enacted the new program also reflected effective logrolling. Representatives of the counties which would benefit directly from one or more of the public works approved in 1836 cast altogether only three negative votes in five crucial roll calls. The hard-core opposition came from a group of counties situated on the Ohio River, including Clermont and Brown in southern Ohio, and Trumbull, Columbiana, Jefferson, Belmont, and Monroe in the eastern part of the state. None of these counties stood to gain directly from the new program; and they cast forty-one of the seventy-six negative votes recorded in the five roll calls.
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> The enlarged program which the legislature approved in 1836, as regional alliances crystallized sufficiently to break the legislative log jam, called for four new large-scale projects--all to be built mainly at state expense and as public enterprises. They were: (1) The Muskingum River Improvement, which projected the canalization for steamboat navigation of the entire Muskingum River between Dresden and its junction with the Ohio, 91 miles distant at Marietta. (2) The Walhonding Canal, designed to run from the Ohio Canal, where it crossed the Walhonding River, upstream along the river as far as the canal officials deemed desirable. (3) The Hocking Valley Canal, which would incorporate the old Lancaster Lateral Canal, to be purchased by the state, and its extension 56 miles southeast to Athens.

(4) Further extension of the Miami Extension Canal, northward from its current terminus at Piqua to a junction with the Wabash & Erie in northern Ohio--this segment to be built with funds borrowed by the state as well as with revenue from land sales.

In addition, the 1836 session of the legislature approved three smaller expenditures: the purchase for $20,000 of the partially built Warren County Canal, and its completion from Lebanon to the main-line Miami Canal; authorization of bond issues to permit a state loan of $200,000 to the Mad River & Lake Erie railroad; and approval of a cash loan from the treasury of $15,000 to permit completion of the Milan Canal Company's short deepwater canal between Milan and the Huron River.

In 1837 the new program was further expanded with enactment of the so-called "Loan Law," under the terms of which the state would lend public funds to private railroad corporations and invest in the capital stock of canal and turnpike companies. This law entitled any Ohio-chartered railroad to qualify for loans, in the form of 6 per cent state faith-and-credit bonds, equal to one-third their authorized capital. The only conditions were that private investors provide two-thirds the estimated capital required for construction, with one-third being actually expended upon construction; and that the railroad be certified by the canal board as likely to yield a 2 per cent annual return on investment. Any chartered turnpike company might obtain a state subscription to half its capital stock, providing that private stockholders had invested half the amount needed to build the road. As for private canal companies, each might obtain a state subscription to one-third the capital stock needed to finance construction when the remainder had been taken by private investors.

The Loan Law was Ohio's first venture in "mixed" public-private enterprise on a general basis, by which any corporation meeting minimum standards was entitled to the aid of the government. It was open-ended, for it set no limit on the total amount of money the state might be required to invest. Modeled on statutes enacted earlier in Virginia and Kentucky, the Loan Law was attractive because it "stretched" state resources by requiring matching funds from private investors. But the law was also regarded in Ohio as a device to aid localities that would be by-passed by the newly authorized public works. As one contemporary enthusiast explained the law's purpose: "Scarcely any settled country is so sparse in population nor poor in property that /it/ cannot take half the stock in turnpike roads . . . The certainty that the State will take half the stock in any road required by the wants of society, will at once induce the subscription, by individuals, of the other half." Conceived then as a means of extending benefits to all sections of the state, the Loan Law was a paradigm of egalitarianism in public transportation policy.

To finance these new undertakings, the legislature approved the issue of 3.1 million dollars in long-term 6 per cent bonds. Consistent with the precedents established in 1825, the board of canal fund commissioners was authorized to issue the bonds, and the faith and credit of the state was placed behind them. Not content even with the record of 1836-37, the legislature enlarged its program still further in 1838

by approving a $700,000 bond issue to supplement land-sale revenues in support of the Wabash & Erie Canal's construction, which had begun two years earlier. Appropriations were also made in 1838 for drainage, grading and macadamizing of the Western Reserve & Maumee Road (the former Federal military road), which ran along the Lake Erie shore from a point near Cleveland to the Sandusky River.

The engineers of the canal commission had estimated the cost of the new canal projects as 4 million dollars. Even if such a figure seemed credible, the legislature thus agreed explicitly to double Ohio's state debt in order to build the expanded public works. But in addition, the state committed itself to apparently limitless funding of private transport projects under terms of the Loan Law. The actual cost of the new program proved to be about 15 million dollars, partly because a national business depression during 1839-43 forced the state to borrow funds at large discounts, but partly because the engineers' estimates of costs had been far too optimistic.

The Loan Law is attached as Appendix C.

This law, which was limited in 1840 and completely repealed in 1842, set the stage for some of the most glaring examples of financial abuse which resulted in the expression of distrust of corporate and political power in the Constitution of 1851. The annual report of the Auditor for 1849 (which is attached as Appendix D) contains a statement of the stocks held by the state which illustrates the problem most graphically. This report shows that the amount of turnpike, railway, and canal stocks held by the state had a face value in excess of $3 million, and that on this investment the state was collecting dividends of less than $39,000 annually. Further, as may be determined by reference to the notes accompanying the auditor's report for 1848, the actual value of these stocks was estimated to be only $1 million, incidating a loss to the state of approximately $2 million on these ventures.

These notes also contain the following highly significant statement:

"There was not a dollar in the Treasury for the payment of more than half a million of interest coming due in May and July /1845/ , except such sums as could be withdrawn from funds appropriated for other purposes; nor were there any revenues from which funds would be received for this purpose. The Fund Commissioners were, therefore, compelled to make temporary loans for the payment of the greater part of the semi-annual interest due in May and July of that year."

Obviously 1845 was a sadly typical year as far as the state's internal improvements

were concerned.

Since the "Loan Law" was repealed in 1842, the last bonds or stocks to be sold were sold by the state in 1843, and canal construction was completed in 1845, the excerpt of the two Auditor's reports which are attached to this memorandum, in all probability give an accurate picture of the final outcome, in terms of dollars and cents, of the state's involvement in the field of internal improvements over a period of 20 years.

At this point, reference must also be made to the act of February 28, 1846 entitled "An act regulating the mode of proceeding where County Commissioners may be authorized by law to subscribe to the capital stock of Railroads, Turnpike Roads, or other incorporated companies in this state". This law, which was only two paragraphs in length, required a majority vote at a general election on any question concerning subscription by counties to the stock of corporations enumerated in the title, was passed as the result of pressure from those areas of the state which believed that they had not benefited from internal improvements constructed since 1825, and therefore felt themselves deprived in some manner. Prior to this time, local involvement in internal improvements was the result of special legislation. Now, it was state policy. At the time of the Constitutional Convention, it was estimated that local debt of this type amounted to approximately $10 million. There was some suggestion during the debates that the state assume this debt as a part of the state debt, and undoubtedly the fear that this might come about caused the majority to put a ban on further involvements of this type--which were mostly in railroads--and specifically to prohibit the assumption of the debts of political subdivisions by the state.

However, those localities which had begun projects before the enactment of the new constitution were permitted to finish them, there being no intention on the part of the framers of the document to prohibit them from doing so.

In putting the Constitutional Convention of 1850-51 into context, is it also necessary to have some understanding of Ohio's banking and railroad laws prior to that time.

As has been previously mentioned, bank capital was not made subject to taxation by the tax law of 1825. Periodically, thereafter, there were attempts to regulate both the manner of their operation and their tax status, but none of these had been successful. Beginning in 1839, there was a reform movement led by the Democrats to impose some sort of order upon the operation of banks, including the establishment of strict specie reserve requirements, the prohibition of suspension of specie payments for more than 30 days per year, and an attempt to have banks pay the state and its workers in "hard" currency, instead of scrip or highly discounted notes as had been widespread practice. However, the economic difficulties of the early 1840s--1839 to 1843 were depression years--made this requirement nothing short of a farce, since the Treasurer himself at times encouraged breaking the law to obtain the money which was required to finish the public works, particularly the Miami Extension Canal and the Wabash and Erie Canal, and the workers on these projects preferred getting paid with any kind of money as opposed to not getting paid at all. On February 24, 1945, the General Assembly finally passed a general law entitled "An Act to incorporate the state bank of Ohio and other banking companies". The purpose of this act was, once again, to control and consolidate banking operations in the state. Section 60 of this act required a bank to set aside 6% of its profits for payment to the state in lieu of tax. A"percentage of profits" feature was common to many banking laws of the past which, prior to this time, had all been special legislation. To that extent, the new banking law offered nothing new.

Railroads, likewise, had long been in a favored position. It was not until February 11, 1848 that the General Assembly passed an act regulating railroad companies. Prior to that time, all incorporations like the incorporation of banks, had been

handled as special legislation which showed a wide diversity of features, reflecting the influence of incorporators and stockholders on the Legislature. Railroads, like banks, were often taxed only on a percentage of their profits. The 1848 act made some changes in this regard, but Section 17 of this law, which "reserved" the right of taxation to the General Assembly, is nevertheless a good example of how not to write a tax law. It reads as follows:

> "The right is hereby reserved to the General Assembly, to provide for taxing such companies by any other mode than is now authorized by the provisions of the act levying taxes on all property of the state according to its true value; but not so as to require any such company, or the stockholders thereof, on account of the stock owned by them, to pay any greater rate of taxes for the time being, than the general average of taxation for all purposes on other property of equal value in those counties through which such road may pass, or within the limits of which the same may be located; and any existing railroad company may accept the provisions of this section, and thereafter be liable to taxation, as provided by the act levying taxes aforesaid, subject to the right of the General Assembly, herein reserved; and provided, also, that any existing railroad company accepting any of the provisions of this act shall thereafter be subject to the taxation herein provided, subject to the right herein reserved."

This can hardly be considered a model tax law. However, given the railroad mania which had existed in this state--77 charters had been granted between 1830 and 1840--it must be considered a step in the right direction, although it was obviously not enough to satisfy the framers of the 1851 Constitution.

Disillusionment with the "active state", as Scheiber calls it, contributed to increasing pressure in the late 1840s for the calling of a constitutional convention. Repeated attempts to enforce the payment of the public debt by legislation had ended in failure. The state's losses under the "Loan Law" were becoming increasingly clear, and the repeated failure to effectively regulate and equitably tax banks and railroads in the state were becoming heated emotional and political issues. On February 23, 1850 the General Assembly, which was controlled by the Democrats, passed a law calling for the election of delegates to a convention. It was to consist of 108 members, the same number as were serving in the General Assembly at the time. The election was held on the first Monday in April, 1850 and the results strongly favored the Democrats.

The first meeting of the Convention took place on May 6, 1850 at Columbus. On May 10, the committee appointed to report a method of conducting the business of the convention offered a resolution recommending that 16 study committees, including a committee on public debt and public works consisting of 9 members and a committee to study finance and taxation consisting of 5, be appointed. The appointments were to be made by the president of the convention, William Medill, a man prominent in Democratic politics for over a decade before the Convention. The appointments to the various committees were announced on May 14. The make-up of the Committee on Public Debts and Public Works and the Committee on Finance and Taxation is given below:

Name	Age	County Represented	Occupation
Jacob Blickensderfer	60	Carroll, Tuscarawas	Farmer
Aaron Harlan	47	Greene	Farmer
William Hawkins, Chairman	53	Morgan	Miscellaneous
Reuben Hitchcock	43	Cuyahoga	Lawyer
John Johnson	43	Coshocton	Farmer
J. Dan Jones	31	Hamilton	Farmer
Thomas J. Larsh	41	Montgomery, Preble	Surveyor
Albert V. Stebbins	39	Henry, Lucas	Farmer
J. R. Swan	47	Delaware, Franklin	Lawyer

Committee on Public Debts and Public Works
Ohio Constitutional Convention, 1850-1851

Name	Age	County Represented	Occupation
William Barbee	45	Miami	Merchant
John Ewing	44	Hancock, Wyandotte Seneca	Merchant
V. B. Horton	47	Athens, Meigs	Farmer
James Loudon, Chairman	54	Brown	Lawyer
E. Wilson*	49	Ashland, Wayne	Farmer

* Replacing Leander Firestone of Wayne and Ashland Counties, resigned.

Committee on Finance and Taxation
Ohio Constitutional Convention 1850-1851

The relative size of the committees is an indication of the relative importance of their respective study areas in the eyes of the delegates. Also interesting to note is the home county of each chairman. James Loudon, the chairman of the finance

and taxation committee came from Brown County. Brown County is repeatedly mentioned in the commentaries on the Ohio canal era as being one of the bypassed counties in the state's program of internal improvements, being located on the Ohio River approximately equidistant from Cincinnati and Portsmouth. On the other hand, the Muskingum River ran through Morgan County, the home of William Hawkins, chairman of the public debt and public works committee, who had also been Speaker of the Senate in 1839, to which session reference will be made later in this memorandum. The Muskingum Improvement stands out as one of the prime examples of the waste which permeated the second phase of canal construction beginning in 1836. The 1836 estimate of its cost was $400,000, but its total cost, mainly due to changes in design caused by engineering difficulties, was $1,662,000. It is not difficult to imagine the attitude of these gentlemen toward the financial plight of the state at the time of Convention. There must also have been a very substantial agreement from the beginning on the outlines of the two proposed articles on which these committees worked, because they submitted their reports in a startlingly short period of time. Report No. 1 of the Committee on Public Debts and Public Works reached the Convention on June 4, hardly three weeks after the committees were appointed. (The report is attached as Appendix E-1). This was the only report that the committee was to write. As a comparison with Article VIII of the 1851 Constitution shows, there was relatively little change between the report and the final product endorsed by the Convention. (Articles VIII and XII of the 1851 Constitution are attached as Appendix E-4).

The finance and taxation committee submitted its first report on June 20. (This report is attached as Appendix E-2). This committee submitted a second report on February 18, 1851. (This report is attached as Appendix E-3). The second report went through some additional changes. However, even the first and second reports of this committee, when they are compared to the final product of the convention, namely Article XII, show a great degree of agreement regarding design and purpose between these reports and the final product.

In general, the purpose of the Convention as the delegates saw it--at least as far as fiscal policy was concerned--was the prescription in the Constitution of a method for paying the public debt, preventing either the state or its political subdivisions from incurring further debt, preventing the assumption of local debts by the state, bringing as much property as possible onto the tax rolls, and generally restricting the fiscal powers of the Legislature, for which there was a pervading feeling of distrust.

Any degree of knowledge of the state's political and fiscal problems for the twenty-five year period preceding the Convention makes the reading of the provisions which were incorporated into the 1851 Constitution in Articles VIII and XII, very nearly anti-climactic. The debates themselves are largely rhetoric,and lead to the inescapable conclusion that the purpose of the 1851 Constitution, at least as far as public debt and public works and finance and taxation are concerned, was to solve immediate problems created under unwise laws--most of which had already been repealed--the failure of state officers to carry out existing laws as they were intended to be carried out, or the failure to enact laws--particularly regulatory laws-- which a majority of the people felt were needed.

Of the problems facing the Convention, no doubt the problem of the state debt was the most vexing. At the time of the Convention, Ohio had approximately 2,000,000 inhabitants, and a tax base of $430,000,000 from which it was extracting $3 to $3.5 million per year in taxes for state purposes. The exact amount of its debt is somewhat difficult to determine, for the reason that bookkeeping methods were, to say the least, often very informal, and the word "debt" was defined according to one's political outlook. But a guess of $16 to $19 million would seem reasonable.

There were some delegates who complained that the reports which were being submitted went into too much detail in trying to solve the problem of repayment. The chairman of the public debt and public works committee, however, defended this approach with a great deal of vigor:

"I regret, Mr. Chairman, the necessity we are under of entering into this matter of details more than heretofore. The Legislature of this State, so far as the state debt is concerned, have proven themselves not to be entitled to the utmost degree of confidence. Upon entering into a system of public improvements in the state of Ohio, there was a law passed, and which exists at this time, and which if it had been regarded, would not only have saved out state from the extent of debt in which we are involved but would have provided by this time a large fund for the extinguishment of it. That wise law--for we believe it to be such--was disregarded. I apprehend it as our duty to pay attention to the impressive lessons of the experience here. There was a deception worked upon the people of this state, or they would not have tolerated the system, by which we are involved in debt. The fund provided for by the law of 1825 was used for a different purpose and was used to save the levying of taxes, and by the refusal of the legislature to levy taxes to meet the interest upon our increased liabilities, a deception was worked upon the public mind. By means of that deception, they tolerated this rapid expenditure in the public works of the State of Ohio, and by that means out debt accumulated to his present amount. Had they adhered to the provisions of that law, the burthen of taxation would have been felt by the people as the debt increased, and they would have checked the expenditure at the proper time. They were deceived, I will repeat, or they would not have tolerated the expenditure. Now I would like to bind the Legislature to do their duty to the people of this state. It is manifest, in my opinion, that heretofore this matter had been neglected."

No doubt Mr. Hawkins was here expressing the most profound sentiment of the Convention.

At this point, and for the purposes of this memorandum, it seems appropriate to offer some impressions and observations on the various sections of Articles VIII and XII which were adopted by the Convention. Article VIII, Section 1, of course, contains the $750,000 limitation on state debt. Readers of our present Constitution have often wondered where this limit came from. It develops that in writing this section the committee originally had in mind amounts of $500,000 to $1,000,000. The report was written with the $750,000 limitation inserted "as a matter of convenience". It was obviously intended only as a basis for discussion, but given the temper of the Convention, it was left untouched. The provision concerning the contracting of debts to repel invasion, etc. in Section 2 was inserted with practically no discussion. Its basis is that the delegates remembered that during the Mexican War the state had contracted debts of this type and thought that such a situation could arise again. Section 3, which

forbids the creation of debt except as set forth in Sections 1 and 2 of this Article, is self-explanatory. It is the result of the abuse of the privilege of creating debt in the previous 25 years, and is a complete reversal of the attitude expressed in the Ohio Constitution of 1802. Section 4, concerning the extension of the credit of the state and its becoming a joint owner or stockholder, was intended to forbid what the "Loan Law" of 1837 had allowed. Section 5, concerning the assumption of debts of political subdivisions by the state, forbids what was suggested by some delegates from those areas which did not benefit by the 1825 canal law and its progeny and the 1837 "Loan Law." Sections 7 through 11, concerning the sinking fund, are simply an attempt to imbed in the Constitution what had been mandated by statute since 1825 but never accomplished because of the failure of the Auditor, the Legislature and the Governor at various times, to demand that the state debt be reduced. The "$100,000 plus 6% compound interest" formula found in Section 7 is of no particular significance, except as a symbolic commitment to the payment of the debt. The committee which wrote the report had originally recommended a figure of $1,150,000. This amount could have paid $900,000 interest and $250,000 on the principal in 1851. However, because of opposition from the poorer sections of the state, this sum, which the committee did not really expect the Convention to approve, was rejected in favor of a smaller sum. (Incidentally, this formula is essentially the one contained in Section 1 of "an act to provide for the extinguishment of the public debt of Ohio", passed by the General Assembly on February 24, 1848.) The arrangement prescribed in Section 9, of having the sinking fund commissioners report their financial needs to the Governor for transmission to the General Assembly, which was to assess the necessary tax, signaled a major change from established practice--embodied even in Section 9 of the Committee report--of having the Auditor assess the tax. The inclusion of the Board of Public Works in the constitution in Sections 12 and 13 of this Article is simply a throwback to the mid-1830s, when the Canal Commission became more and more the object of political interest

and pressure. In 1836, a year when the Democrats controlled the General Assembly, and William Medill was President Pro-tem of the Senate, they abolished the Canal Commission and created in its stead the Board of Public Works, strictly as a political move. A short while later, when the Whigs regained control, they in turn abolished the Board of Public Works and reinstated the Canal Commission. This cycle of abolition and resurrection occurred several times during this period, and some members of the Convention thought that this procedure had been "a disgrace", and to assure that it would not recur again, the Convention established the Board of Public Works as a constitutional office.

Now, to touch briefly on the provisions of Article XII. Section 1 of this Article, concerning the levying of poll taxes, is the only provision of the Constitution of 1802 in the field of finance and taxation which was carried over from it. Section 2, containing the "uniform rule" and the exemptions was one of the most difficult sections for both the committee which wrote it and the Convention. The most debated point, however, was not the "uniform rule," but rather the question of exemptions--particularly the exemption of church property. Section 2 of the first report of this committee came to the floor of the Convention with a blank as to the amount of such exemptions. After the report had been recommitted to it, the committee rewrote the exemptions provision, and placed a $2,000 ceiling on the amount. However, Article XII, Section 2 as adopted by the Convention contained no limit. This was one of the most emotionally charged issues of the convention, to which that body devoted at least four or five days of debate.

There is, really, very little discussion of the "uniform rule"in the debates. Its inclusion and wording did not seem to bother anyone, and one gets the definite impression that the original intent of this rule was only to assure that every kind of property which was subject to taxation was equally taxed, regardless of its ownership. Its origin is apparently traceable to the exemption provision of the 1825 tax law which, as will be recalled, taxed the capital of merchants and exchange brokers while omitting banks, and to the resentment engendered by the exemption of real

property of railroads, which had become general practice. There is no indication which this writer was able to ascertain that the "uniform rule", as originally conceived, was intended to prohibit the classification of real property.

Section 3 of Article XII was the finance and taxation committee's contribution to the convention's attack on banks. The inclusion of this section in this article is another instance of overlap both in the work of the various committees and in the constitutional provisions they produced. The Convention adopted an article on corporations, namely Article XIII, Section 4 of which provides as follows: "The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals." And Section 7 of Article XIII provides as follows: "No act of the General Assembly, authorizing associations with banking powers, shall take effect; until it shall be submitted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all electors voting at such election." Obviously, if this provision belonged in the Constitution at all, it should have been put in the article on corporations. Section 4 of Article XII, providing for the raising of revenues sufficient to defray the expenses and to pay the interest on the state's debt, and Section 5 of that Article, providing for the levying of taxes in pursuance of law and of the application of them to stated objects, were put in the Constitution to prohibit borrowing to pay interest on the state's debt, which as we have seen was a common practice, and to prohibit the raising of a tax for one stated purpose and its disposal for another purpose. Section 6 of Article XII, which absolutely prohibited the contracting of debt for internal improvement, contained the distilled reaction of the Convention to the "active state". It is interesting to note that the first report of this committee, in Section 8, would have permitted the contracting of debt for internal improvements upon a majority vote at the next general election following the passage of a law by the General Assembly. However, opposition to this approach was so strong that the

deleting this provision
amendment of this section/on the floor of the Convention was accepted without discussion.

One is compelled to the conclusion that the Constitution of 1851 did not lay down any fundamental or general principles or provide for a comprehensive system of taxation. It was never meant to do so. Instead, it was meant to solve specific problems which have long passed into history--problems which it attempted to solve by a piecemeal approach. Perhaps, the constitutional legislation to which they gave rise should pass into history, also.

APPENDICES

(Note: Due to the limitation of space, the appendices to the paper dated November 10, 1971, and entitled "The Historical and Political Context of Article VIII and XII of the Constitution of 1854" are omitted. Following are the citations to the materials covered by each such appendix.)

Appendix A — "An act to provide for the internal improvement of the State of Ohio by navigable canals" (popularly known as the 1825 Canal Law), 23 Ohio Laws 50.

Appendix B — Annual Report of the Auditor of State for 1848 (Printed in 47 Ohio Laws).

Appendix C — "An act to authroize the loan of credit by the State of Ohio," etc. (popularly known as the 1837 Loan Law or Plunder Law), 35 Ohio Laws 76.

Appendix D — Annual Report of the Auditor of State for 1849 (Printed in 48 Ohio Laws).

Appendix E-1 — Report No. 1 of the Committee on Public Debt and Public Works, Constitutional Convention of 1850, 1 Debates 292 (June 4, 1850).

Appendix E-2 — Report of the Committee on Finance and Taxation, Constitutional Convention of 1850, 1 Debates 513 (June 20, 1850).

Appendix E-3 — Report No. 2 of the Committee on Finance and Taxation, Constitutional Convention of 1850, 2 Debates 651 (February 18, 1851).

Appendix E-4 — Articles VIII and XII of the Ohio Constitution as adopted by the Convention, 2 Debates 861 and 863, respectively (March 10, 1851).

Constitutional Revision Commission
Finance and Taxation Committee
February 16, 1972

MEMORANDUM

Basic Debt Limits in State and Commonwealth Constitutions

The Hawaii Constitutional Convention Studies on taxation and finance provisions of American state and commonwealth constitutions, published in July, 1968, indicated that, at that time, twenty-two (22) state constitutions required referenda for incurring debts for capital improvements and other purposes. These included the following:

1. Alaska
2. Arkansas
3. California
4. Idaho
5. Illinois
6. Iowa
7. Kansas
8. Kentucky
9. Maine
10. Michigan
11. Missouri
12. Montana
13. New Jersey
14. New Mexico
15. New York
16. North Carolina
17. Oklahoma
18. Rhode Island
19. South Carolina
20. Virginia
21. Washington
22. Wyoming

The study listed a somewhat smaller number of states--nineteen--as requiring constitutional amendments to incur debt. This group included the following:

1. Alabama
2. Arizona
3. Colorado
4. Florida
5. Georgia
6. Indiana
7. Louisiana
8. Minnesota
9. Nebraska
10. Nevada
11. North Dakota
12. Ohio
13. Oregon
14. Pennsylvania
15. South Dakota
16. Texas
17. Utah
18. West Virginia
19. Wisconsin

Minnesota was erroneously included in this group because in November, 1962 that state had done away with a referendum requirement and, in Article 9, Section 6 of its constitution, substituted a three-fifth (3/5) majority vote of its legislature instead.

The Hawaian study also listed seven (7) states as having no state debt limits. These states included:

1. Connecticut
2. Delaware
3. Massachusetts
4. Mississippi
5. New Hampshire
6. Tennessee
7. Vermont

Two of the above--Delaware and Massachusetts--were listed as requiring special majorities of their legislatures,--three fourths (3/4) and two thirds (2/3) respectively--the others as requiring none. This group should also have included Maryland. Article III, Section 34 of its Constitution, which governs state debt, merely requires all such debt to mature in fifteen (15) years. Minnesota also belonged in this group, as previously noted.

In 1968, Hawaii had a state debt limit not subject to referendum of fifteen (15) per cent of assessed valuation, prescribed in Article VI, Section 3 of its Constitution.

In summary, in mid-1968, there were twenty-two (22) states which required referenda to incur state debt, eighteen (18) which required constitutional amendments, nine (9) which had no debt limit, and one which had a debt limit tied to assessed valuation and not subject to the referendum. The Commonwealth of Puerto Rico had a "debt service to revenue formula" prescribed in Article VI, Section 2 of its constitution, an amendment adopted in 1961.

Between 1968 and 1971, changes occurred in the state debt provisions of several state constitutions. These included:

1. Hawaii - switched from an "assessed valuation" basis to a "multiple of general fund" basis:". . . provided that such bonds at the time of authorization would not cause the total of state indebtedness to exceed a sum equal to three and one-half times the average of the general fund revenues of the state in the three fiscal years immediately preceding the session of the legislature authorizing such issuance."-- Article VI, Section 3, approved November 5, 1968.

2. Florida - switched from requiring a constitutional amendment to requiring a referendum, and fixed the maximum outstanding principal of the state debt at fifty (50) per cent "of the total tax revenues of the state for the two preceding fiscal years."- Article 7, Section 11, 1968 Revision, ratified November 5, 1968.

3. Illinois - switched from requiring a referendum to requiring a three-fifth (3/5) majority vote of the legislature or a simple majority in a referendum, and set no limit. Article 9, Section 9(b), 1970 Constitution, adopted December 15, 1970.

4. Pennsylvania - switched from requiring a constitutional amendment to a "multiple of annual tax revenues" formula: " . . . one and three-quarters times the average of the annual tax revenues deposited in the previous five fiscal years . . ." Article 8, Section 7(4), 1968 Amendment, adopted April 23, 1968.

5. Virginia - changed the basis of the debt limit from assessed valuation to a multiple of annual state tax revenues derived from income and sales taxes: ". . . twenty-five per centum of an amount equal to 1.15 times the average annual tax revenues of the Commonwealth derived from taxes on income and retail sales . . . for the three fiscal years immediately preceding the authorization . . ." All such debt is subject to referendum. Article X, Section 9(b), ratified November 3, 1970.

So, as of this date in 1972, state and commonwealth constitutions fall into the following categories on the question of a basic debt limit.

Those states which require referenda to incur debt still number twenty-two (22):

1. Alaska
2. Arkansas
3. California
4. Florida
5. Idaho
6. Iowa
7. Kansas
8. Kentucky
9. Maine
10. Michigan
11. Missouri
12. Montana
13. New Jersey
14. New Mexico
15. New York
16. North Carolina
17. Oklahoma
18. Rhode Island
19. South Carolina
20. Virginia--within flexible limit
21. Washington
22. Wyoming

Those states which require constitutional amendments to incur debt have dropped to sixteen (16):

1. Alabama
2. Arizona
3. Colorado
4. Georgia
5. Indiana
6. Louisiana
7. Nebraska
8. Nevada
9. North Dakota

10. Ohio
11. Oregon
12. South Dakota
13. Texas
14. Utah
15. West Virginia
16. Wisconsin

Those states which have no debt limit number ten (10):

1. Delaware--three fourths (3/4) majority of legislature required
2. Illinois--three fifth (3/5) majority of legislature required
3. Massachusetts--two thirds (2/3) majority of legislature required
4. Minnesota--three fifth (3/5) majority of legislature required
5. Connecticut
6. Maryland --Note: fifteen (15) year maturity limit is shortest in nation, and acts as a debt limit in practice
7. Mississippi
8. New Hampshire
9. Tennessee
10. Vermont

Flexible debt limits not subject to referenda are found in Hawaii, Pennsylvania and Puerto Rico. Hawaii and Pennsylvania have "multiple of annual tax revenues" type formula, while Puerto Rico has a "debt service to revenue" type formula.

SUMMARY

Jurisdictions requiring referenda to incur debt: 22

Jurisdictions requiring constitutional amendment to incur debt: 16

Jurisdictions having no constitutional debt limit: 10

Jurisdictions having flexible debt limits of "multiple of state tax revenue" type, not subject to referendum: 2

Jurisdiction having flexible debt limit of "debt service to revenue" type, not subject to referendum: 1

Ohio Constitutional Revision Commission
Finance and Taxation Committee
February 29, 1972

Comment on the Revenue Bond Aspects of Article VIII, Section 2i and on Article VIII, Section 13, as they affect the State of Ohio.

Article VIII, Section 2i and Article VIII, Section 13 of the Ohio Constitution are of particular interest at this time because the committee is considering various methods of dealing with them in any revision it may suggest. It has been proposed to the committee that it consider repeal of these sections, with a "savings clause" assuring the validity of outstanding bonds and existing authorizing legislation enacted to implement the constitutional provisions. It has also been proposed to the committee that it consider recommending that these sections be left in the Constitution, at least for the time being, because they permit financing arrangements which would not be permitted in their absence. The purpose of this memorandum is to provide some of the factual and historical data needed to arrive at a conclusion regarding the disposition of these provisions.

Section 13

Article VIII, Section 13 of the Constitution was approved by the people on May 4, 1965. It is intended to permit "industrial aid" revenue bond financing. The insertion of this provision is clearly a reaction to the decision of the Supreme Court of Ohio in State ex rel. Saxbe v. Brand, 176 Ohio St. 44, decided on March 18, 1964.

The General Assembly had, prior to that time, established the Ohio Development Financing Commission "in order to promote the welfare of the people of the state, to stabilize the economy, to provide employment, to assist in the development within the state of industrial, commercial, distribution, and research activities . . ." The O. D. F. C. was given power to "issue revenue bonds of the state," and, inter alia to lend money to community improvement corporations and Ohio development corporations and other business entities engaged in the establishment, location or expansion of facilities for the stated purposes. The statute creating the O. D. F. C. specifically provided that the bonds which it was authorized to issue did "not constitute a debt, or a pledge of the faith and credit, of the State or any political subdivision thereof."

On the basis of the foregoing statutory authority the Commission proposed to make the three particular loans involved in Saxbe v. Brand: one to a community improvement corporation to acquire and expand an existing plant leased to a private corporation; another to a private corporation to build a new office building and to expand an existing plant leased to a private corporation; and a third to a private corporation to aid in the building of a new manufacturing plant.

The Court held that the word "credit" as used in Section 4 of Article VIII includes within its meaning (1) a loan of money and (2) the ability to borrow. It also held that the credit of the state could not be loaned even where no debt of the state, either direct or contingent, is incurred. The matter of ability to borrow arose because a section of the O. D. F. C. statute required that the prospective borrower first show that he was unable to borrow the money to finance a proposed project through ordinary financial channels at reasonable rates, and that 40% could

not be financed even with a first mortgage on the property. The Court found that the statute in question permitted the extension of both types of credit by the state and its political subdivisions and therefore violated Article VIII, Section 4 of the Ohio Constitution. The end result of Saxbe v. Brand was to invalidate much of the legislation underlying the O. D. F. C. and community improvement corporations and Ohio development corporations.

But, in State ex rel. Barton v. Greater Portsmouth Growth Corporation, 7 Ohio St. 2d 34, decided on June 22, 1966, the Court upheld statutes embodying very similar if not identical concepts, and in so doing relied squarely on Article VIII, Section 13:

> "If the people think that aid to private enterprize serves a public purpose and amend the Constitution to so provide, barring some infringement of the federal Constitution, such determination by the people becomes the law of the state. The people have spoken through their fundamental document."

As of December 31, 1971, the following amounts of bonds had been issued under Article VIII, Section 13, and its implementing legislation:

Issued by cities	$255,815,000
Issued by counties	177,635,000
Issued by state	10,150,000
Issued by port authorities	7,000,000
	$450,600,000

Also, as of the foregoing date, the O. D. F. C. was guaranteeing $5,733,000 in loans pursuant to the above constitutional section and its implementing legislation.

In addition to having authority to issue revenue bonds and loan money--even to municipal corporations--and to guarantee loans to private entities, the O. D. F. C. may also own property in its own name, and lease such property for the stated purposes. Presently, the statutes establishing the Commission and setting out its powers and operation in detail are found in Revised Code Sections 122.39 to 122.62, its powers being enumerated in detail in Section 122.42, Revised Code.

The references at the end of Article VIII, Section 13 are intended to validate acts done under Amended Substitute H. B. 270, enacted on June 4, 1963 and relating to the Ohio Department of Development and the Ohio Development Financing Commission, and Amended Senate Bill 360 enacted on June 27, 1965, which amended Section 1724.03, Revised Code, relating to the establishment and powers of community improvement corporations. Both of these acts, of course, predate Article VIII, Section 13.

Section 2i

The revenue bond provision of Article VIII, Section 2i, which Article was adopted on November 5, 1968, attempts to answer the question "When is a revenue bond a revenue bond?" The 2i revenue bond provisions, like those in Section 13, emerged from a history of legal interpretation in Ohio which made the issuance of bonds which the General Assembly intended to be revenue bonds and which were inarguably to be issued for a proper public purpose but which were to be paid for wholly

or in part from pre-existing sources of revenue--such as patient charges at state mental hospitals, a procedure fraught with unpredictability and, at times, embarassment to the state and the other parties involved in a proposed transaction.

Section 2i revenue bonds may be issued for the following purposes:

(1) mental hygiene and retardation

(2) parks and recreation

(3) state-supported and state-assisted institutions of higher education, including technical education

(4) water pollution control and abatement and water management

(5) housing of branches and agencies of state government.

Generally, Section 2i mandates that revenues produced by an agency or facility be pledged to the payment of that particular facility or the facilities of that particular agency. This section also specifically authorizes the application of "other revenues and receipts" to the payment of the obligations authorized, and states that such obligations may be secured "by a pledge, under law, without necessity for further appropriation." In view of the legal interpretations in Ohio on the question of what constitutes a revenue bond, the latter two provisions are of particular significance.

This committee is already aware of Kasch v. Miller (1922), 104 Ohio St. 281, a case involving the Department of Public Works and water conservation project. There, the Supreme Court found that there was no "debt" in violation of Article VIII, Section 3 /w/here the entire improvement is to be paid for by the issue and sale of bonds in the name of the state, and the principal and interest are to be paid entirely out of the revenues derived from the improvement or from the sale of the corpus in case of default . . ." If matters had always remained that simple, there probably would be no revenue bonding provisions in Article VIII, Section 2i today. But that was not to be, as the following illustrates.

In 1939, the General Assembly established the Public Institutional Building Authority, "to provide for the construction, equipment and improvement of buildings, in cooperation with any federal agency or otherwise, for the use of the benevolent, penal and reformatory state institutions."

Section 2332-4, General Code gave the authority the following powers:

(1) To acquire and hold, under and as against the state of Ohio, the interest in lands of the state hereinafter defined.

(2) To make contracts of every name and nature and to execute all instruments necessary and convenient for the accomplishment of the foregoing purposes and the carrying on of its business.

(3) To permit the use of any building or facility constructed or improved by the authority, by the state department for the use of which the same has been constructed or improved, while the authority shall retain title thereto as hereinafter provided; and to fix, alter

and charge rentals, rates and other charges for such use, in such amounts or rates as it may determine to be necessary for the purpose of providing for the payment of the expense of the authority, the construction, improvement, repair and maintenance of such building or facility, the payment of the principal of and interest on the obligation of the authority, allocable to such building or improvement, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

(4) To borrow money from a federal agency or otherwise, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations (hereinafter called "bonds"), in the name of the state of Ohio and to secure the payment of such bonds or any part thereof by pledge or deed of trust of all or any of its revenues, rentals and receipts; and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds, whether issued or to be issued, as the authority shall deem advisable; and in general to provide for the security for said bonds and the rights of the holders thereof.

(5) Without limitation of the foregoing, to borrow money and accept grants from, and enter into contracts or other transactions with any federal agency as provided for in this act.

(6) To pledge, hypothecate or otherwise encumber all or any of the revenues, rentals or receipts of the authority as security for all or any of the obligations of the authority.

(7) To do all things and acts necessary or convenient to carry out the powers granted to it by this act or any other acts.

Provided, however, the authority shall have no power to acquire by lease or purchase any lands not owned, leased or operated by the state of Ohio.

Provided, however, that the authority shall have no power at any time, or in any manner, to pledge the credit or taxing power of the state, nor shall any of the bonds or other obligations issued hereunder be deemed to be indebtedness of the state"

Section 2332-8, General Code prescribed the remedies of bondholders in case of default. Such rights included the appointment of a receiver who was to possess "all of the powers necessary or appropriate for the exercise of any function specifically set forth herein or incident to the general representation of the bondholders in the enforcement and protection of their rights."

Pursuant to the authorizing legislation, the Authority entered into a 25-year lease agreement, wherein the Authority agreed to enlarge, repair and construct buildings at ten mental hospitals of the state, then under the jurisdiction of the Department of Welfare. In return, the Department pledged "every part of its available resources and income" to the payment of an annual rental of $421,500 and $10,000 annually toward the general expenses of the Authority. The Authority was to finance the improvements in question by the issuance of revenue bonds in the

amount of $7,500,000. The bonds, on their face, were negotiable, stated that the bonds were "secured by a first, direct, and exclusive charge and lien upon a sufficient portion of the revenues, rentals and receipts of said Public Institutional Building Authority," and stated that no part of the bonds "constitute an indebtedness of the state of Ohio nor a charge on the credit of taxing power of the state."

However, in State ex rel. Public Institutional Business Authority v. Griffith (1939), 135 Ohio St. 604, the Supreme Court invalidated the proposed contract, as well as a part of the underlying legislation. The syllabus of the case reads as follows:

1. The debt limitation prescribed by Sections 1 and 3 of Article VIII of the Ohio Constitution does not apply to an indebtedness incurred in the procurement of property or erections of buildings or structures for the use of the state, to be paid for wholly out of revenues or income arising from the use or operation of the particular property for the procurement or construction of which the indebtedness is incurred. (Kasch v. Miller, Supt. of Public Works, 104 Ohio St. 281, approved and followed.)

2. Where additions or improvements are made to property owner by the state, and the whole or a part of the revenue arising from the use of the combined existing property and such additions or improvements is pledged by the state or its authorized board or agency as the sole and exclusive source of payment of the construction cost of such additions or improvements, an indebtedness is incurred by the state within the contemplation of the state constitutional debt limitations.

3. Bonds issued pursuant to and based upon a resolution of the Public Institutional Building Authority of the state, authorizing the issuance of its revenue bonds for the construction of any buildings or additions to buildings on income-producing state property, payable from tentals derived from such state property, and a contract between the building authority and the Department of Public Welfare whereby the promises of the latter to pay to the former rentals sufficient to service such bonds solely from income or revenue derived from the operation of such buildings and properties, old as well as new, create an indebtedness of the state within the meaning of the debt limitations of the Constitution and are therefore void.

In the opinion, the Court noted several other factors, including the fact that both the Authority and the Department were agencies of the State, and that the Department received its income and revenues exclusively from patient charges and the general revenue of the State. Also, the Court noted that the proposed bonds were negotiable on their fact, which, in the Court's view, made the promise to pay unconditioned by the low merchant.

The Court also found fault with the length of the lease in question, saying at pages 619-620:

"The Department of Public Welfare is dependent for its resources upon legislation to provide the revenues from pay-patients in its hospitals or otherwise and to turn such revenues over to its own use. These are public funds, at all times subject to legislative control. That this is true is shown by the legislation now under consideration which assumes to divert a portion of such funds to the servicing of these bonds.

A future general assembly may revoke this grant and divert these funds to other purposes. Nothing but a constitutional inhibition could prevent such action. No general assembly can guarantee the continuity of its legislation or tie the hands of its successors. Who knows what demands for public revenues and public funds may be more pressing within the next quarter century? Who knows the necessities of future general assemblies, finding the public revenues permanently pledged by their predecessors for the servicing of similar bonds, as to which there is no limit and no constitutional limitation under the claim of the relator? In the case of State, ex rel. Fletcher, Atty. Genl. v. Executive Council 207 Iowa, 923, 223 N.W. 737, the court had under consideration a legislative enactment which assumed to make the legislation providing for the servicing of similar revenue bonds irrevocable until the bonds were liquidated. The court in the course of its opinion said: "In the absence of any constitutional provision to such effect, no general assembly has power to render its enactment irrevocable and unrepealable by a future general assembly. No general assembly can guarantee the span of life of its legislation beyond the period of its biennium. The power and responsibility of legislation are always upon the existing general assembly. One general assembly may not lay its mandate upon a future one. Only the Constitution can do that. It speaks as an oracle, and stands as a monitor over every general assembly. . . . . The power of a subsequent general assembly either to acquiesce or to repeal is always existent."

In conclusion, the Court focused its attention on the statutory authorization for the intervention of a receiver, saying at pgs. 622-623:

"Clearly such receiver would have the same right and powers as receivers generally have and are given by the court as to custody of property for the benefit of creditors in cases of insolvency. Undoubtedly, such receiver, representing the creditor bondholders, would be authorized to operate the property independently and exclusively, and would not be obliged to deal with the defaulting welfare department for the use of the same. In ordinary course, unless the state in some way came to the rescue to redeem its property, the receiver could bring about a sale of the remainder of the leasehold estate of the authority in these properties, to liquidate the bonds. With these possibilities existent in this scheme of financing the Court holds that the obligation of the welfare department in connection therewith creates an indebtedness on the part of the state and is in contravention of Sections 1 and 3 of Article VIII of the Constitution. The court also holds that Sections 2332-3a, 2332-4 and 2332-5, of the General Code, are unconstitutional and void in so far as they authorize the transfer of income-producing property of the state to the authority, the rentals from which are to service the bonds

issued by the authority.

> The court is always reluctant to disapprove legislative enactment, especially as in this case, when its purpose is the amelioration of the urgent needs of the state in the care of its wards but, to approve this legislation, in the opinion of the court, would be to open the way to similar schemes of financing upon the part of the state and its municipalities which could not but result, in many instances, in financial disaster."

Having lost once, the P. I. B. A. returned to litigate again during the following year, in State ex rel. Public Building Authority v. Neffner (1940), 137 Ohio St. 390. This time, the facility to be constructed was a hospital at Apple Creek.

In the Court's words. "/The/ he effect of the proposed plan would be the construction of the institutional building on the land of the state leased to the building authority, the possession of the building being retained by the authority until the termination of the lease. During such period, the building authority has the right to fix the rentals for the building, and to alter the same from time to time, in such amount as it determines to be necessary for the payment of the expense of the authority with relation to the institution, i.e., the construction, improvement, repair and maintenance thereof, and the retirement of the bonds as they mature."

This time, the agreement provided that "the obligation of the department to pay /the/ rental shall not be a general or unconditional obligation of the department or of the state of Ohio, but the same shall be payable only and solely from said fees."

The bonds, while still negotiable, stated clearly that they "shall not be or constitute general obligations of the authority or of the State of Ohio." Further, the bonds stated that the bondholders could look for payment only to the special fund created for the purpose.

Still, the Court invalidated the proposed transaction, saying at pgs. 398-399:

> "Therefore, the question is squarely presented whether the Department of Public Welfare can be authorized to pay the entire sum which it receives for the care of patients to another state department to be expended in its entirety for the construction and upkeep of a building, leaving the entire cost of the medical treatment, care and food and other expenses of the support and maintenance of patients to be paid from other state funds. The obligation of the state to its wards is one which must be met from its general revenues, and any reimbursement it may receive by virtue of the provisions of Section 1815-12, General Code, is paid to the Treasurer of State. That section requires that the treasurer of each county pay to the Treasurer of State the amount chargeable against such county for the preceding six months for all inmates not otherwise supported. If the money paid in reimbursement by counties and others may be diverted to the payment of the bonds in question, leaving the state with the clear duty to care for its wards from general revenues secured from taxation, the state will have certainly incurred a debt, whether it be direct or contingent. An obligation in a definite amount would be incurred under the

> rental contract, for the Department of Public Welfare assures the institutional building authority that the state will house 3,000 patients, or as many as are possibly available, in such institution at a rental fixed by the authority and changeable at its instance for the life of the bonds, which is tantamount to an agreement to pay a fixed sum annually just as if the state had agreed to pay the interest and the accruing principal installments by warrant drawn upon the treasurer.
>
> Where substantial funds which have heretofore gone into the general funds of the state treasury are pledged to liquidate such bonds, thereby requiring the state to seek and secure revenues otherwise in order to meet its obligations to care for and support its wards, then the obligation of those bonds does become the ultimate obligation of the state. To hold otherwise would result in an evasion of the constitutional limitations."(Emphasis added)

The P. I. B. A. cases of 1939 and 1940 seem to have established an extremely narrow view of the state's revenue bonding authority.

In March, 1960, the Court decided State, ex rel. Preston v. Ferguson, 170 Ohio St. 450, which revolved around a 1959 statute under which the School Employees Retirement Board and other boards were given the authority to buy and hold title to land which the Director of Highways "deems will be necessary for the improvement of the state highway system," eventual resale to the Department of Highways. No agreement between a board and the Department of Highways could extend beyond the current two-year period for which appropriation had been made. This agreement could be renewed for one or more two-year periods but not more than five years from the date of the original agreement.

The validity of this arrangement was measured by the Court against the prohibition of Article VIII, Section 3, and was upheld. The Court placed great stress on the legal difference between a contract which may be "renewed" and a contract which may be "extended," the former granting a right to enter into a new contract upon the exercise of the option, the latter granting a right to extend the original contract upon the exercise of the option. And, the Court noted, the Director of Highways could not enter into a new contract unless he first ascertained (1) that funds were available and (2) that there has been a specific appropriation for that purpose. Since the renewal of agreements was made contingent on the Director's ability to fulfill these requirements, the Court found the statute and proposed agreement at issue in this case consonant with constitutional requirements. Paragraph 4 of the syllabus reads:

> "Section 5501.112, Revised Code, which authorizes the Director of Highways, on behalf of the state, to enter into an agreement with the School Employees Retirement Board to act as agent for the board in the procurement of land which the director deems will be necessary for the improvement of the state highway system and which requires the state to purchase such land from the board within the then current biennium unless such agreement is renewed for periods of not exceeding two years duration but which requires that the purchase be consummated by the state not later than five years from the date of the original agreement, when read in

> pari materia with Section 131.17, Revised Code, which necessitates a certificate of availability of funds, does not authorize the creation of a debt within the purview of Sections 1, 2c and 3, Article VIII, Ohio Constitution."

Apparently encouraged by the favorable result in Preston v. Ferguson, the General Assembly attempted to establish a bond mechanism based on the two-year appropriation scheme which, it seemed, was pivotal in that case. In 1961, the legislature enacted Section 129.41, Revised Code, pursuant to which the Commissioners of the Sinking Fund were to issue "certificates of obligation," which would have matured at the end of the biennium for which they were issued, and would have been renewable, at the option of the Commissioners, for three additional bienniums. The proceeds of these "certificates of obligation" were to be used for the purposes for which the funds were used in Preston v. Ferguson, and under much the same type of agreement, except that the Director of Highways would have been under a mandatory duty to purchase land held by the Commissioners on or before the expiration of an agreement or any renewal. For this purpose, the Director would have been "authorized to use any funds available to the department, subject only to the prior pledge of such moneys for the retirement of the state highway bonds . . ."

In State ex rel. Lynch v. Rhodes (1965) 2 Ohio St. 2d 259, this statute was invalidated. At page 263, the Court states:

> "In 1961 (129 Ohio Laws 518) after the decision of the Preston case, the General Assembly enacted the statutes pursuant to which the present so-called "certificates of obligation" were issued. Those statutes rely upon, but also represent a step and a very long step beyond, the statutes construed in the Preston case.
>
> There, the School Employees Retirement Board had been authorized to invest their public pension and retirement funds in the real estate which the Highway Director purchased for them under an agreement of the Highway Director to repay with interest the amount invested out of money appropriated to the Director for the then current biennium.
>
> The statutes involved in the instant case provide for similar investments by the Board of Commissioners of the Sinking Fund. However, they go further and purport to enable the Board of Commissioners of the Sinking Fund to raise funds for those investments by selling certificates of obligation to the public."

The decision rested on the two-year appropriations provision of Article II, Section 22. Apparently, although it is not stated in the opinion, the "mandatory purchase" provision of the statute at issue in the case was instrumental in bringing about the outcome, a consequence of which $25,000,000 in bonds already sold to a New York investment house had to be recalled.

It does not seem unreasonable to conclude that the final push for the passage of Section 2i came from highway interests. But, at least as far as its revenue bond aspects are concerned, the framers of Section 2i very evidently also envisioned the laying to rest of a great deal of the constitutional uncertainty which had

surrounded the state's revenue bonding authority. For example, the Ohio Public Facilities Commission was created in 1969 pursuant to Chapter 154. of the Revised Code. It has authority to issue obligations for mental hygiene and retardation, state supported and state assisted institutions of higher learning, and parks and recreation. As such, it is probably the closest to being the heir of the Public Institutional Building Authority of 1939, and the General Assembly took pains to clearly identify the source of the Commission's power. Section 154.03, Revised Code, pointedly states:

> "Pursuant to the powers granted to the general assembly under Section 2i of Article VIII, Ohio Constitution, to authorize the issuance of revenue obligations and other obligations, the owners or holders of which are not given the right to have excises or taxes levied by the general assembly for the payment of principal thereof or interest thereon, and pursuant to other authority vested in the general assembly, there is hereby created a body, both corporate and politic, constituting an agency and instrumentality of the state of Ohio and performing essential functions of the state, to be known as the "Ohio public facilities commission," which in such name may contract and be contracted with, sue and be sued thereon, and exercise all other authority vested in such commission by Chapter 154. of the Revised Code."

In summary, it is evident that both Article VIII, Section 2i and Article VIII, Section 13 embody revenue bonding concepts which, based on the case law of this state, have received narrow or unfavorable treatment in Ohio, and any recommendation in regard to these sections must be made with due regard to this fact.

GENERAL REVENUES AND DEBT
RELATIONSHIP OF STATE OF OHIO TO OTHER STATES - 1970
(In Thousands of Dollars)

State	Population	Rank	General Revenues(1)	Rank $/Per Cap.	Total Debt	Rank $/Per Cap.	Full Faith and Credit Debt	Rank $/Per Cap.	Non-Guaranteed Debt	Rank $/Per Cap.	Total Debt as % of Rev.	Rank	Full Faith & Credit Debt as % of Rev.	Rank
OHIO	10,652	6	2,798,329	7/49	1,631,898	7/25	731,480	7/23	900,418	6/26	58.3%	18	26.1%	18
Alabama	3,444	21	1,203,261	21/34	742,871	16/19	86,877	32/32	655,994	11/8	61.7%	17	7.2%	30
Alaska	302	50	1,184,327	22/1	222,255	34/2	152,339	28/3	69,916	38/2	18.8%	40	12.9%	26
Arizona	1,772	33	762,564	32/15	90,929	43/45	-	-/-	90,929	31/35	11.9%	48	-	-
Arkansas	1,923	32	613,362	35/41	100,810	41/44	12,116	41/39	88,694	33/39	16.4%	41	2.0%	39
California	19,953	1	9,542,602	1/9	5,334,537	2/15	4,653,358	1/8	681,179	10/42	55.9%	21	48.8%	9
Colorado	2,207	30	853,861	28/23	124,352	38/43	1,491	40/42	122,861	27/32	14.6%	43	0.2%	42
Conn.*	3,032	24	1,090,900	25/32	1,919,455	4/4	1,621,160	3/2	298,295	21/21	175.9%	1	148.6%	1
Delaware*	548	46	285,929	43/6	420,919	27/1	334,589	17/1	86,330	34/11	147.2%	2	117.0%	2
Florida	6,789	9	2,013,734	10/46	891,039	13/27	-	-/-	891,039	7/14	44.2%	24	-	-
Georgia	4,590	15	1,503,603	19/39	870,190	14/23	16	45/-	870,174	8/9	57.9%	19	-	-
Hawaii**	770	40	548,879	37/2	528,175	24/3	357,388	15/4	170,787	24/4	96.2%	5	65.1%	7
Idaho	713	42	264,849	45/27	33,102	49/47	456	44/43	32,646	45/40	12.5%	46	0.2%	43
Illinois*	11,114	5	4,044,801	4/30	1,305,942	8/32	298,382	20/30	1,007,560	3/25	32.3%	28	7.4%	29
Indiana	5,194	11	1,597,884	14/43	583,823	20/33	47,065	35/36	536,758	17/19	36.5%	26	2.9%	36

State	Population	Rank	General Revenues	Rank $/Per Cap.	Total Debt	Rank $/Per Cap.	Full Faith and Credit Debt	Rank $/Per Cap.	Non-Guaranteed Debt	Rank $/Per Cap.	Total Debt as % of Rev.	Rank	Full Faith & Credit Debt as % of Rev.	Rank
Iowa	2,825	25	1,025,386	27/31	97,999	42/49	9,100	42/40	88,899	32/43	9.6%	50	0.9%	40
Kansas	2,249	28	746,157	33/37	223,590	33/37	17,935	38/37	205,655	23/24	30.0%	30	2.4%	38
Kentucky	3,219	23	1,173,255	24/29	1,224,078	9/8	305,656	19/19	918,422	5/1	104.3%	3	26.0%	19
Louisiana	3,643	20	1,542,279	17/16	864,987	15/17	453,586	12/15	411,401	18/17	56.1%	20	29.4%	16
Maine	994	38	348,714	41/33	232,322	32/18	166,005	26/12	66,317	41/29	66.6%	16	47.6%	10
Maryland*	3,922	18	1,551,544	16/22	1,145,879	10/12	570,047	10/14	575,832	14/13	73.9%	14	36.7%	13
Mass.*	5,689	10	2,159,185	8/25	1,861,766	5/10	1,221,696	4/9	640,070	12/18	86.2%	7	56.6%	8
Michigan	8,875	7	3,531,803	5/21	958,461	12/34	127,392	30/35	831,069	9/22	27.1%	35	3.6%	34
Minnesota*	3,805	19	1,644,925	13/14	462,512	25/28	393,662	14/18	68,850	39/47	28.1%	33	23.9%	22
Miss.*	2,217	29	839,122	30/26	455,186	26/22	324,866	18/13	130,320	26/31	54.2%	22	38.7%	12
Missouri	4,677	13	1,346,526	20/48	141,922	37/50	35,690	36/38	106,232	28/45	10.5%	49	2.7%	37
Montana	694	43	286,984	42/17	81,786	44/31	841	43/41	80,945	35/16	28.5%	32	0.3%	41
Nebraska	1,484	35	470,748	39/42	73,535	45/46	-	-/-	73,535	37/37	15.6%	42	-	-
Nevada	489	47	239,747	47/8	34,111	48/40	22,838	37/27	11,273	48/44	14.2%	44	9.5%	28
New Hampshire*	738	41	193,334	50/50	157,949	36/20	155,119	27/11	2,830	49/49	81.7%	11	80.2%	4
New Jersey	7,168	8	2,115,530	9/47	1,762,768	6/16	770,533	5/17	992,235	4/15	83.3%	9	36.4%	14
New Mexico	1,016	37	564,273	36/4	120,694	39/30	17,196	39/34	103,498	29/20	21.4%	37	3.0%	35
New York	18,191	2	9,012,408	2/7	7,387,836	1/6	3,836,254	2/10	3,551,582	1/7	82.0%	10	42.6%	11

State	Population	Rank	General Revenues	Rank $/Per Cap.	Total Debt	Rank $/Per Cap.	Full Faith and Credit Debt	Rank $/Per Cap.	Non-Guaranteed Debt	Rank $/Per Cap.	Total Debt as % of Rev.	Rank	Full Faith & Credit Debt as % of Rev.	Rank
N. Carolina	5,082	12	1,763,043	12/35	541,591	22/35	441,122	13/21	100,429	30/46	30.7%	29	25.0%	21
N. Dakota	618	45	270,580	44/12	37,324	47/42	-	-/-	37,324	44/30	13.8%	45	-	-
Oklahoma	2,559	27	1,033,826	26/19	739,612	17/13	166,171	25/24	573,441	15/3	71.5%	15	16.1%	24
Oregon	2,091	31	807,364	31/24	689,680	19/9	689,672	8/6	8	50/50	85.4%	8	85.4%	3
Penna.**	11,794	3	4,057,129	3/36	3,220,438	3/14	752,891	6/25	2,467,547	2/5	79.4%	12	18.6%	23
Rhode Island	950	39	379,380	40/20	373,200	29/7	296,823	21/7	76,377	36/27	98.4%	4	78.2%	6
S. Carolina	2,591	26	842,134	29/40	350,452	30/26	215,483	22/22	134,969	25/33	41.6%	25	25.6%	20
S. Dakota	666	44	246,756	46/28	29,932	50/48	-	-/-	29,932	47/41	12.1%	47	-	-
Tennessee*	3,924	17	1,182,101	23/45	416,228	28/36	347,670	16/20	68,558	40/48	35.2%	27	29.4%	15
Texas	11,197	4	3,394,131	6/44	1,013,052	11/39	460,095	11/28	552,957	16/38	29.8%	31	13.6%	25
Utah	1,059	36	484,328	38/11	103,089	40/38	50,500	34/26	52,589	42/36	21.3%	38	10.4%	27
Vermont *	445	48	237,212	48/5	220,603	35/5	189,108	24/5	31,495	46/28	93.0%	6	79.7%	5
Virginia	4,648	14	1,530,530	18/38	323,194	31/41	81,593	33/33	241,601	22/34	21.1%	39	5.3%	33
Washington	3,409	22	1,579,992	15/10	719,724	18/21	88,326	31/31	631,398	13/10	45.6%	23	5.6%	32
W. Virginia	1,744	34	709,934	34/18	554,596	21/11	208,080	23/16	346,516	20/6	78.1%	13	29.3%	17
Wisconsin	4,418	16	1,933,972	11/13	536,220	23/29	127,910	29/29	408,310	19/23	27.7%	34	6.6%	31
Wyoming	332	49	201,422	49/3	51,091	46/24	-	-/-	51,091	43/12	25.4%	36	-	-
TOTALS	202,428,000.		$77,754,639,000.		$42,007,664,000.		$20,840,577,000.		$21,167,087,000.					

(1) All State Revenue except liquor store receipts and insurance trust revenue (e.g., workmen's compensation fund revenues).

* States having no debt restrictions (Illinois removed restrictions in 1970).

** States having flexible debt limits (Pennsylvania adopted formula in 1968).

NOTE: Excluding Illinois and Pennsylvania where debt liberalization was effected too recently to be reflected in the above statistics, 9 of the 10 states with no debt restrictions are employing debt formulae rank in the top 15 states and 6 of the 10 are in the top 8 states in respect of Full Faith and Credit Debt as a percentage of General Revenues: Connecticut 148.6%/No. 1; Delaware 117%/No. 2; New Hampshire 80.2%/No. 4; Vermont 79.7%/No. 5; Hawaii 65.1%/No. 7; Massachusetts 56.6%/No. 8; Mississippi 38.7%/No. 12; Maryland 36.7%/No. 13; Tennessee 29.4%/No. 15; Minnesota 23.9%/No. 22.

Source of Statistics: Bureau of Census, U. S. Department of Commerce.

(Statistics assembled, percentages calculated and ranking determined by NWC).

3/10/72

Ohio Constitutional Revision Commission
Finance and Taxation Committee
April 10, 1972

Article XII, Section 11 Construed as a Guarantee of First Claim upon Revenues

Article XII, Section 11 provides:

> "No bonded indebtedness of the state, or any political sub-divisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

This section was added rather late and at an unusual time--on third reading--to Article XII as it was adopted by the 1912 Constitutional Convention. The Convention had originally agreed on a provision which would have required the repayment of at least 2% of the principal of each outstanding issue every year, thus theoretically allowing the issuance of fifty-year bonds, if desired, while at the same time assuring that the principal of a debt would have to be paid off within a constitutionally mandated period of time.

The opponents of this approach argued that the bond market would not accept serial bonds, the first of which would mature within one year after the bonds were issued, the argument being that bond buyers do not like being bothered with having to find a means of reinvesting their funds so soon. This must have been a quite persuasive argument, because the Convention subsequently adopted the present provision instead, which, of course, contains the then more familiar concept of a sinking fund.

Soon after the provision was adopted, the Supreme Court in a series of cases made clear (1) that it considered Section 11 mandatory and (2) that the mandate of the section had to be carried out even if, by so doing, a subdivision would become unable to levy taxes for any other purpose. (Presumably, since the section also applies to the state, the state could be in a like position, although there are no cases on this point).

This aspect of Section 11 is clearly highlighted by the following passage from State ex rel. Bruml v. Brooklyn (1933), 126 Ohio St. 459. While the statutory citations given in the case are to the General Code and not the Revised Code the cases cited in it do not appear to have been overruled, and the essential point of the passage appears as valid today as when it was written:

> "Coming now to the question whether taxes for debt charges are preferred to those for current expenses, we are of opinion that interest and principal due on bonds such as are involved in this case are entitled to preference, within the statutory and constitutional limitations. Such was the conclusion in the case of State ex rel., Southard, Dir. of Health vs. City of Van Wert, ante, 78, 184 N. E., 12, the statute (Section 5625.15, General Code) providing for current expenses outside the fifteen-mill limitation.
>
> Section 11 of Article XII of the Ohio Constitution provides: "No bonded indebtedness of the state, or any political sub-division thereof, shall be incurred or renewed, unless, in the legislation under which

such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

This section was considered by this court in the case of Link vs. Karb, Mayor, 89 Ohio St., 326, 104 N. E., 632, the second paragraph of the syllabus reading: 'Section 11 of Article XII of the Constitution of Ohio requires the taxing authority of any political subdivision of the state proposing to issue bonds to provide at the time the issue of bonds is authorized, for levying and collecting annually by taxation an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity. This provision made at the time the issue of bonds is authorized is mandatory on all subsequent taxing officials of that political subdivision during the term of the bonds.'

This construction thus given this constitutional provision was made prior to the amendment and repeal of Section 5649-1, General Code, and indicates its mandatory character.

Attention may also be called to Sections 5625-21 and 5625-23, General Code, requiring the county auditor to lay before the budget commission the annual tax budgets submitted to him. The latter section contains this mandatory language: 'If any debt charge is omitted from the budget, the budget commission shall include it therein.'

Thus, in setting up the budgetary procedure, the Legislature has carried into and retained in the General Code the statutory provisions reiterating the constitutional mandate of Section 11, Article XII of the Constitution, as construed by this court.

It may be noted that the same act which repealed Section 5649-1 enacted Sections 5625-21 and 5625-23, the present budgetary law, 112 Ohio Laws, 391.

The principles announced in Rabe vs. Board of Education of Canton School District, 88 Ohio St., 403, 104 N. E., 537, have not been departed from by this court. The language of the opinion, at pages 422 and 423, is applicable in the present instance, although the amendment to Section 11. Article XII, had no application in the Rabe case: 'At this time, under the amendment to the Constitution (Section 11, Article 12) which provides that no bonded indebtedness of the state or any political subdivision thereof shall be incurred or renewed, unless in the legislation under which such indebtedness is incurred or renewed provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds and provide for a sinking fund for their final redemption at maturity, it is of the utmost importance that at the time of the incurring of such indebtedness the other needs of the political subdivision proposing to issue the bonds should be taken into account, for this levy must continue during the term of the bonds in an amount sufficient to pay the interest and provide a sinking fund for their final redemption, even though the amount should exhause the entire income available from

taxation and without regard to the current expenses. In other words, under this provision of the constitution, the payment of interest and the retirement of bonds are to be provided for first, and the current expenses become a secondary consideration.

This decision, made prior to the amendment of Section 5649-1, General Code, when the same contained nothing about priorities, was followed by State, ex rel. Heald, vs. Zangerle et al. Budget Commrs., 94 Ohio St., 447, 115 N. E., 1013, the second paragraph of the syllabus in that case reading: 'The provision of Section 5649-1 General Code that the taxing authorities in each taxing district of the state shall levy a tax sufficient to provide for sinking fund and interest purposes, requires the county budget commissioners to certify to the county auditor a tax sufficient for such purposes, regardless of other needs of the taxing district. Rabe et al. vs. Board of Education, 88 Ohio St., 403, approved and followed.'

In view of the fact that the provisions of Section 5649-1 were carried into Sections 5625-21 and 5625-23, General Code, the syllabus above quoted is entirely applicable. In the opinion, the language of Donahue, J., at page 450, is pertinent: 'It is not seriously contended that the amount certified is excessive. The only reason offered by the defendants for not certifying the full amount to the county auditor is that if this is done a sufficient sum cannot be provided, within the limitations fixed by law, to meet the current expenses of city government. That is unfortunate, but it does not authorize the budget commissioners to ignore the law." (Emphasis added)

The foregoing makes clear that Section 11. standing by itself, has been construed to guarantee a bondholder a first claim on the tax revenues of any entity whose bonds he happens to own. To the extent Section 11 is relied upon as a guarantee, its repeal may be expected to have an effect on the marketability of the bonds covered by it.

Ohio Constitutional Revision Commission
Finance and Taxation Committee
April 21, 1972 REPORT

Article VIII - Debt

Section 1. (A) THE STATE MAY, BY LAW PASSED WITH THE CONCURRENCE OF THREE-FIFTHS OF THE MEMBERS ELECTED TO EACH HOUSE OF THE GENERAL ASSEMBLY, CONTRACT DEBT FOR CAPITAL IMPROVEMENTS, CAPITAL ACQUISITIONS, LAND, AND INTERESTS IN THE FOREGOING, AND FOR REFUNDING DEBT CONTRACTED FOR SUCH PURPOSES. DEBT FOR SUCH PURPOSES SHALL NOT BE CONTRACTED IF, IN ANY FISCAL YEAR, THE AMOUNT REQUIRED FOR PRINCIPAL AND INTEREST PAYMENTS ON SUCH DEBT AND ON ALL OUTSTANDING DEBT PREVIOUSLY CONTRACTED WOULD EXCEED SIX PER CENT OF THE AVERAGE OF THE ANNUAL REVENUES OF THE STATE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY, EXCLUDING BORROWED MONEYS, MONEYS RECEIVED FROM THE FEDERAL GOVERNMENT, AND MONEYS REQUIRED TO BE RETURNED BY SECTION 9 OF ARTICLE XII OF THIS CONSTITUTION, RECEIVED BY THE STATE DURING THE THEN TWO PRECEDING FISCAL YEARS. NEW DEBT FOR SUCH PURPOSES SHALL NOT BE CONTRACTED IN ANY FISCAL YEAR IN A TOTAL PRINCIPAL AMOUNT EXCEEDING EIGHT PER CENT OF SUCH REVENUE AVERAGE.

(B) THE STATE MAY, BY LAW, CONTRACT DEBT TO REPEL INVASION, SUPPRESS INSURRECTION, OR DEFEND THE STATE IN WAR.

(C) THE STATE MAY, BY LAW, CONTRACT DEBT TO MEET APPROPRIATIONS DURING ANY FISCAL YEAR, BUT SUCH DEBT SHALL BE PAID NOT LATER THAN THE END OF SUCH FISCAL YEAR.

(D) THE STATE MAY, BY LAW, CONTRACT DEBT IN ADDITION TO THAT, OR FOR PURPOSES OTHER THAN THOSE, PROVIDED FOR IN DIVISION (A), (B), OR (C) OF THIS SECTION, BUT ONLY IF THE QUESTION OF CONTRACTING SUCH DEBT HAS BEEN SUBMITTED TO THE ELECTORS AND APPROVED BY A MAJORITY OF THOSE VOTING ON THE QUESTION. THE MANNER OF SUBMITTING SUCH QUESTIONS SHALL BE PROVIDED BY LAW.

(E) DEBT CONTRACTED PURSUANT TO DIVISION (B), (C), OR (D)OF THIS SECTION SHALL NOT BE INCLUDED IN THE LIMITS OF, NOR BE SUBJECT TO THE REQUIREMENTS OF, DIVISION (A) OR (G) OF THIS SECTION.

(F) THE GENERAL ASSEMBLY SHALL PROVIDE BY LAW FOR THE PAYMENT OF THE STATE DEBT AND FOR THE METHOD AND PROCEDURE FOR INCURRING, EVIDENCING, REFUNDING, AND RETIRING DEBT. THE GENERAL ASSEMBLY SHALL APPROPRIATE SUFFICIENT MONEYS AS WILL PROVIDE FOR THE FULL AND TIMELY PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE STATE DEBT. IF THE GENERAL ASSEMBLY DOES NOT, AT ANY TIME, MAKE SUCH APPROPRIATIONS, THE TREASURER OF STATE SHALL SET ASIDE FROM THE FIRST REVENUES OF THE STATE APPLICABLE TO THE GENERAL REVENUE FUND AND ANY OTHER APPROPRIATE FUNDS OF THE STATE SUFFICIENT SUMS TO PROVIDE FOR SUCH FULL AND TIMELY PAYMENT AND SHALL SO APPLY THE MONEY SET ASIDE.

(G) AT LEAST FOUR PER CENT OF THE TOTAL PRINCIPAL AMOUNT OF DEBT OUTSTANDING AT THE BEGINNING OF A FISCAL YEAR SHALL BE PAID, OR MONEYS FOR SUCH PAYMENT SET ASIDE, DURING SUCH FISCAL YEAR. FOR THE PURPOSES OF DIVISION (A) OF THIS SECTION, THE GENERAL ASSEMBLY SHALL PROVIDE FOR COMPUTING REQUIRED PRINCIPAL AND INTEREST PAYMENTS, AND MAY PROVIDE FOR ESTIMATING PRINCIPAL AND INTEREST PAYMENTS ON BONDS WHILE NOTES IN ANTICIPATION THEREOF ARE OUTSTANDING, FOR INCLUDING PRINCIPAL AND INTEREST PAYMENT ON DEBT CONTRACTED TO REFUND OR RETIRE PRIOR DEBT IN LIEU OF SUCH PAYMENTS ON SUCH PRIOR DEBT, AND FOR THE METHOD OF COMPUTING PRINCIPAL AND INTEREST PAYMENTS ON ANY DEBT REQUIRED TO BE RETIRED, OR FOR WHICH SINKING FUND DEPOSITS ARE REQUIRED, PRIOR TO MATURITY. THE TREASURER OF STATE SHALL DETERMINE AND CERTIFY THE ANNUAL PRINCIPAL AND INTEREST PAYMENTS ON OUTSTANDING DEBT, THE REVENUES OF THE STATE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY, AND OTHER FINANCIAL DATA NECESSARY FOR THE PURPOSES OF DIVISION (A) OF THIS SECTION, AND SUCH CERTIFICATION SHALL BE CONCLUSIVE FOR PURPOSES OF THE VALIDITY OF ANY DEBT CONTRACTED PURSUANT TO SUCH DIVISION.

(H) FOR THE PURPOSES OF THIS SECTION, "DEBT" MEANS GENERAL OBLIGATIONS OF THE STATE FOR WHICH THE FAITH, CREDIT, AND TAXING POWER OF THE STATE ARE PLEDGED.

Section 2. NO STATE DEBT SHALL BE CONTRACTED NOR SHALL THE CREDIT OF THE STATE BE USED EXCEPT FOR A PUBLIC PURPOSE DECLARED BY THE GENERAL ASSEMBLY IN THE

LAW AUTHORIZING SUCH DEBT OR USE OF CREDIT.

Section 3. THE GENERAL ASSEMBLY MAY AUTHORIZE THE ISSUANCE OF REVENUE OBLIGATIONS AND OTHER OBLIGATIONS, THE OWNERS OR HOLDERS OF WHICH ARE NOT GIVEN THE RIGHT TO HAVE EXCISES OR TAXES LEVIED BY THE GENERAL ASSEMBLY FOR THE PAYMENT OF PRINCIPAL THEREOF OR INTEREST THEREON, FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, OR OTHER IMPROVEMENT OF, AND PROVISION OF EQUIPMENT FOR, BUILDINGS, STRUCTURES, OR OTHER IMPROVEMENTS, AND NECESSARY PLANNING AND ENGINEERING, AND THE ACQUISITION AND IMPROVEMENT OF REAL ESTATE AND INTERESTS THEREIN REQUIRED WITH RESPECT TO THE FOREGOING, INCLUDING PARTICIPATION IN ANY SUCH CAPITAL IMPROVEMENTS WITH THE FEDERAL GOVERNMENT, MUNICIPAL CORPORATIONS, COUNTIES, OR OTHER GOVERNMENTAL ENTITIES OR ANY ONE OR MORE OF THEM WHICH PARTICIPATION MAY BE BY GRANTS, LOANS, OR CONTRIBUTIONS TO THEM FOR ANY OF SUCH CAPITAL IMPROVEMENTS, FOR MENTAL HYGIENE AND RETARDATION, PARKS AND RECREATION, STATE SUPPORTED AND STATE ASSISTED INSTITUTIONS OF HIGHER EDUCATION, INCLUDING THOSE FOR TECHNICAL EDUCATION, WATER POLLUTION CONTROL AND ABATEMENT, WATER MANAGEMENT, AND HOUSING OF BRANCHES AND AGENCIES OF STATE GOVERNMENT, WHICH OBLIGATIONS SHALL NOT BE DEEMED TO BE DEBTS OR BONDED INDEBTEDNESS OF THE STATE UNDER OTHER PROVISIONS OF THIS CONSTITUTION. SUCH OBLIGATIONS MAY BE SECURED BY A PLEDGE UNDER LAW, WITHOUT NECESSITY FOR FURTHER APPROPRIATION, OF ALL OR SUCH PORTION AS THE GENERAL ASSEMBLY AUTHORIZES OF CHARGES FOR THE TREATMENT OR CARE OF MENTAL HYGIENE AND RETARDATION PATIENTS, RECEIPTS WITH RESPECT TO PARKS AND RECREATIONAL FACILITIES, RECEIPTS OF OR ON BEHALF OF STATE SUPPORTED AND STATE ASSISTED INSTITUTIONS OF HIGHER EDUCATION, OR OTHER REVENUES OR RECEIPTS, SPECIFIED BY LAW FOR SUCH PURPOSE, OF THE STATE OR ITS OFFICERS, DEPARTMENTS, DIVISIONS, INSTITUTIONS, BOARDS, COMMISSIONS, AUTHORITIES, OR OTHER STATE AGENCIES OR INSTRUMENTALITIES, AND THIS PROVISION MAY BE IMPLEMENTED BY LAW TO BETTER PROVIDE THEREFOR; PROVIDED, HOWEVER, THAT ANY CHARGES FOR THE TREATMENT OR CARE OF MENTAL HYGIENE OR RETARDATION PATIENTS MAY BE SO PLEDGED ONLY TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS FOR MENTAL HYGIENE AND RETARDATION, ANY RECEIPTS WITH RESPECT TO PARKS

AND RECREATION MAY BE SO PLEDGED ONLY TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS FOR PARKS AND RECREATION, ANY RECEIPTS OF OR ON BEHALF OF STATE SUPPORTED OR STATE ASSISTED INSTITUTIONS OF HIGHER EDUCATION MAY BE SO PLEDGED ONLY TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS FOR STATE SUPPORTED OR STATE ASSISTED INSTITUTIONS OF HIGHER EDUCATION, AND ANY OTHER REVENUES OR RECEIPTS MAY BE SO PLEDGED ONLY TO OBLIGATIONS ISSUED FOR CAPITAL IMPROVEMENTS WHICH ARE IN WHOLE OR IN PART USEFUL TO, CONSTRUCTED BY, OR FINANCED BY THE DEPARTMENT, BOARD, COMMISSION, AUTHORITY, OR OTHER AGENCY OR INSTRUMENTALITY THAT RECEIVES THE REVENUES OR RECEIPTS SO PLEDGED. THE AUTHORITY PROVIDED BY THIS SECTION IS IN ADDITION TO, CUMULATIVE WITH, AND NOT A LIMITATION UPON, THE AUTHORITY OF THE GENERAL ASSEMBLY UNDER OTHER PROVISIONS OF THIS CONSTITUTION; SUCH SECTION DOES NOT IMPAIR ANY LAW HERETOFORE ENACTED BY THE GENERAL ASSEMBLY, AND ANY OBLIGATIONS ISSUED UNDER ANY SUCH LAW CONSISTENT WITH THIS SECTION SHALL BE DEEMED TO BE ISSUED UNDER AUTHORITY OF THIS SECTION. THE PRINCIPAL OF AND INTEREST ON OBLIGATIONS AUTHORIZED BY THIS SECTION SHALL BE EXEMPT FROM TAXATION WITHIN THIS STATE.

Section 4. EXCEPT AS PROVIDED BY LAW, NO LOCAL GOVERNMENTAL ENTITY IN THIS STATE SHALL BECOME A STOCKHOLDER IN, RAISE MONEY FOR, OR LOAN ITS CREDIT TO OR IN AID OF, ANY JOINT STOCK COMPANY, CORPORATION, OR ASSOCIATION.

Section 5. The State shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war.

Section 13. To create jobs and employment opportunities and to improve the economic welfare of the people of the state, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, and

research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement,

improvement, or equipment, of such property, structures, equipment and facilities. Laws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, the state, or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, and to authorize the making of guarantees and loans and the lending of aid and credit, which laws, bonds, obligations, loans, guarantees, and lending of aid and credit shall not be subject to the requirements, limitations, or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under or ratified, validated, confirmed, and approved by this section.

No guarantees or loans and no lending of aid or credit shall be made under laws enacted or validated, ratified, confirmed, and approved pursuant to or by this section of the Constitution for facilities to be constructed for the purpose of providing electric or gas utility service to the public.

The powers herein granted shall be in addition to and not in derogation of existing powers of the state or its political subdivisions, taxing districts, or public authorities, or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities.

Any corporation organized under the laws of Ohio is hereby authorized to lend or contribute moneys to the state or its political subdivisions or agencies or instrumentalities thereof on such terms as may be agreed upon in furtherance of laws enacted pursuant to this section or validated, ratified, confirmed, and approved by it.

Amended Substitute House Bill 270 enacted by the General Assembly on June 4, 1963, and Amended Senate Bill 360 enacted by the General Assembly on June 27,

1963, are hereby validated, ratified, confirmed, and approved in all respects, and they shall be in full force and effect from and after the effective date of this section as laws of this state until amended or repealed by law.

SAVINGS CLAUSE OR SCHEDULE

All obligations of the state issued under authority of any section of Article VIII of the Constitution of Ohio repealed by this amendment, or under authority of any law enacted pursuant to or validated by any such section, which obligations are outstanding on the date of the adoption of this amendment, shall remain valid and enforceable obligations of the state according to their terms and conditions. Any law enacted pursuant to or validated by any section of Article VIII of this Constitution repealed by this amendment shall remain valid and enforceable as if such section had not been repealed. The repeal of such sections and the adoption of this amendment shall not be deemed to impair, diminish, or restrict the rights or benefits of any holder or owner of any such obligations, nor any liability, covenant, or pledge of the state with respect thereto, including those for the levy and collection of taxes, the maintenance of funds, and the appropriation and application of money.

~~Ohio Constitutional~~ Revision Commission
Finance and Taxation Committee
April 21, 1972 REPORT

Comments on Proposed Article VIII - State Debt

A proposal for Article VIII of the Ohio Constitution, relating to state debt, is presented to the Ohio Constitutional Revision Commission by its committee studying the Finance and Taxation provisions of the Constitution with the following explanatory comments:

Section 1

(A) This division permits the General Assembly by a three-fifths (3/5) vote of the members elected to each house, to contract general obligation, or guaranteed debt, subject to limitations contained in the section, for "capital improvements, capital acquisitions, land, and interest in the foregoing." Although the committee felt that a broad interpretation of "capital improvements" would probably cover all the items listed it concluded that it would be preferable to list these items in order to avoid uncertainty regarding the intent of this provision. Debt could also be contracted for refunding the foregoing debt, with the intent of giving the state the flexibility to take advantage of favorable changes in the money market or in financing methods, as such changes and methods may develop in the future. The amount of debt which could be contracted would be limited in two ways:

1. An overall debt service limit of 6% of the base. The overall limit is a limit on the amount of the state's revenues (as defined, constituting the base) which can be spent in any fiscal year to pay debt principal and interest.

2. An annual principal amount limit of 8% of the base.

The base from which the state's basic general obligation debt limit would be calculated is the average of the annual state revenues subject to appropriation by the General Assembly for the two preceding fiscal years excluding borrowed moneys, moneys received from the federal government, and 50% of the income and inheritance taxes which are constitutionally required to be returned to specified governmental units.

The committee chose to recommend this base because it appears to reflect adequately the state's ability to repay borrowed money, and because the elements defining the base can be ascertained with relative certainty. The reason for excluding borrowed moneys is that the committee believes that the state ought not to include in the base used to calculate the amount it can borrow, moneys which it has already borrowed. The committee also believes that federal funds ought not to be included for the reason that this source of revenues is too unpredictable, being entirely dependent on federal laws and programs over which the state presently has little or no control. Further, the committee believes that the one-half (1/2) of all income and inheritance taxes which the state must share with local government units under Section 9 of Article XII--in which section the committee recommends no change--should logically also be excluded from the base, since the state has no control over those funds.

The section prohibits the contracting of debt if, in any fiscal year, payments for principal and interest on the proposed debt, and all general obligation debt previously contracted--including general obligation debt contracted under present constitutional provisions--would exceed six per cent (6%) of the base. Further, the section would limit the amount of debt which could be contracted in any fiscal year

to eight per cent (8%) of the base. The committee believes that the proposal will provide for effective planning for the future capital needs of the state, and continue Ohio's historic pattern of general obligation bond issuance at levels similar to those voted by Ohio voters in the recent past, without the necessity of submitting each decision on capital expenditures, which are a part of the normal conduct of the government of the state, to the vote of the electorate.

(B) This division would give the General Assembly power to contract debt "to repel invasion, suppress insurrection, and defend the state in war." Similar authorization is granted in Section 2 of Article VIII of the present Constitution, and the committee recommends its preservation for the sake of historical continuity.

(C) This division would authorize the state to borrow money to meet appropriations, and would require that money so borrowed be repaid in the fiscal year in which it was borrowed. This provision would not serve as the basis for long-term bonding authority, and is recommended for the purpose of giving the state an option, which it does not have at the present time, to borrow money to alleviate cash-flow problems within a fiscal year.

(D) This division would authorize the state to contract debt in addition to, or for purposes other than, those set forth in divisions (A), (B) and (C) of this section. The question of whether such debt should be incurred would have to be submitted to the electorate and would need a majority vote for passage. The last sentence of this division would authorize the General Assembly to prescribe the manner in which such questions would be submitted to the electorate.

The purpose of this division would be to require voter approval for incurring debt in addition to or outside of the constitutional limits prescribed in divisions (A), (B) and (C), without a constitutional amendment. The situations in which such authority might be sought could include non-capital items, such as veteran's bonuses. Also, particularly in view of the fact that the natural tendency of the formula proposed by the committee for determining the state debt limit would be to reduce the power to borrow at times of reduced state revenues, the authority embodied in division (D) could be used at such times to gain voter approval of capital improvement programs which would otherwise be outside the limit.

(E) This division would exclude debt incurred under divisions (B), (C), or (D), for purposes of computing the debt limit under division (A) of this section. Excluding voter-approved and emergency debt from the limit continues the present situation. The committee believes that short-term borrowing should also be excluded, as being different in duration and purpose from borrowing for capital improvements. These borrowing powers outside the limit would also be excluded from the various technical aspects of division (G), explained below.

(F) This division provides certain conditions attached to all state borrowing, whether for capital improvements or for other purposes. It requires that state debt be repaid, and authorizes the General Assembly to enact the necessary laws respecting methods and procedures for incurring, evidencing, refunding, and retiring debt. It further requires the General Assembly to appropriate money to pay the state debt, and requires the Treasurer to set aside sufficient moneys from state revenues to pay the state debt if the General Assembly fails to appropriate and make adequate appropriations. This latter provision offers a guarantee to the bond purchaser that the debt will be repaid.

(G) This division requires that at least four per cent (4%) of the principal of the debt outstanding at the beginning of a fiscal year shall be paid in that fiscal year, or money for its payment set aside. The 4% is not intended to apply to any particular issue of bonds but to the aggregate of the principal of the general obligation debt including debt which would be outstanding at the time of the adoption of this proposal. The committee believes that this approach would preserve a measure of desirable flexibility in regard to structuring the repayment of particular debts, while at the same time assuring that at least 4% of the principal of the total debt outstanding is paid each fiscal year, or money for its payment is set aside. The latter option is included because there are bonds by the terms of which payment of principal to the bondholder is not required during every fiscal year.

This division further requires the General Assembly to provide for the required principal and interest payments for the nonvoted capital improvement debt and authorizes other provisions deemed necessary for the purpose of estimating principal and interest payments on bonds issued for such purpose while bond anticipation notes are outstanding on such bonds, to include payments on debt contracted to refund or retire prior debt for other payments on such prior debt, and for computing principal and interest payments on debt which is required to be retired before maturity, or in connection with which sinking fund deposits are required.

The division also imposes on the Treasurer of State the duty to certify the financial data necessary for the computations under division (A), and provides that such certification shall be conclusive for purposes of the debt contracted pursuant to division (A). The provision regarding the conclusiveness of the Treasurer's certification is inserted because the committee believes that its omission could result in an adverse effect on the credit rating of the state and the marketability of its bonds.

(H) This division defines "debt" for purposes of this section as "general obligations of the state for which the faith, credit and taxing power of the state are pledged."

At the present time, the Constitution contains no definition of the word "debt", which is intended to refer to general obligation debt only for purposes of Section 1 of Article VIII. The committee believes that Section should contain such a definition, for purposes of clearly distinguishing general obligation debt from debt incurred through revenue bonds. The traditional definition of general obligation debt is that it is debt to the repayment of which the "faith and credit" or "full faith and credit" of the state are pledged. However, these terms, standing alone, still appear to have no precise definition themselves, in relation to state financing, despite broad use. It does appear, however, that the essential characteristic of general obligation debt is that the pledge to repay it is expressly or impliedly backed by the taxing power of the state, and that the concept of what constitutes "taxing power" is universally understood. For that reason, the committee proposes the definition contained in division (H).

Note: Repealed, and assumed to be incorporated in this section or obsolete, are the following sections of the present Article VIII: sections 1, 2, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i (except that the revenue bond portion of 2i has been preserved as a new Section 3) and 3.

The committee also recommends the repeal of Section 6 of Article XII, which reads as follows: "Except as otherwise provided in this Constitution the state shall never contract debt for internal improvement." This section is no longer necessary, since the committee feels that the proposed Article VIII would adequately and completely cover the question of how the state may incur debt for internal improvement or other public purposes.

Section 2.

This new section prohibits the contracting of state debt and the extension of state credit except when a public purpose has been declared by the General Assembly. Present Section 4 of Article VIII, which would be repealed, prohibits the extension of state credit for any individual association or corporation, whether or not a public purpose would be served thereby. The committee's intention is to give the General Assembly the authority to contract debt and to extend state credit and the responsibility of determining a proper public purpose in order to reduce the necessity for court interpretation. Section 13 of Article VIII adopted by the voters in 1965, and other constitutional amendments adopted by the voters, have already modified the prohibition against the extension of credit.

The remainder of present Section 4, which prohibits the state from joint ownership with, or holding stock in, any company or association would be repealed under the committee's proposal. In the committee's view, this prohibition--which can be traced to unfortunate experiences due to the lack of proper regulation of canal, railroad and turnpike companies in Ohio during the period 1820-1850--is no longer justified, and may, in fact, hinder beneficial cooperation between the governmental and private sections in providing necessary public service.

Section 3

This section contains the "hybrid" revenue bond authority from present Section 2i of Article VIII, which section would be repealed. Research and discussion indicate that this authority--which covers capital improvements for mental hygiene and retardation, parks and recreation, state supported and assisted institutions of higher learning, water pollution control and abatement, water management, and housing of branches and agencies of state government--was embodied in the Constitution following a series of cases in which various revenue bonding programs involving the same or similar projects as now permitted by this section were held unconstitutional. The committee is concerned that the complete removal of this authority from the Constitution might be construed as an intent to negate it, and that such removal would reopen litigation on the subject. Therefore, the Committee recommends its retention as Section 3 of the new Article VIII.

Section 4

This section would permit the General Assembly to prescribe, by law, how local governmental entities in the state could become stockholders in, raise money for, or loan their credit to or in aid of a joint stock company, corporation or association. This provision would modify a prohibition presently contained in the first part of Section 6 of Article VIII. Section 6 would be repealed.

The committee recommends the use of the term "local governmental entities" in this section in place of "county, city, town or township"as used in the present Section 6 of Article VIII. The intent is to cover not only those units of local government now enumerated in that section, but all local governmental entities.

The present section 6 of Article VIII also contains a provision allowing the insurance of public buildings in mutual insurance associations or companies, and a provision permitting the regulation of rates charged by insurance companies or associations which would be repealed, as explained in a separate memorandum.

Section 5.

The committee recommends no change in present Section 5 of Article VIII, which prohibits the assumption of local debt by the state. The section is included in the draft only for the purpose of giving a complete picture of the proposed Article VIII.

Savings Clause or Schedule

The reason for the savings clause or schedule would be to assure that all obligations of the state undertaken under any section of Article VIII which would be repealed, or any law enacted pursuant to such section or validated by it, would continue to be recognized as valid obligations, to the same extent as if such section had not been repealed.

The difference between a savings clause and a schedule is that the former would become a permanent part of the Constitution as a separate section, while the latter would not become part of the document but would have the force of law until its purposes were accomplished.

Repealed Sections of Article VIII

In addition to the sections already noted for repeal, the committee proposes the repeal of Sections 7, 8, 9, 10, and 11, which relate to the sinking fund and the Sinking Fund Commission. The committee believes that it is unnecessary to retain these sections in the Constitution, particularly in light of the plenary power which would be given the General Assembly to regulate state debt, including establishing sinking funds, by provisions in the proposed Article VIII.

The committee also proposes the repeal of Section 12. This section makes the office of Superintendent of Public Works a constitutional office, which, in the committee's view, is unnecessary.

Repealed Section of Article XII

It has already been noted that Section 6 of Article XII would be repealed.

The committee also has under study the question of whether Section 11 of Article XII ought to be repealed, but is not making a recommendation in regard to the section at this time.

Ohio Constitutional Revision Commission
Finance and Taxation Committee
April 21, 1972

Article VIII - Section 6
Insurance Provisions

Summary

As part of a revision of Article VIII, the Finance and Taxation Committee proposes to repeal section 6 of Article VIII and to reenact part of its provisions as a new Section 4.

Section 6 presently reads:

> No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.

The committee recommendation for the new section 4 reads:

> Except as provided by law, no local governmental entity in this state shall become a stockholder in, raise money for, or loan its credit to or in aid of, any joint stock company, corporation, or association.

If enacted in this form, the portions of present section 6 dealing with insurance would, in effect, be repealed.

This memorandum sets forth the history and background of these insurance provisions. Based on this background and analysis, it would appear reasonable to conclude that:

1. If the provision authorizing the insuring of public buildings in mutual insurance associations or companies is repealed, and a new section enacted as proposed, it is possible that local governmental entities would again be held to be prohibited from insuring their buildings in mutual companies or associations were it not for "except as provided by law" at the beginning of the sentence. Thus, the General Assembly could permit by law such insurance, which might otherwise be found to be prohibited by the terms of the constitutional language, as it was prior to 1912.

2. Repeal of the sentence authorizing the General Assembly to regulate insurance rates would not have the effect of denying this power to the General Assembly, since there is ample evidence that this power exists whether or not specifically referred to in the Constitution.

Insurance Provisions of Section 6 - 1912 Convention

The scope of this memorandum is a response to two specific inquiries into the reason for and effect of the amendment made to Article VIII, Section 6, in 1912. First, an analysis of the opinions of the Attorney General which are indicated by

the journals of the Constitutional Convention as having been evocative of the Convention's Proposal 51. Proposal 51 was that part of the Convention's product which, upon approval, became the proviso and the final sentence of Article VIII Section 6. Second, an investigation into the issues of whether the state legislature has as affirmative responsibility to regulate insurance rates by reason of the final sentence of Section 6, and whether the General Assembly would retain the authority to regulate rates charged by insurance companies, corporations, and associations doing business for profit within the state should the final sentence of the section be deleted in revision of the Constitution.

Two opinions of the Attorney General were referred to in the Convention's consideration of Proposal 51. Proceedings and Debates of the Constitutional Convention of the State of Ohio, 1912, pp. 1015-1025, 1721-1732, 1824-1825. The principal discussants indicated that the holdings in each encouraged amendment to Article VIII, Section 6, that would allow for the insuring of public property with mutual insurance associations and companies. Both opinions were, in part, read into the record.

The first mentioned opinion, dated April 28, 1911, had been issued in response to an inquiry as to whether a board of education could, within the constitution, insure school district property with a mutual fire insurance company in which, on the occasion of insured loss by a member of the mutual, the school district could be compelled to satisfy a pro rata assessment of the loss. The question had been raised by the Bureau of Inspection and Supervision of Public Offices, Department of Auditor. The Attorney General rested his response on the conclusion that a board of education had no statutory authority to enter an agreement exposing the board to a potential, indefinite, and uncertain liability. The opinion quotes in its entirety Section 9593, General Code, as amended 101 Ohio Laws 294, which is presently part of Section 3939.01, Revised Code. The statute set out the conditions for the organization and operation of mutual protective associations. The opinion noted that a board of education does not own property in the sense required by the statute, but rather holds the property in trust for the public. This absence of ownership of property was construed to exclude a board of education from membership in a mutual association and, thereby, render illegal the insurance of school district property in such an association. The only direct reference to Article VIII, Section 6, which had been specifically referred to in the Bureau's inquiry, was:

> Article VIII, Section 6 of the constitution, to which you refer, would make unconstitutional any attempted act on the part of the legislature to even authorize a school board to become a stockholder in any joint stock company, corporation or association.

The thrust of this first opinion was that a board of education or other holder in trust of public property could not insure that property in a mutual association because to do so would constitute participation in a joint stock company or an extension of the public credit in violation of Article VIII, Section 6, by virtue of the fact that such insurance would expose the board to indeterminate liability for assessments. Further, even without that constitutional prohibition, the statute was found to exclude, by implication, a board of education, and presumably the state or subdivision thereof, from membership in a mutual association.

The second opinion noted by the Convention was issued December 29, 1911, on the same question as was considered in the earlier opinion. This time the issue

was raised by the Legislative Committee of the Federation of Mutual Insurance Associations of Ohio (of which G. W. Miller, delegate to the Convention from Crawford County and prime mover in the submission and approval of Proposal 51, was a member). This opinion of Attorney General Hogan refined the reasoning of and affirmed the conclusion of the earlier opinion. The majority of the opinion is dedicated to a more detailed explication of Article VIII, Section 6. It indicates that the main objects of the constitutional provision are to prohibit private persons from having the aid of the government in financial transactions and to prohibit the government or any subdivision from entering partnerships and incurring liabilities resulting from enterprises not within the exclusive control of the government. The exposure to indefinite liability is found to be a prohibited extension of credit under the section and the conclusion that a board of education is not a property owner as required by Section 9593, General Code is clarified. Walker v. Cincinnati, 21 O. S. 14 (1871), is cited as authority that "associations" as used in Article VIII, Section 6, must be construed liberally, and that a mutual insurance association falls within that class.

These opinions of the Attorney General are based on narrow distinctions but do not appear to be unsustainable in the absence of the 1912 amendment. Research of all cases citing Article VIII, Section 6, discloses no case dealing definitively with the constitutionality of insuring public property in mutual insurance associations and companies. Therefore, the reasoning in the two opinions of the Attorney General must be turned to. That a mutual insurance association is among the group of organizations intended to be covered by Article VIII, Section 6, is within the still mandate for comprehensive reading of the section. Walker, supra. The indication in the second opinion of the main objectives of Section 6, which are the principles the opinion tries to protect, is an appropriate analysis of the constitutional purpose. The finest points in the opinions must be those concluding that a board of education does not own property and, thus, may not become a member of a mutual insurance association which is required by statute to be made-up of persons owning property. However narrow that conclusion may be, it does appear to be incorrect. School property is not the private property of a board of education. The board functions in a fiduciary capacity holding the property in trust for school purposes. 48 O. Jur. 2d (Part 2) Schools 194. Section 3939.01, Revised Code, the successor to Section 9593, General Code, retains the same language in reference to ownership of property as was effective in 1911.

In the light of present circumstances, the greatest deficiency of the opinions is their failure to distinguish between mutual associations and mutual companies with reference to the limitation on liability for assessments upon an insured of each. The opinions were correct in finding the liability in a mutual association organized under Section 9593, General Code, to be potentially indeterminate, but they omitted mention of Section 9528, General Code, which limited the contingent liability of members in a mutual company to a direct function of the basic premium. It should be noted that the inquiry prompting the first opinion referred specifically to a mutual company and not a mutual association. Presently, a policy of insurance with a mutual company issued with provisions for a contingent liability of the insured must stipulate the maximum extent of potential contingent liability, Chapter 3941, Revised Code. To the extent undertain liability was determinate of the Attorney General's holdings, the opinions might arguably be invalid as to mutual companies, absent a proviso as was added to Article VIII, Section 6.

In the common law, contracting for the sale of insurance was held to be a private right. As legislatures, in the interest of public protection, established

conditions insurers had to fulfill before doing business, what had been a private right became a matter of public concern and a franchise granted by government with failure to meet statutory conditions a usurpation of a public or sovereign function. State ex rel. Richards v. Ackerman, 51 O.S. 163, 37 N. E. 828 (1894).

The United States Supreme Court has conclusively dealt with the issue of a state's power to regulate insurance business, finding such regulation to be a valid exercise of police powers, Osborn v. Ozlin, 310 U. S. 53, 84 L. Ed. 1074, 60 S. Ct. 758 (1940). The power of the states to regulate and control the insurance business has been held to include the power to regulate the rates charged by insurance companies and associations, ans was first recognized as such in German Alliance Ins. Co. v. Lewis, 233 U. S. 389, 58 L. Ed. 1011, 34 S. Ct. 612 (1914). However, upon a showing that a state regulated rate is confiscatory to such a degree as to violate the Fourteenth Amendment to the United States Constitution, the rate may be set aside as invalid. Aetna Ins. Co. v. Hyde, 275 U. S. 440, 72 L. Ed. 357, 48 S. Ct. 174 (1928). While clearly the regulation of insurance rates is within the powers of the General Assembly, even without the recognition given that power by the final sentence of Article VIII, Section 6, no authority has been found indicating the legislature must exercise the power to comply with any affirmative duty.

Ohio Constitutional Revision Commission
May 18, 1972

Article VIII - Exception to Debt
Limit for Debts to Meet Emergencies

At the last meeting of the Commission, when the Finance and Taxation committee draft of Article VIII was presented, some members questioned the continuance of the constitutional language permitting debts to be contracted outside the debt limit to "repel invasion, suppress insurrection, defend the State in war." This language is contained in the present Constitution, was adopted in 1851, and is fairly standard state constitutional language making an exception to whatever debt limit is provided in the Constitution. It was felt by some that it no longer expresses modern emergency concepts since it does not provide for events which are likely to happen to a state today.

The Finance and Taxation committee, in a prior draft, did include additional "disaster" language found in some of the more recent constitutions. This included adding "or riot" after "insurrection" and adding a clause permitting emergency debt to "deal with disasters." However, the committee deleted this additional language in the final draft because it felt that too many problems of interpretation were presented, particularly in the use of such terms as "disaster" or "emergency."

Some of the recent Constitutions, including those of Florida and Michigan, do not include any similar emergency language as an exception to the debt limit. Others, including those of Georgia and Virginia, have continued the old language - repelling invasions, suppressing insurrection, and defending the State in war. Still others have variations. For example:

Alaska (Section 8, Article IX) - to the three traditional emergencies, it adds "meeting natural disasters." This has been interpreted by the Alaska Supreme Court to include earthquakes and seismic waves and to permit the issuance of bonds to raise money to relieve economic hardship caused by such disasters.

Hawaii (Section 3, Article VI) - to the three traditional emergencies, it adds "to meet emergencies caused by disaster or act of God." Same in the 1950 Constitution.

Illinois (Section 9, Article IX) - provides for debt, in addition to other debt, not exceeding 15% of the state's appropriations for that fiscal year for deficits caused by emergencies or failures of revenue. Must be repaid within one year.

North Carolina (Section 3, Article V) - permits debt for suppressing riots or insurrection, and to repel invasion. Not changed from prior Constitution.

Pennsylvania (Section 7, Article VIII) - deletes "repelling invasion and defending the state in war" from prior Constitution, but continues "suppressing insurrection" and added "rehabilitate areas affected by man-made or natural disasters."

League of Women Voters of Ohio
65 S. Fourth St. Columbus, Ohio 43215

STATEMENT TO THE OHIO CONSTITUTIONAL REVISION COMMISSION
Regarding Draft of Article VIII (state debt)
By Mrs. Richard M. Brownell, Chairman
LWV Constitution Committee
May 18, 1972

The League of Women Voters of Ohio has been reviewing the Ohio Constitution for the past five years. Our members have agreed that a state constitution should provide for a structure of government responsive to the needs of the people of Ohio. In order to achieve this a constitution should be flexible and concerned with fundamental principles. It should be clearly written, logically organized and consistent.

The League of Women Voters of Ohio studied the Finance and Taxation Provisions of the Ohio Constitution in 1968. At that time our members agreed that the fixed dollar debt limit should be removed. In its place the constitution should provide for a flexible debt limit tied to some indicator of the state's economic wealth. The present limit of $750,000 is totally unrealistic. Even though the constitution has been amended nine times to increase the state debt, the League believes the legislature should have the flexibility to deal with the state's fiscal affairs. Any fixed dollar limit will become outdated and is contrary to the accepted criteria of flexibility and concern with fundamental principles.

The Finance and Taxation Committee's draft of Section 1 of Article VIII does propose a flexible debt limit. It is tied to the economic wealth of the state. It can be interpreted by the courts and will keep the debt within bounds. The provision gives the legislature the flexibility to deal with the state's fiscal affairs and permits the allowable debt to change with recession or growth spurts of the state.

The League did not reach a conclusion on which of the various possible debt indicators would be most appropriate. The measurement proposed in this draft ties the principal and interest payments on state debt to a percent of the annual revenues received by the state during the two preceding fiscal years. This method is similar to the average citizen's home mortgage which is usually related to a percent of his annual income. The concept, although new in the field of state debt, is certainly a concept the average person understands as he uses it in his credit purchases and mortgage payments. This flexible debt limit allows the General Assembly to finance capital improvements with general obligation bonds, the least expensive type of financing for states. The proposal is a distinct improvement over the fixed dollar debt limit.

We know that states such as Ohio with fixed debt limits have incurred larger debt. In Ohio the estimated constitutional debt is over $1.2 billion. If you add the debt due to revenue bonds the figure would be higher. This debt has been incurred because the General Assembly has the option of asking the people to extend the debt by constitutional amendment. Rather than requiring addition to the constitution of sections such as the present 2b through 2i, the proposed revision of Article VIII allows the General Assembly (under Section 1D) to extend the debt if submitted to the electors for approval. This section states the principle that the General Assembly always has the power to ask the voters to extend the debt, but it keeps the constitution clear and uncluttered with details. It is a useful provision since a constitution should state the fundamental principles and leave the details to statutory law.

The other provisions set forth in sections 1A through H, spell out the checks and balances necessary for this flexible debt limit. The League of Women Voters supports this proposal and urges the Commission to adopt this as a recommended change to the Ohio Constitution.

The League of Women Voters of Ohio also supports the proposed repeal of Sections 7, 8, 9, 10, and 11 dealing with the sinking fund and Section 12 dealing with public works. These sections are no longer necessary. They dealt with problems incurred in the early 1800's and need no longer be in the constitution.

The League of Women Voters of Ohio has been following the work of the Ohio Constitutional Revision Commission and wishes to commend the Finance and Taxation Committee for the thorough study and work that has gone into these proposals. There have been many hours of staff and committee time spent in hearing testimony, drawing up alternative drafts, and considering all the possible options. The committee members and the chairman in particular are to be commended for their continued devotion to the task of constitutional revision.

Thank you for this opportunity to testify on these proposed changes in the Ohio Constitution.

Statement by Robert H. Baker
Before the Ohio Constitutional Revision Commission
(May 18, 1972)

The Department of Finance has worked closely with the Finance and Taxation Committee of the Ohio Constitutional Revision Commission during its consideration of Article VIII, the Debt Provisions of the Ohio Constitution. I wish to commend the members of that committee for their long hours of thoughtful deliberation on the intimate problems of the state debt. Their report represents a significant proposal which can provide the State with flexibility in meeting the future capital needs of the citizens of this state.

In considering this proposal the Commission should be aware of some Constitutional history. Prior to the Constitution of 1851 there was no provision in the Ohio Constitution which restricted the power of the state to contract debt. During the 1830's in order to build the state's canal system the State contracted what were large amounts of debt at that time. By the time of the Constitutional Convention of 1850-1851, the failure of the canals to generate sufficient revenues to retire the debt led delegates at that convention to propose a limitation on the state's ability to issue debt. They chose a debt limit of $750,000 which represented 30% of the state's revenue at that time. However, there were no provisions to adjust the debt ceiling upward as either the revenues of the state increased or inflation reduced the capital goods that $750,000 would purchase.

The continual existence of $750,000 limitation, however, has not precluded the State from borrowing money. In order to obtain capital funds, the State has resorted to a variety of revenue bond devices or constitutional amendments authorizing specific issues of "general obligation" bonds. Thus, the current provisions of Article VIII of the State Constitution have not really limited state debt but have instead encouraged

the use of more expensive revenue bond techniques and created the necessity to periodically bring constitutional amendments to the public.

A fundamental question in considering any debt proposal is why does the state need to borrow. The answer is simple. In order to serve the needs of the citizens of the state, the state government must continually construct capital facilities, build roads, buy park lands, etc. Some of these projects can be called new, but many merely replaces obsolete facilities. The ability to borrow capital moneys on a regular basis is key to any long term capital improvements program.

We believe that it is in the best interest of the state to create a constitutional framework in which the state has the ability to meet its capital needs in a rational manner. The Department of Finance endorses the proposal of the Finance and Taxation Committee which would express the debt limit in terms of a percentage of revenue available for appropriation. This approach says to the people of Ohio that no more than 6 percent of the state's revenue should be expended for debt service in any year unless the people of the state have agreed through a referendum to incur more debt. This is the very approach people use deciding if they can afford to buy a particular car or home, "Can I afford to pay more than $100 a month to buy this car?"

The committee has proposed to further limit the ability of the state to issue debt by providing that the principle amount issued in any one year may not exceed 8 percent of the moneys available for appropriation and that at least 4 percent of the principle outstanding at the beginning of the fiscal year must be paid during that fiscal year. The effect of these provisions is that one General Assembly may not issue all of the increased new debt authority in any one year and thereby prevent subsequent General Assembly's from issuing debt without a vote by the public. The

principle repayment provision is designed to provide an average maturity of 25 years for state debt--which period the committee felt is related to the average useful life of state capital improvements. The end result of these provisions is that the State could issue roughly the same amount of debt as that which over the last 10 years has been requested by prior administrations, approved by the General Assembly and the public and actually spent.

The Commission should note the provisions of Section I (C) which provides that the state may contract debt to meet appropriations during a fiscal year. Members of the Commission will remember the discussions that were held last fall here in Columbus concerning the State's cash flow crisis. Because of the timing anomaly in tax collections, the state receives a significant amount of its tax revenue during the spring of each year and then spends against that revenue balance for the remainder of the year. Thus, it is possible that although the state may end the fiscal year on June 30 with $150 million in the Treasury, it may have just barely skirted a zero balance some time during the preceding January. This provision would permit the state to borrow moneys in anticipation of future tax collections in much the same manner as school districts, cities, villages, and counties are now permitted. The Committee should note that any such state borrowing must be repayed before the end of the fiscal year in which the borrowing takes place. This latter clause insures that an administration can not issue debt indefinitely for operating expenses.

Existing Section 4 , of Article 8 forbids the use of the credit of the state in aid of any individual, association or corporation. There have been several court challenges against various public programs in Ohio's history in which a taxpayer claimed that the state was lending its credit for other than a public purpose. This proposed section is an attempt to provide the General Assembly with the power to

determine what a public purpose is. The Department of Finance endorses the proposal.

The Department of Finance, at this time, would like to present to the Commission a set of suggested changes to Section 13 of Article 8, the industrial bond provision. This section has permitted in the past the issuance of state debt to aid in the construction of industrial facilities. Looking into the future, the state is being asked to take a new and vital vole in the areas of environemtnal protection and housing.

The proposed changes in this section are aimed at expanding such section 13 clearly to recognize as public purposes (regardless of disposition of the Constitutional Revision Commission's proposed Section 2 of Article VIII) the provision of, and to authorize the financing of, environmental protection and housing facilities as well as facilities for industry, commerce, distribution and research to protect (in addition to present provision for creation of) job and employment opportunities.

The following (references are to the numbers of the changes marked on the attached draft) is a brief explanation of the changes:

1. To permit the traditional industrial development approach to be used in those situations where no new jobs will be created, but in which protection is afforded existing jobs which are or might otherwise be in jeopardy. Examples might be the replacement of facilities no longer economically feasible to operate, or which cannot in their present condition meet requirements of federal or state laws or regulations such as the new Federal Safety Standards laws.

2. To expand provisions of Section 13 to encompass environmental protection and housing facilities.

3. To provide, for interpretation purposes, basis for a distinction later in the section between the purposes (facilities) for which financing may be undertaken under Section 13 and the entitites which are authorized to acquire, such facilitie: For example, we think the addition of "for purposes of" and "for such purposes" avoids any implementation than loans can be made only to governmental entities or non-profit corporations.

4. To make it clear that the provision permits bonds or other obligations to be issued with the proceeds being loaned to, or used as a guarantee fund for loans of, private entities.

5. To make it clear that the General Assembly may voluntarily appropriate money for purposes of a "reserve fund" in connection with environmental protection or housing financing the primary security of which might be, for example, periodic payments by the users. For example, in the area of environmental protection, it is conceivable that smaller companies would not be able to avail themselves of the lower interest rates of tax free borrowing (i.e. bonds issued by the state or by other governmental entities) unless some sort of a funded reserve were established for the further security of bondholders; such a reserve might be one with respect to an issue which pools environmental protection facility financing for a number of small companies. This same type of need for a reserve fund may well present itself in the financing of housing for low or moderate income persons or families, such as provided for in H.B. No. 1113 presently before the General Assembly.

6. To eliminate presently superfluous references to ratification and validation of certain statutes in effect when Section 13 was originally enacted but which have subsequently been repealed.

Aside from the housekeeping changes the primary legal purposes for the amendments are:

(1) To eliminate any legal question as to whether the financing of pollution abatement or prevention facilities and housing in conjunction with private use is (a) a public purpose, and (b) not prohibited by lending credit restraints. This is desirable whether or not the proposed Section 2 is adopted for only by the constitution speaking specifically to these points are they completely placed beyond legal challenge.

(2) To eliminate the indication that the section is not applicable unless new jobs are created. This is important from a job maintenance standpoint, and particularly important from the pollution abatement standpoint.

(3) To make it clear that the voluntary reserve supplements in the pollution abatement and housing areas are permitted, if the General Assembly should choose to make them.

The proposal of Finance and Taxation Committee would in essence permit the State to continue the same level of capital spending that has occurred over the last ten years. The State would be prohibited under this proposal from "mortgaging its future". The Department of Finance supports this proposal and urges the Commission to become familiar with both the details and the concepts underlying in the committee report.

Section 13. To create ①OR PROTECT job and employment opportunities OR TO improve, MAINTAIN, OR PROTECT②the economic OR ENVIRONMENTAL welfare OR LIVING②CONDITIONS of the people of the state, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for ③THE PURPOSES OF industry, commerce, distribution, ②and research, POLLUTION ABATEMENT OR PREVENTION, WASTE DISPOSAL, ENHANCEMENT OF THE QUALITY OF THE ENVIRONMENT, AND HOUSING AND RELATED FACILITIES INTENDED PRIMARILY FOR USE BY PERSONS AND FAMILIES OF LOW OR MODERATE INCOME AS DEFINED BY THE GENERAL ASSEMBLY, AND to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for ④SUCH LOANS AND GUARANTEES OR FOR the acquisition, construction, enlargement, improvement, or equipment, of ~~such~~ property, structures, equipment and facilities FOR SUCH PURPOSES.④LOANS OR GUARANTEES OF LOANS MADE UNDER AUTHORITY OF THIS SECTION SHALL ONLY BE MADE FOR THE ACQUISITION, CONSTRUCTION, ENLARGEMENT, IMPROVEMENT, OR EQUIPMENT OF PROPERTY, STRUCTURES, EQUIPMENT, AND FACILITIES TO BE USED FOR THE AFORESAID PURPOSES. Laws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, and to authorize the making of guarantees

and loans and the lending of aid and credit, (5) AND THE SECURING OF SUCH BONDS OR OTHER OBLIGATIONS, GUARANTEES, AND LOANS FOR THE PURPOSES OF POLLUTION ABATEMENT OR PREVENTION, WASTE DISPOSAL, ENHANCEMENT OF THE QUALITY OF THE ENVIRONMENT AND HOUSING AND RELATED FACILITIES BY A PLEDGE OF RESERVES WHICH MAY BE FUNDED OR SUPPLEMENTED BY APPROPRIATIONS BUT WHICH APPROPRIATIONS THE OWNERS AND HOLDERS OF SUCH BONDS, OBLIGATIONS, GUARANTEES, AND LOANS SHALL HAVE NO RIGHT TO HAVE MADE, which laws, bonds, obligations, loans, guarantees, and lending of aid and credit shall not be subject to the requirements, limitations or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be OTHERWISE obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under (6) ~~or ratified, validated, confirmed and approved by~~ this section.

No guarantees or loans and no lending of aid or credit shall be made under laws enacted (6) ~~or validated, ratified, confirmed, and approved~~ pursuant to ~~or by~~ this section of the Constitution for facilities to be constructed for the purpose of providing electric or gas utility service to the public.

The powers herein granted shall be in addition to and not in derogation of existing powers of the state or its political subdivisions, taxing districts, or public authorities, or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities.

Any corporation organized under the laws of Ohio is hereby authorized to lend or contribute moneys to the state or its political subdivisions or agencies or instrumentalities thereof on such terms as may be agreed upon in furtherance of

laws enacted pursuant to this section (b) ~~or validated, ratified, confirmed, and approved by it.~~

(b) ~~Amended Substitute House Bill 270 enacted by the General Assembly on June 4, 1963, and Amended Senate Bill 360 enacted by the General Assembly on June 27, 1963, are hereby validated, ratified, confirmed, and approved in all respects, and they shall be in full force and effect from and after the effective date of this section as laws of this state until amended or repealed by law.~~

Ohio Constitutional Revision Commission
June 14, 1972

Power of the State to Exempt its Own Bonds from Taxation in the Absence of a Constitutional Provision Thereon

This memorandum is in response to specific questions raised by the Commission in its study of possible revisions of the provisions for the issuance of bonds of the state as set out in Article VIII, Sections 2b, 2c, 2d, 2e, 2f, 2g, 2h and 2i and in Article XII, Section 2. The indicated sections of Article VIII, with the exception of Sections 2e and 2h, provide for the issuance of bonds for various purposes and explicitly state that the principal of and the interest accruing to such bonds shall be exempt from all taxes levied by the state or any of its taxing subdivisions or districts. Sections 2e and 2h of Article VIII are silent on the point of exempting bonds issued pursuant to these sections from taxation, but such exemption is made by statute in the sixth paragraph of Section 129.30, Revised Code, and in Section 129.60 (4), Revised Code, respectively. Article XII, Section 2, states in part that

> "All bonds outstanding on the 1st day of January, 1913, of the state of Ohio or of any city, village, hamlet, county or township in this state, or which have been issued in behalf of the public schools of Ohio and the means of construction in connection therewith, which bonds were outstanding on the 1st day of January, 1913, and all bonds issued for the World War Compensation Fund, shall be exemption from taxation."

The Commission has expressed an interest in deleting from a revision of the Constitution these clauses exempting bonds from taxation within the state. The purpose of this memorandum is to deal with questions of whether the state may, absent a constitutional provision for exemption, exclude from taxation by legislative action the principal and interest on state bonds and similar obligations. Beyond the General Assembly's power to exempt bonds from taxation, consideration will be given to what problems might arise should legislative exemption of bonds become the standard, and federal taxation of state bonds will also be dealt with.

The issue of the power to grant tax exempt status to the principal and interest of state bonds by legislative act where no express constitutional exemption exists has rarely been brought to the courts. The question has not been decided by the Supreme Court of Ohio. Due to the lack of authority on the subject, attention to two of the cases that have been decided can aid in seeing possible approaches to the problem.

Foremost among the cases in point is Foster v. Roberts, 142 Tenn. 350, 219 S.W. 729 (1920). In Foster, the Tennessee Supreme Court was presented with the question of whether or not the state legislature had the power to issue nontaxable bonds. The state legislature had authorized by law the exemption of bonds from taxation on principal or interest. Opponents of the exemption argued to the court that such an enactment violated Article 2, Section 28, of the state constitution which reads, in pertinent part, as follows:

> "All property real, personal or mixed shall be taxed; but the legislature may exempt such as may be held by the State, by counties, cities or towns and used exclusively for public or corporation purposes."

The court upheld the legislature's power to exempt bonds from taxation by offering two constructions of Article 2, either of which the court felt was sufficient to support the holding. First, it was found that the thrust of the section of the constitution relied upon its uniformity of taxation and the prevention of unreasonable and discriminatory exemptions, and that the section is not designed to in any way limit the distinguishable right of the state as a sovereign entity to contract with reference to the selling of debt. Secondly, the Tennessee Supreme Court held that state bonds do not constitute property in the same sense as the term is used in Article 2, Section 28. Rather than property, bonds were held to be instrumentalities of the state. Bonds being instrumentalities of the state, the court reasoned, it cannot be argued that the state legislature is required to tax the bonds or that the legislature is without the power to exempt the bonds from taxation.

A very similar question was presented to the Supreme Court of Oklahoma in the case of In re: Assessment of First National Bank of Chickasha, 58 Okla. 508, 160 P. 469 (1916). (Board of Equalization of Oklahoma County v. First State Bank of Oklahoma City, 77 Okla. 291, 188P. 115 (1920) overruled the holding of In re: First National Bank in part, but explicitly did not overrule the holding in respect to the power of the legislature to exempt bonds from taxation.) In this case the constitutionality of a legislative enactment exempting public building bonds from taxation was questioned. Opposition to the exemption was based on Article 5, Section 50, of the Constitution of the State of Oklahoma, which says," The Legislature shall pass no law exempting any property within this State from taxation, except as otherwise provided in this Constitution." The opponents pointed out the absence of any explicit exemption for state bonds elsewhere in the constitution and concluded by urging that bonds are property in the hands of holders and as such are taxable. The court rejected these arguments, holding that while bonds were not specifically exempted, it was not conceivable to them that the authors of the constitution intended to impede the power of the legislature to provide through exempt bonds for the preservation of the state's credit and good faith of the people of the state.

Turning to the situation in Ohio, it is important to first consider the history of the present Article XII, Section 2. Under the state's first constitution, that of 1802, the state's powers of taxation were limited in only the broadest manner. The only restrictions were that poll taxes were prohibited and that equal protection of the laws was required. When the constitution was rewritten in 1851, several provisions were included to halt legislative indiscretion in taxation. Among these restrictions was Article XII, Section 2. As it was originally passed, the section required the taxation of all real and personal property with the exception of burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, and public property used exclusively for any public purpose, any or all of which could be exempted. The so-called "classification amendment" to Article XII, Section 2 was passed in 1929 and became effective in 1931, changing the section to its present form. The amendment included the specific exemption for bonds quoted on page one.

The only Ohio case to deal with the power of the legislature to provide for the exemption of public bonds from taxation arose under Article XII, Section 2, as it existed before the amendment in 1931. The case is Probasco v. Raine, 10 Ohio Dec. Reprint 409 (Superior Court of Cincinnati, 1889). Involved was whether the failure of a taxpayer to list state canal stock for personal property taxation constitutes the filing of a false tax return, and whether the legislature acted outside its constitutional powers in exempting from taxation on interest or principal the canal stock issued by the state. The case was decided by Judge William Howard Taft and

based upon his strict interpretation of the section. Referring to Article XII, Section 2, of the constitution, he stated at 412:

> "The property which the legislature may exempt is specifically named. No room is left for doubt that under the constitution any other exemption than of the kind of property therein named for exemption, would be in violation of this section. It would seem to follow that an express exemption of certificates of indebtedness of the state, they being included in the property which the legislature is required to tax, would be beyond the legislative powers to enact and void."

Regardless of how logically Judge Taft found the answer to the question as to the legislature's power to exempt bonds to be, the case was overruled and the judgment reversed on appeal by the Ohio Supreme Court in Probasco v. Raine, 50 Ohio St. 378, 34 N.E. 536 (1893). The case was reversed on grounds other than those involving the legislative power of exemption. Burket, J. writing for the majority of the Supreme Court indicated that the majority was divided on the question of the legislature's power to exempt bonds, and thus left the point undecided, being able to dispose of the case on other grounds. However, Burket did go on to express in dicta that such stocks had never been taxed by the state; and at 394, "that there was good reason for the belief that the stocks were not taxable."

The decision in Probasco having not squarely confronted the issue of the legislature's power to exempt bonds and the express exemption in the 1931 amendment to Article XII, Section 2, have resulted in a present lack of any clear resolution of the question. For an answer, cases interpreting the uniformity and classification provisions under Section 2 may be resorted to in part. To pursue this approach, it must be assumed arguendo that bonds of the state constitute property of their holders.

When the 1931 Amendment was added, the requirement that "all property" be taxed by uniform rule was replaced with the provision that "land and improvements thereon" would be taxed uniformly according to value. This change clearly deleted personal property from the rule of uniformity, and the inclusion of the wording "without limiting the general power, subject to the provisions of Article I . . . to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt . . .," gave the legislature the power to classify and exempt classes of personal property. Kroger Co. v. Schneider, 9 Ohio St. 2d 80, 223, N.E. 2d 606 (1967).

The Ohio Supreme Court construed Article XII, Section 2 as amended, and with attention given to the passages quoted immediately above in State ex rel. Struble v. Davis, 132 Ohio St. 555, 9 N. E. 2d 684 (1937). Matthias, J. for the court said at 560:

> "It is quite obvious, therefore, that, having expressly removed the previous limitation in the constitutional provision, the power of the General Assembly to determine the subjects and methods of taxation and exemptions of personal property therefrom is limited only by the provisions of Article I of the Constitution, which is the "equal protection of the law" provision and is substantially the same as the guarantee in that respect contained in the Fourteenth Amendment to the federal Constitution."

The construction of the amended Article XII, Section 2 was again considered by the Supreme Court in Denison University v. Board of Tax Appeals, 2 Ohio St. 2d 17, 205 N.E. 2d 896 (1965). In Denison the Court found the General Assembly to have power to determine exemptions limited only by the equal protection clause in Article I. The equal protection clause of the Fourteenth Amendment to the federal Constitution must also be recognized as a limiting factor on the General Assembly's powers to exempt. Allied Stores of Ohio, Inc. v. Bowers, 358 U. S. 522, 79 S. Ct. 437, 3 L. Ed 2d 480 (1959), expressed the standard of equal protection of the laws as applied to exemption and classification for taxation. Classification and exemption may not be palpably arbitrary but may discriminate among classes of property, taxing some and exempting others, so long as "the discrimination is founded upon a reasonable distinction, or difference in state policy." Allied at 528.

Synthesizing this analysis, and still assuming that bonds are property, a strong argument may be constructed for the General Assembly having constitutional power to exempt the state's bonds from taxation should the specific exemptions in Article XII, Section 2 and Article VIII, Sections 2b, 2c, 2d, 2f, 2g, and 2i be removed from the Constitution in revision. In that the General Assembly is possessed of plenary power to exempt personal property from taxation, the standard which legislative exemption would have to meet would be that of the equal protection clauses of the Ohio and United States Constitutions. Denison University, supra.

It is practically undisputed in judicial commentary that state bonds serve several basic functions. The sale of bonds bring to the public coffers funds needed to finance a wide variety of governmental operations approved by the legislature and the voters, and bonds serve to maintain the credit of the state. Further, it is in the state's interest and a part of the public policy that state bonds be attractive to investors and readily saleable. Tax exempt status for a state bond results is a greater net profit to the holder than absent the exemption thereby making the bonds more desireable and marketable investments, consequently, the public policies and interests in debt financing and high credit rating are promoted. These factors considered, the exemption of state bonds clearly rests on a reasonable distinction from non-public bonds and is based on a difference in state policy.

A conceptually different argument for the exemption of state bonds from taxation can be constructed without the assumption that bonds are property. Such a theory was proposed in Foster, supra, as sufficient to support exemption. The Supreme Court of South Dakota has also upheld the argument that bonds are not property as that term is used in constitutional provisions requiring uniformity. National Surety Co. v. Starkey, 41 S. Dak. 356, 170 N.W. 582 (1919). Further, in that uniformity provisions are designed to avoid discrimination among taxpayers, and since the state is not considered a taxpayer within the state, the uniformity requirements do not apply to the state. At the base of the theory is the idea that the state as sovereign is not the subject of taxation but the recipient of taxes. Bonds are evidences of debt, of money lent to the sovereign and devoted wholly to public use. The principal being dedicated entirely to the facilitation of governmental functions, the bonds can be seen to function as instrumentalities of the state sovereign. If bonds are taken to be instrumentalities of the state and the state imposes a tax on the bonds to be paid by the holders, the state would in the end be bearing the burden of its own tax through the lower initial price or higher interest which purchasers of bonds would demand. Apparently Ohio courts have not spoken to the question of whether state bonds are property or non-property instrumentalities. In light of there being no Ohio decisions on this point and

because the instrumentality theory is rather abstract and indefinite, the argument that state bonds may be exempted by the General Assembly exercising its power to exempt property subject only to equal protection requirements seems the stronger.

While the power of the state legislature to exempt bonds from taxation is not entirely clear, the constitutionality of taxation by the United States government on bonds of the states is presently a well settled issue. The leading cases on the federal government's power to tax state bonds are Mercantile National Bank of the City of New York v. New York, 121 U. S. 138, 7 S. Ct. 826, 30 L. Ed. 895 (1887) and Pollock v. Farmer's Loan and Trust Company, 157 U. S. 429, 15 S. Ct. 673, 39 L. Ed. 759 (1895). In Mercantile Bank the Supreme Court considered whether the United States could tax bonds of the state of New York and its municipal subdivisions. The court found the borrowing of money by a state to be an exercise of governmental function and held bonds to be not taxable by the United States. Pollock, in two hearings before the court, held that federal taxation of income on state and local bonds is unconstitutional. The present federal statutory provisions reflecting the decisions in Mercantile Bank and Pollock can be found in Section 103 of the Internal Revenue Code. The statute excludes from gross income the interest paid on obligations of the states without reference to whether the interest or the bonds themselves are taxed by the states. It is worth noting that the decisions that state bond interest is nontaxable under the federal constitution have come under attack recently in Congress, as when the tax reform legislation of 1969 was being worked out.

Ohio Constitutional Revision Commission
Finance and Taxation Committee
July 10, 1972

Research Study No. 12

The 1912 Convention: Article XII
The Income Tax

Although the uniformity-classification of property fight at the 1912 Constitutional Convention received the most interest on the convention floor, the revised Article XII which developed out of that Convention contained several new provisions not found in the 1851 Constitution. As of 1912, poll taxes were prohibited; debts for internal improvement were outlawed; inheritance and income taxes were authorized; the bonded debt of the state and its subdivisions was to be protected as to principal and interest; and franchise and excise taxes, as well as taxes on the production of minerals, were to be permitted.

Much of the argument by those favoring the classification of property for taxation purposes at the Convention was that a single uniform tax on property would not necessarily be an honest tax on an individual's total wealth. The further provisions for other types of taxation, then, granted to the legislature in Article XII, must be viewed to some extent as a form of compromise. Many of the delegates of the convention admitted that they were "single-taxers," and in reality favored only the new "income tax" plan which was under experimentation in Wisconsin.

> Mr. Colton: I believe a tax distributed in proportion to the income a man receives would be distributed in the most just and fair way that it is possible to distribute it; but we are not under an income tax, and it is impossible for us to pass from the property tax, under which we are now proceeding, to an income tax in any abrupt and positive way. If we have to pass to the basis of an income tax, we must pass to it gradually. The income tax at present is in an experimental stage. It has been successfully used in the old world, but thus far, as used by our states, it cannot be pronounced a success. The state of Wisconsin is the first state to adopt a very elaborate income tax, modeled after the income tax provisions of the Old World, and there the experiment of income tax is being tried out. All of the states are watching the outcome of the Wisconsin experiment, but the income tax, by itself now, is out of the question.
>
> (Debates, 1912, p. 1509)

Mr. Doty felt that the Convention should submit to the people of Ohio the Wisconsin tax provision, which would include the inheritance tax provision as well as the income tax, because he felt that it had already been tested in Wisconsin. The Wisconsin constitutional provision Mr. Doty supported read as follows:

> The rule of taxation shall be uniform and tzxes shall be levied upon such property as the legislature shall prescribe. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided.
>
> (Debates, 1912, p. 1545)

The income tax provision proposed by the Minority Report of the Committee on Taxation, which replaced the Majority Report, read as follows:

> Section 9. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to incomes derived from investments not directly taxed in this state, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

The vote to replace the Majority Report of the Committee with the Minority Report, including the above provision on taxation of incomes, was 74 to 36, and the main area of contention in the debate which was to follow was uniformity and classification, rather than the subject of income tax.

Mr. Jones made the point in debate that the provision offered on income tax provided for "a tax on incomes of a certain amount" (Debates, 1912, p. 1670), and there seems to have been little question by the delegates to the Convention on this matter, as the specific amount was never debated.

Mr. Fackler suggested the following description of the provision for income taxation which was included in the provision eventually adopted, and spoke of it as a way to lay aside the differences of the Convention on uniformity and classification.

> The income tax is provided for here. There is no fairer way of levying taxes than upon incomes. The man drawing a large income is deriving greater benefits from society than any other man, and upon his shoulders should be placed a very large part of the burden of carrying on the government. Gentlemen, I believe there are so many things of merit in this proposition, and so many things that are progressive and really demanded by the spirit of the times, that it will pay us to lay aside our differences on uniform taxation and classification, and to lay aside our difference on the bond proposition, and to adopt this, and I believe that if we adopt this it will be overwhelmingly ratified by the people at the polls.
>
> (Debates, 1912, p. 1672)

When the proposal for a revised Article on Taxation was finally adopted by the Convention, it read as follows: (Section 8 of Article XII)

> 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.

The differences between this version of the provision and provision originally found in the Committee report were not debated, as there were no specific motions with respect to the language changes. The move to include other types of taxation in the new Constitution was felt generally to be in favor of progressive taxation; the Constitutional Convention in 1912 was dominated by a move of "progressive reformism." A majority of the Convention was in favor of these provisions throughout, and at the point where it seemed that the Constitution was going to be written without a new taxation article because of the extreme disagreement concerning uniformity and classification,

the appeal for an article at least including these other provisions was made. This, in fact, was the main reason that the Convention finally did get together enough to rewrite Article XII, at least to include the new progressive taxes on which the Convention was able to find agreement.

Debate on these measures, however, was not extensive as most of the Convention's time was spent on the classification debates. Although the other taxes were added, the amendment as finally written was decidedly not in favor with the corporations and the financial world, for the newspapers of big business constantly attacked the proposal.

The following commentary by the Political Science Club at OSU at the time the 1912 amendments were presented for the consideration of the citizens of Ohio points out that the taxation amendment written by the Convention proposes several important additions to the present (1912) tax system and should be given serious though by all.

"The amendment proposes several important additions to our present tax system that should be given serious thought by all. By the first one the General Assembly is empowered to pass an inheritance tax, by the second, similarly, an income taxm and by the third, a tax upon franchises and the production of coal, gas, oil, and other minerals.

The inheritance proposal gives the Legislature the right to tax estate when it changes hands at the death of the owner. This tax may be graduated so that those who receive larger estates shall pay a higher rate than those who receive small estates; and also indirect heirs may be required to pay a higher rate than direct heirs. The maximum exemption which the legislature may allow is $20,000.

The inheritance tax is used by thirty-six states in the Union and in most of them the provisions for the tax are much the same as those mentioned above. New York derives a large revenue from this source, the chief advantage being that the large estates, which so generally escape the general property tax, cannot escape the inheritance tax in any more than small estates. Altogether the inheritance tax is a desirable addition to our present tax system and should receive the support of all who feel that our taxes should fall proportionally on capacity to pay.

Provision is also made for an income tax which may be uniform or graduated; exemption of not exceeding $3,000 may be allowed by the Legislature, and by the clause "may be applied to such incomes as may be designated by law," permission is given the Legislature to classify incomes according to their source. This will facilitate the administration of the tax and prevent evasion. A further provision states that not less than 50% of the revenue that the state collects from the inheritance and income taxes shall be paid back to the county, township, or city in which the income or inheritance originated. The Legislature is furthermore constitutionally guaranteed the right, through the excise tax, to derive a revenue from the ordinary operations of business, and, by means of the franchise tax, to receive a return upon its grant of corporate privileges.

The value of these supplementary modes of revenue-raising is very great. They are not meant to exact a larger revenue or cause double taxation but merely to give the state the power to use other methods supplementing and correcting the inequities of the general property tax. It is well known that our general property tax is a failure

in that it falls upon those who have tangible property such as farms and homes and neglects many that have wealth in other forms. In order to get at those who are not paying their just share under the general property tax we need some such methods as the inheritance and income taxes. As the revenues from these sources and from the franchises and mineral lands increases, we may expect possibly a tendency toward the gradual abandonment of the State's vain attempt to tax personal property as such, (such income to bear its fair share of burden otherwise), the diminution of the rate on real property, and in general a more equitable distribution of tax burden on the basis of ability to pay."

Ohio Constitutional Revision Commission
Finance and Taxation Committee
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Research Study No. 13

The Debate on the Question of Classification at the Constitutional Convention of 1912

In 1912, Article XII of the Ohio Constitution was the subject of extensive discussion and debate at the Constitutional Convention as it had been in 1851. There was still an obvious recognition of the need for a revision of the tax laws of the state and the constitutional provisions relating to them. The Convention's Standing Committee on Taxation produced both a majority and a minority report on April 22, 1913. The majority section of the Committee was chaired by E.W. Doty, and the minority section by George Colton.

The reports differed most strongly on the question of classification. The majority report called for the General Assembly to "provide for raising revenue sufficient to pay the expenses of the state" and provided that a system of classification of property for taxation purposes "may" be devised, "and if it is classified the taxation shall be uniform on all property belonging to the same class." The minority report, on the other hand, provided for the uniform rule of taxation, stipulating that "property shall never be so classified as to permit taxes to be levied at different rates for different classes..." The minority report was also more specific in the provisions dealing with the inheritance tax and the income tax. (Both reports as presented to the Convention are attached.)

Mr. Colton, chairing the minority section of the Committee, reported to the Convention that the Committee had decided unanimously that they could not agree on the subject of taxation, and that it was for this reason that the Convention was faced with both reports. The first question which was before the Convention was whether the minority report should be substituted for the majority report.

Most of the debate came from the proponents of a "uniform rule" and the proponents of classification. Contrary to what one might expect, the delegates who favored classification readily admitted that they were defending the corporations which seemed to regard classification as a means of distinguishing tangible property from intangible property for taxation purposes. Mr. Redington was one of the delegates who expressed this view most clearly:

> "I want to preface my remarks by saying that I am in favor of the classification of property. I want that understood at the outset. I also want it understood at the outset that I am here defending the thousands of corporations which are here doing business in the small towns and cities of this state, who furnish the labor for the men who build up those towns, and I am here to speak a good word for them. I am also here to speak as a person interested in real estate and as one who pays taxes on real estate; and as a man interested in real estate and as a man interested in the manufacturing industries I am in favor of the classification of property. Nearly every tax commission for twenty years that has investigated the uniform rule established in Ohio in 1851 has condemned it.

> At the time the Constitution of 1851 was adopted there were no large corporations in this state. There was not very much intangible property in the state, and I take it that a great many persons who went to that convention went to the convention on horseback. I take it that in 1851 one-half of the houses on the farms in Ohio were log houses and that farmers used oxen instead of horses. They had very little personal property and everybody knew what everybody else had. Each person knew exactly what his neighbor had, and at such a time and under such circumstances the uniform rule of taxation might have been just. As corporations increased, and by reason thereof intangible property increased in amount, the uniform rule of taxation began to work badly. I venture the assertion that today the intangible personal property of the state of Ohio is more than double that of real estate, and yet not six per cent of the intangible personal property goes upon the tax duplicate; and as a man interested in manufacturing and real estate I protest against such conditions. You never have been able under the uniform rule to bring out that intangible personal property, and you never will be able to do so."
>
> (Debates, pp. 1515-1516)

And again:

> "...Now by classification of intangible property or by classification of all property, you can do justice to these corporations that are having a hard time to succeed and not help force a failure and thereby create a loss for the owners who have put their money into the enterprise as well as the workmen who work in those factories and the people who live in those towns."
>
> (Debates, p. 1519)

The tenor of the foregoing argument seemed to be that while theretofore a great deal of intangible property was being concealed and thus not taxed at all, if classification were allowed and intangible property were taxed at a lower rate than real property, more of the former type of property would appear on the tax rolls.

Mr. Pierce spoke against the classification of property and the majority report, and reflected the fear of those who held that classification would open the door to corporate manipulation of tax laws:

> "I am in favor of the substitution and adoption of the minority for the majority report on taxation because I believe it is more in the interests of the people. I am opposed to the classification of property for the purpose of taxation, whether it is secured by direct or indirect methods. If the people of the state want the real estate owners to pay the highest rate of taxation, and those owning personal property of various kinds to pay the least rates, I have nothing to day; but I am opposed to any plan by which a taxing unit less than the whole state itself shall say what kind of a system the people may have."
>
> (Debates, p. 1526)

Pierce believed that the uniform taxation rate was more fair to the people of the state, and also declared that he wished to see bonds of all types restored to taxation. He

called for the removal of taxation of the debtor class, for he could see no reasons why a person who had a $2500 mortgage on a $5000 home should have to pay taxes on the full amount, when actually he did not own the complete house. He warned the people of the state against the classification of property on the grounds that this would permit the legislature, composed mainly of supporters of the corporations, to decide and set the taxation rates of the various forms of property. (Debates, p. 1527)

Mr. Evans expressed a somewhat different view from the others presented, believing that constitutions are frameworks of government and should not contain specifics on subjects such as taxation. He said: "I am opposed to all constitutional rules on the subject of taxation." (Debates, p. 1546)

After several day's debate, some of which became quite heated, on May 2, the minority report was substituted for the majority report by a vote of 74 to 36. (Debates, p. 1550) Most of the debate which followed dealt with the same conflict between classification and uniformity.

Mr. Harris of Hamilton County delivered a speech supporting the classification of property. Most of his talk was devoted to the presentation of statistics to support his opinions. At no time did he show how the classification of property would be beneficial to the people of the state. Mr. Hahn of Cuyahoga County joined him in this support. He declared that the uniform taxation theory was neither sound nor sane, for it did not permit a fair distribution of taxes. Mr. Antrim, of Van Wert County, also supported the classification of property, believing that such a method of taxation was more elastic. He stated that all the better know economists of the country favored this type of taxing plan, and he added that it would be the savings of the "little man" that would be protected, for these would not be as heavily taxed as the larger savings of the rich man. (Debates, p. 1588)

The debates lasted for two days, but few original arguments for or against the measure in the minority report were presented. The delegates tended to reinforce the arguments already presented on both sides by their fellow Convention members. Mr. Fluke, of Ashland County, an opponent of the classification of property, emphasized the appearance before the Committee of a group of businessmen who desired the classification of property. He reminded the Convention that these men did not claim that this new system was morally right or just, but that the best argument that they presented was one based on expediency. (Debates, p. 1644)

It seems that by May 7, the delegates who supported the classification plan were beginning to realize that their proposals were going to come down to defeat, and the debates became somewhat more heated. President Bigelow turned his chair over to the vice-president of the Convention and spoke to the Convention from the floor, appealing to the supporters of the classification plan to permit the Convention to carry the question to the voters. Bigelow did not believe that it was the duty or right of the delegates to decide the question. Rather, he felt that it was the duty of the Convention to put the question into such a form that could be presented to the voters of the state, so that they would determine what they felt the Constitution should say on the subject. Bigelow wanted the voters to be able to vote for classification, for uniformity, or against both, as they might choose. (Debates, p. 1659 f.)

At the end of the morning session on May 7, the vote was taken on the minority report, as it had been amended by the Convention at that point. The question being,

"Shall the proposal as amended pass?," the yeas and nays were taken and the vote was 53 yeas, 54 nays. The proposal was thus voted down by the Convention and lost.

At that point, the Convention did not have any proposal on taxation before it. Mr. Fess, of Greene County, brought up the matter for reconsideration at the afternoon session on May 7. He said that he did not believe the Convention should adjourn without acting upon the taxation problem. It was decided not to drop the question just because 35 members of the Convention opposed uniform taxation. Mr. Fackler expressed the view of many of the delegates:

> "...let us not do a foolish thing by dropping this taxation proposition because the Convention is unalterably divided on classification and uniform rule. I hope you will vote to reconsider the vote of this morning, and if we can not do anything else on the subject of taxation, let us adopt sections 7, 8, 9, and 10, which provide for the income tax, the inheritance tax, the franchise tax, the excise tax, the production tax, and the provision whereby the municipalities shall make arrangements for the liquidation of their debts. We can do that much.
>
> I am simply appealing to the sober, good sense of the Convention not to throw down an opportunity to make progressive legislation on the taxation question because we are divided on the features of it. Let us do something that will be regarded by everybody as a step forward in the matter, and let us not throw away an opportunity because of rancor that may have been injected in this debate because of the uniform rule and classification."
>
> (Debates, p. 1669)

The motion to reconsider was passed. A proposal was submitted to the Convention by Mr. Anderson of Mahoning County to amend sections 1, 2, and 6 of Article XII, and to add to it sections to be known as sections 7, 8, 9, and 10, relative to taxation, and the proposal was passed by the Convention by a vote of 37 to 31. The proposal was finally passed, after third reading, by a vote of 73 to 32, with few changes as follows:

Article XII

> Sec. 1. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.
>
> Sec. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school house, houses used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

Sec. 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

Sec. 7. Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

Sec. 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.

Sec. 9. Not less than fifty (50) per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate.

Sec. 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.

Sec. 11. No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless in the legislation under which such indebtedness is incurred or renewed, provision is made for the levying and collection annually by taxation of an amount sufficient to pay the interest on said bonds, and provide a sinking fund for their final redemption at maturity.

The provision on uniformity in taxation of all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and all real or personal property was included in the proposed revision of Article XII as Section 2, and was essentially the same provision which had been developed at the 1851 Convention. Again, in 1912, there had been a lot of debate, but little change in the realm of uniformity.

Appendix A. Majority Report of the Standing Committee on Taxation

Proposal to submit an amendment to Article XII, Sections 2, 3, and 4, of the constitution, and to renumber present Sections 5 and 6 as Sections 6 and 7, respectively--relative to taxation.

Resolved, by the Constitutional Convention of the State of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Section 2. The general assembly shall provide for raising revenue sufficient to pay the expenses of the state, and the interest on the state debt, for each year, by excise taxes on successions or inheritances and on the business and franchises of corporations, and by assessment upon the counties of the state, or so many of the sources of revenue aforesaid as the general assembly may deem best.

Section 3. Every assessment upon the counties of the state under the preceding section, shall be apportioned among such counties ratably in proportion to the aggregate amount expended during the preceding year in each county and all political subdivisions thereof.

Section 4. Laws shall be passed applicable to all counties which may elect to be governed thereby, pursuant to section 6 hereof, providing that the revenue necessary for all purposes of such counties, and all taxing districts therein, shall be raised by taxes levied on the property therein described, which property may be classified; and if it be classified the taxation shall be uniform on all property belonging to the same class, though the rate imposed upon property of one class may differ from that imposed upon property of another class, provided, that bonds of the State of Ohio and of any city, village, hamlet, county, township, or board of education therein shall be exempt from taxation.

Section 5. Laws shall also be passed, applicable to all counties which may not elect to be governed by the laws to be passed under section three hereof, providing for raising the revenues necessary for such counties and all taxing districts therein by taxing under a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property therein, according to its true value in money, excepting bonds of the State of Ohio, bonds of any city, village, hamlet, county, or township in this state, and bonds issued in behalf of the public schools of Ohio, and the means of instruction in connection therewith, which bonds shall be exempt from taxation; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or appeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law.

Section 6. At the general election in November, 1915, and every ten years thereafter, the general assembly shall submit to the electors of each county

the question whether the revenues necessary for such county and all taxing districts therein shall be raised under the laws then and thereafter passed under section three hereof. If on any such submission the negative votes exceed the affirmative votes in any county, the general assembly may re-submit such question to the electors of such county at any other November election. If on any such decennial or special submission the affirmative votes exceed the negative votes in any county, such county and all taxing districts therein shall be governed by the laws passed pursuant to section three hereof, until on a decennial submission the negative votes shall exceed the affirmative votes. But no such change of system shall invalidate taxes theretofore assessed and levied pursuant to law.

Resolved, That section 5 of said article be renumbered as section 6, and that section 6 of said article be renumbered as section 7.

Appendix B. Minority Report of the Standing Committee on Taxation

Section 1. The general assembly shall never levy a poll tax.

Section 2. Property shall never be so classified as to permit taxes to be levied at different rates for different classes, but all real and personal property, tangible and intangible, shall be taxed by a uniform rule according to its true value in money; but burying grounds, public school-houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, personal property to an amount not exceeding two hundred dollars for each individual, and deductions of bona fide debts from credits, may, by general laws, be exempted from taxation; but all laws providing for such exemptions shall be subject to alteration or repeal.

Section 3. All property employed in banking, shall always bear a burden of taxation equal to that imposed on the property of individuals.

Section 4. The general assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay the interest on the state debt.

Section 5. No tax shall be levied, except in pursuance of a law; and every law imposing a tax, shall state, distinctly, the object of same, to which only, it shall be applied.

Section 6. Except as otherwise provided in this constitution the state shall never contract any debt for purpose of internal improvement.

Section 7. The maximum rate of taxes that may be levied for all purposes shall not in any year exceed ten mills on each dollar of the total value of all property, as listed and assessed for taxation, in any township, city, village, school district, or other taxing district. Additional levies, not exceeding in any year a maximum of five mills, for all purposes, on each dollar of the total value of all the property therein, as listed and assessed for taxation, in any taxing district, may be levied when such additional levies are authorized by a majority vote of the electors voting thereon at an election held for such purpose; but in no case shall the combined maximum rate of taxes for all purposes, levied in any year in any township, city, village, school district, or other taxing district exceed fifteen mills on each dollar of the total value of all the property, as listed and assessed for taxation in such district. No county, city, village, school district, township, or other taxing district shall ever create or incur a net indebtedness in excess of one per cent, for county purposes, four per cent, for city or village purposes, one per cent for school purposes and one per cent for township or other taxing district purposes, of the total value of all the property, as listed and assessed for taxation in such county, city, village, school district, township, or other taxing district. No indebtedness not payable out of current receipts shall hereafter be created, incurred, refunded, renewed, or extended without at the same time a co-incidental

tax being levied, which shall be maintained sufficient to pay principal and interest at maturity.

Section 8. Laws may be enacted providing for the taxation of the right to receive or succeed to estates, and such tax may be uniform or it may be so graduated as to tax at a higher rate the right to receive or to succeed to estates of larger value than to estates of smaller value. A portion of each estate not exceeding twenty thousand dollars in value may be exempted from such tax.

Section 9. Laws may be enacted providing for the taxation of incomes, which tax may be either uniform or graduated, and either general or confined to incomes derived from investments not directly taxed in this state, but a part of each income not exceeding three thousand dollars in any one year may be exempt from such tax.

Section 10. Taxes may be imposed upon the production of coal, oil, gas, and other minerals.

Section 11. Revenues for the payment of the expenses of the state may be provided by assessment upon the counties, but every such assessment shall be apportioned among all the counties ratably in proportion to the aggregate amount expended during the preceding year in each county by the county and all political subdivisions thereof.

Delegation of Legislative Power
Article II, Section 26

History of Section 26, Second Clause: The 1851 Convention

The second clause of Section 26 of Article II of the Ohio Constitution was the subject of considerable debate in the Ohio Constitutional Convention of 1850-51. In its present form, Section 26 requires, in the first clause, that all laws of a general nature have a uniform operation throughout the state, and in the second: "nor, shall any act, except such as relates to public schools, be passed to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution."

In its original form this clause was found in Section 31 of the Legislative Article being considered by the Convention, reading as follows:

> "No power of suspending laws shall be exercised, unless by the General Assembly, nor shall any law be passed contingent upon the approval or disapproval of any other authority, except as provided in this Constitution."

During early consideration of the section and in response to inquiry as to the meaning of the underlined clause a delegate explained:

> "We have been in the habit of passing laws in the Legislature and submitting them to the people. For instance, we authorize a subscription upon turnpike roads and railroads running into cities, and it becomes a law provided people vote for it, and a good many other things of this kind . . ." [1]

The section was proposed to prevent all that, he explained, noting that the Constitution provides for certain laws that the people may vote upon.

Strong opposition was immediately voiced by one delegate, who opposed such a broad restriction on legislative power. He was, he said, "in favor of restricting the Legislature, and any and every portion of the people, with reference to the exercise of the power of subscribing money to be used by taxation for works of internal improvement. And this was necessary in order to protect the rights of minorities. But taking the case of a law, affecting certain localities, such as towns and cities exclusively, and not relating to other portions of the State, could there be any more desirable privilege exercised by the Legislature, than to submit such a law for the approval of the people to be affected by it . . . What could be the objection? But here, gentlemen, we are undertaking to say by this section, that, in all future time, the Legislature should never do such a thing . . ."[2]

Another, who had served on the committee which drafted the provision, reiterated that acts of the legislature authorizing local votes for stock subscriptions had been brought to the committee's attention, that "the committee considered this thing of compelling minorities to construct public works in which they could have no earthly interest, to be the fruit of a most anti-democratic and tyrannical principle; and it was to prevent the exercise of this power, that this latter part of the section was drafted."[3]

An issue discussed at length throughout the ensuing proceedings was on the one

hand that the language was aimed at the evils inherent in the specific practice of voting stock subscriptions and on the other that the convention had already agreed to the principle denying to local governments the right to subscribe for stock for internal improvements and that one constitutional provision on the subject appeared to be enough. Another hailed the specificity of the stock prohibition and called for striking out Section 31 as too indefinite in meaning.

Other proponents expanded the debate by urging that it "was the object of this provision to prescribe that the law-making power shall remain with the Legislature, in order that the citizen may know exactly where to look for it."[4] His and others' position was that the constitution should give exclusive law making power to the legislature and that the power should be non-delegable. One explained:

> "The law-making power is by its very terms vested in a General Assembly. The compact entered into by every citizen is this, that the General Assembly shall have the power to declare what is or is not law, but a practice has grown up of devolving this power upon the people or voters in certain localities--and as this practice is admitted to be wrong in principle, this section expressly settles the question, denies the power, and commands the General Assembly to do its duty, to declare what shall be or shall not be law, without leaving the effect or operation of its acts to remain contingent upon the vote or approval of any other body. Whether a law, whether a rule of action shall be established, declared obligatory as law, must be settled by the General Assembly, where of right it belonged, and not to be left to become obligatory as law upon the will or action of one or many. The section means this, and in my humble opinion, can mean nothing else. No law shall be passed to take effect upon a contingency of the approval of others. The question presented is, who shall declare the law. This duty is required to be performed exclusively by the General Assembly." [5]

Some difference of opinion was registered as to the constitutionality under such language of submitting to local vote the question of whether schools should be constructed. Some assumed it would prohibit this practice, as well as the practice of submitting to local vote the question of adopting certain school systems.[6] As to the former, however, a clear distinction was recognized:

> "The two questions are wholly distinct. The law prescribes the rule, ordains the regulation, grants the power; whether the people will exercise this grant of authority, may well rest upon their votes. The power to build school houses, to raise the taxes, is found in the law, and whether this power shall be granted to school districts, and on what conditions it may be exercised, must be decided by the General Assembly; but whether this authority, when granted, shall be exercised, is no part of the law. The law is as much a law of the State, whether a single school house is built or not. There is the law; you may read it on the statute book; whether it shall be law or not, depends upon no contingency whatever. It is the difference between the granting and the exercise of an authority; the one must be given by the General Assembly; the other may be exercised or not, just as the individuals see fit."[7]

In the course of debate on the subject several references were made to a Pennsylvania case in which the court had recently ruled that a law was unconstitutional where it was to take effect upon a vote of the people in particular localities, holding that the power to declare law was vested in the General Assembly alone. It was argued by opponents of legislative delegation, supporting the second clause of Section 31, that it settled the same question as the Pennsylvania Supreme Court had settled in Parker v. Commonwealth, 6 Barr Pa. State Reports 507 (1847). The challenged law gave citizens of certain counties the power to decide by a vote whether the sale of wine and liquor should be continued and imposed a penalty for sale where a majority opposed such sale.

The opinion in the Parker case distinguished laws authorizing local votes to accept or reject a common school system as "complete and perfect laws, drawing the principle of life from the creative power of the legislature, and looking to no other authority to invest them with the compulsive power of a rule." Said the Court:

> "A short examination of their scope, intent, and mode of operation, will make this manifest, and prove that, unlike the act (before the court) . . ., they do not make the repeal of former laws, and the creation of new substantial ones, to depend upon the fiat of the popular vote . . . It is true that the citizens are called to decide by their votes, whether common schools shall be established within their precincts. But for what purpose? Not to determine whether the acts of Assembly shall become laws."[8]

A proponent of Section 31 pointed out this distinction and urged that the section be retained in order to accomplish the same result as had been accomplished by judicial decision in Pennsylvania.

That representative form of government requires such a provision was stressed by others:

> "The law-making power, instead of being an integral whole, vested under limited and strictly defined powers; in a body of representatives, acting under a sense of direct responsibility to the people, will be reparceled out to the people, in townships, cities and counties; and it becomes, from an organized and well understood power in the government, a power boundless in its character and irresistible in its tendency . . . if I desire a government, limited in its powers, clearly defined in its spheres, protecting alike the rights of majorities and minorities, I must battle for the integrity of the legislative power to be exercised, not sometimes in my township, sometimes in a county, but by the authorities recognized and defined in the organic law of the State."

Still the prohibition was not acceptable to a number of vocal delegates, and debate continued. The substitute section then being considered read as follows:

> "All laws of a general nature, shall have a uniform operation, not shall any law be passed, to take effect upon the approval of any other authority then the General Assembly, except as otherwise provided in this constitution."

An opponent still believed "that the proposed section would utterly prohibit

the building of a school-house, or anything else, by means of a tax law, which would require a vote of the people, to carry it into operation. "It has been said that," he pointed out, "by submitting laws to the people, we delegate legislative power. But, if in the exercise of power delegated by the representative, the sovereign, the principal, ratify the thing done, what amazing wrong was there?"[9] He also meant to maintain, he said, that if the people of a given locality were to be affected by any law, it was reasonable for the people of that locality to be allowed to say whether they will have the law or not.

Another was understood to say that the representatives received their power from the whole people, and to ask whether the representatives had the right to parcel out to portions of the people that power which they receive from the whole people.[10]

The section was retained in Report No. 2 of the Standing Committee on the Legislative Department, but because of apparent confusion as to its effect upon the school tax and school system laws an amendment was adopted excepting acts "upon the subject of the public schools."

A motion to strike the entire section followed immediately. It was defeated, with the spokesman for defeat making the following points:

> "The evil to be guarded against was one that was becoming very prevalent. Laws during every session were passed to take effect after a vote of the people upon them. It was an assumption by the people of the function of the General Assembly. Laws under such circumstances were passed which otherwise never would be and their framers excused themselves under the fact that the people were to accept them before they were bound by them. The question presented is shall we have a republican government or a pure unadulterated democracy . . ."[11]

Another motion to strike was offered, with a substitution for the section, reading as follows:

> "The Legislative powers of this State being vested in the General Assembly, no law, passed by that body, shall ever be submitted to a popular vote for adoption or rejection, except in reference to public schools - and, as otherwise provided in this Constitution."[12]

Although this proposal seemed more to express the object of its inclusion, based on proponents arguments for it and the assumption from the beginning that the section dealt solely with delegating legislative power to the people, it was regarded as a proposition coming from "an enemy" and was summarily rejected.

Section 26 was slightly revised, to its present form, by the Convention's Committee on Revision, Arrangement and Enrollment.

Delegation of Legislative Power

Convention debates reveal some confusion regarding the object of adopting the second clause of Section 26 of Article II. The non-delegability of legislative power would appear to be inherent in Section 1 of Article II, vesting legislative

power of the state in a General Assembly. It had been so vested, however, by Section 1 of Article I of the Constitution of 1802, and the Convention was obviously concerned about the past practice of referring certain questions to local vote and uncertainty over whether an Ohio court would follow the rule recognized by the Pennsylvania state court without benefit of specific restriction upon legislative delegation. An apparent purpose of adopting the clause was to prohibit the referral of legislative power to the people, but the differentiation between making the law and exercising powers conferred by the law is at best a murky one if one is to rely on intent as expressed in convention debate. The prohibition in Section 26 is on the passage of any act "to take effect upon the approval of any other authority." Proponents of the proposal were evidently concerned with delegation of the authority to make laws, but as the preceding discussion illustrates, their discussion and debate could have provided little help to the courts in subsequent challenges to legislation as being in violation of the section. In 1940 the Ohio Supreme Court acknowledged the overlay and prior difficulty experienced in applying Section 26 when it pointed out: [13]

> "Under the doctrine of the distribution of powers, legislative power cannot be delegated. As may be perceived by an examination of the authorities . . . the constitutional inhibitions against the passage of an act effective only upon the approval of some other authority are so akin to each other than the currents of discussion naturally cross and intermingle . . ."

With the Constitution of 1802, not 1851, controlling, the Ohio Supreme Court had to resolve a challenge to legislation authorizing county commissioners to subscribe to capital stock of a railroad company and providing that the subscription not be made until the assent of a majority of the electors of the county is first obtained at an election held for that purpose, in Cincinnati W. & Z. R.R. Co. v. Clinton County Commissioners, 1 Ohio St. 77 (1852). One ground of challenge in this frequently cited case was that the act was not passed into law by the General Assembly but was made to depend for its effect upon a vote of the people of the county, representing an attempt on the part of the general assembly to delegate its legislative power. The Court rejected it, reasoning as follows:

> "That the general assembly cannot surrender any portion of the legislative authority with which it is invested, or authorize its exercise by any other person or body, is a proposition too clear for argument, and is denied by no one . . . But while this is so plain as to be admitted, we think it equally undeniable that the complete exercise of legislative power by the general assembly, does not necessarily require the act to so apply its provisions to the subject matter, as to compel their employment without the intervening assent of other persons, or to prevent their taking effect, only, upon the performance of conditions expressed in the law."[14]

The opinion then distinguishes between "laws which imperatively command or prohibit the performance of acts, and those which only authorize or permit them."[15] The Parker case from Pennsylvania was specifically distinguished as involving imperative legislation, invoking criminal penalties. Examples given of permissive legislation included laws to authorize county commissioners to erect buildings and levy taxes for the purpose, laws allowing taxpayers to determine by vote upon the erection of schools, as well as acts of incorporation which the court stated

necessarily require acceptance by incorporators.

> "But because such discretion is given, are these, and all similar enactments to be deemed imperfect and nugatory? . . . In what does this discretion consist. Certainly not in fixing the terms and conditions upon which the act may be performed, or the obligations thereupon attaching. These are all irrevocably prescribed by the legislature, and whenever called into operation, conclusively govern every step taken. The law is, therefore, perfect, final, and decisive in all its parts, and the discretion given only relates to its execution. It may be employed or not employed--if employed it rules throughout; if not employed it still remains the law, ready to be applied whenever the preliminary condition is performed. The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."[16]

Finally, the Court held, "These views lead to the conclusion that an enactment is not imperfect which makes its execution depend upon the contingent approval of persons designated in it . . ."[17] However, Section 26 of Article II of the new Constitution was not before it.

State ex rel. Allison v. Garver, 66 Ohio St. 555 (1902) involved challenge of a statute "to limit the compensation of county officers in Holmes county" that called for submission of the county salary law to the people of the county. In a very brief opinion the Supreme Court upheld the challenge on the ground that the statute conflicted with both the first and second clauses of Section 26. On the latter point the Court cites statutory language to the effect that if a majority of the votes case on the proposition are in favor of a salary law, the act "shall take effect and be in force" from and after a day named, otherwise that the act should be void. Said the Court:

> "Hence the taking effect, as well as the enforcement of the statute, is made to depend on the approval of another authority than the general assembly, namely, the will of a majority of the electors. The entire legislative power of the state is vested in the general assembly (Constitution, Art. 2, Sec. 1), and even without the limitation contained in Sec. 26, Art. 2, it could not be delegated."[18]

The opinion in the Garver case is short on rationale. The opinion distinguishes cases where the law was held to take effect prior to a vote and where the court had found a legislative intention that the law should not be enforced until a condition precedent was performed. Also distinguished without explanation was a holding that an act "was a complete law when it had passed through the several stages of legislative enactment and derived none of its validity from the vote of the people."[19]

The distinction between unlawful delegations of the power to make law and the lawful delegation of discretion as to its execution have been recognized in several more recent challenges to laws under Section 26 of Article II. In State ex rel. deWoody v. Bixler, 136 Ohio St. 263 (1940) the constitutionality of a county poor relief distributing fund statute was questioned. It provided that county commissioners

may, by a two-thirds vote, and shall, if the taxing authority of any subdivision administering poor relief shall request it, create such a fund. One of the questions raised was its constitutionality under Section 26 because creation of the fund was dependent upon action by the county commissioners, either upon their own volition or upon request of a taxing authority. The Court upheld the statute, reasoning:

> "There is a distinction between a legislative declaration that an enactment shall not become a law until approved by some authority other than the General Assembly itself, and a statutory provision which has become law but depends for its execution upon a contingency or an eventuality. The former is prohibited; the latter is not.
>
> The state Legislature undoubtedly has power to create by positive enactment such a poor relief distributing fund in each county and, if that power exists, there seems to be no reason why the Legislature would not also have the power to require the county commissioners to create the fund upon a contingency such as the request of a subdivision."[20]

Under another approach, the Court said that the statute "does not confer upon the county commissioners or the controlling body of a subdivision any authority to legislate, but at best merely bestows the right to make a factual determination as to the necessity of creating a poor relief distributing fund."[21]

This is the opinion in which the Court finds the currents of delegation cases to "cross and intermingle," and although Section 26 is ostensibly discussed, the Court does not distinguish the Cincinnati case, cited as an authority, but decided under the Constitution of 1802.

In his dissent in a very recent case, dealing not with Section 26 of Article II but raising questions about delegation of municipal law-making powers, Judge Day of the Cuyahoga County Court of Appeals terms "classical" the distinction in the Cincinnati case between unlawful delegation of the power to make law and the lawful delegation of discretion as to its execution. "Classical or not," however, he notes "the statement . . . does not throw much light on the constitutional status of a particular delegation of authority unless and until, there is a supply of detail either in the delegation from the legislature itself, or from the executive, or through judicial application. While the general rule is that no delegation of legislative power to <u>make</u> the law is valid, it is clear that every regulatory statute involves some exercise of guided power to implement by the agency with responsibility for effectuating the policy of the law. The distinction between power to legislate and power to implement is only the beginning. The difficult issues arise when the method a legislative authority adopts to implement its policy raises the question whether the power to legislate rather than the power to implement has been delegated."[22]

The Cincinnati case is illustrative of the rationale of the older cases that upheld legislative delegations of power--i.e. that the power to make law is non-delegable, but that the power to execute the law may be transferred by the legislature to another agency. Later formulas to support delegation have been identified by one commentator as the "contingency doctrine" and the "adequacy of standards" test.[23] Under the former the constitutionality has been sustained of delegations "of the power to determine the existence or absence of certain facts or conditions upon which the operation of the law depends."[24] The text involving adequacy of standards

"evolved from the attempt by legislatures to allow some subordinate agency to take some action not feasible for the legislature itself to take. The legislature protected itself by outlining in advance the 'standards'which would guide and control any important action to be taken by the subordinate."[25]

Belden v. Union Central, 143 Ohio St. 329 (1944) represents a dual test approach. It questioned the validity of statutory authority for the conversion of domestic stock life insurance companies into mutual life insurance companies. The statutory scheme called for approval of the plan by the superintendent of insurance upon a finding of satisfactory financial condition. One attack upon the act was that it constituted an unlawful delegation of legislative power to the superintendent and violated Section 26 by taking effect upon the approval of some authority other than the General Assembly.

As to the first point the Court talked about acts granting administrative agencies "quasi-legislative power" and their validity where the General Assembly "has laid down the policy and established the standards while leaving to an administrative agency the making of subordinate rules within prescribed limits and the determination of facts to which the legislative policy is to apply." It also pointed out that the act in question was "permissive, not mandatory."

Not clearly distinguishing the two points (unlawful delegation and taking effect upon approval), the Court held that "the act definitely defines the legislative policy; that it does establish standards for the guidance of the superintendent in approving or rejecting the plan; and that it does not delegate legislative power, within the meaning of the Constitution."[27] Furthermore,

> "The contention that the act takes effect upon the approval of the Superintendent is without merit. The mutualization takes effect upon his approval, but the act took effect in the manner and at the time for the taking effect of legislative acts as provided by the Constitution."[28]

There years later the Ohio Supreme Court upheld the constitutionality of state minimum wage legislation and found no unconstitutional delegation of legislative power in contravention of Section 26 of Article II where the law gave the director of industrial relations powers to appoint wage boards to recommend minimum wages for women and minors and to accept or reject board findings. Citing Belden, the Court said:[29]

> "It is no violation of the constitutional inhibition against the delegation of legislative power for the General Assembly to establish a policy and fix standards for the guidance of administrative agencies of government while leaving to such agencies the making of subordinate rules within those fixed standards and the determination of facts to which the legislative policy applies."

Judge Day points out: "In this state the traditional 'standards' language is often used to describe the principle that legislative policy setting, coupled with contingency fact finding or the filling in of details by delegate to implement the legislative policy, accomplishes constitutional delegation."[30] But in Cleveland v. Piskura, 140 Ohio St. 144 (1945) he notes, "an attempt to condition policy effectiveness upon the action of a federal agency, the office of price administrator, was struck down by the Supreme Court of Ohio, in part, because delegation went to an entity outside Ohio legislative control."[31]

In the Piskura case an ordinance provided that whoever sells a commodity which is subject to the ceiling price fixed by or under the authority of the United States in excess of such ceiling price so established would be guilty of a misdemeanor. Part of the rationale of the decision was that Congress has pre-empted the field and that states and political subdivisions were without authority to prescribe additional complementary regulations. But beyond this, said the court, "prices are determined by the Price Administrator, a federal agency, over whom council has no authority or control. That body did not and could not establish a policy and fix standards for his guidance. Therefore, in the last analysis the offense is the violation of an order of the Price Administrator. Such an ordinance is invalid because of its attempted delegation of legislative power to a federal agency."[32]

Opdyke v. Security Savings and Loan, 157 Ohio St. 121 (1952) makes a further point about Piskura. Here the statute challenged was one authorizing state building and loan associations to become members of, acquire stock in, and deposit money with a federal home loan bank created by a cited federal act and amendments thereto, including another cited federal law and supplements to these acts as well as laws enacted in substitution therefor. The associations were authorized "to do everything required of or authorized or permitted by the provisions of said acts and laws to members of a federal home loan bank created therein, including among other things conversion into a federal savings and loan association as authorized thereby and pursuant to any rules and regulations prescribed or which may hereafter be prescribed by virtue of and in accordance with said acts and laws; but such conversion shall be made only in the manner and subject to conditions provided in Section 9660-2 of the General Code." Section 9660-2 authorized conversion "as authorized by the acts of Congress mentioned and described . . . and pursuant to rules and regulations prescribed by and in accordance with said acts and laws."

Questions involved the interpretation of a number of laws relating to building and loan associations. The Court upheld the statute against attack and tersely disposed of delegation problems by saying:

> "The power to convert into a federal savings and loan association is granted by the General Assembly . . . In making that grant, the General Assembly has imposed conditions and limitations on the exercise of that power, such as the requirement of compliance with federal laws and with regulations of the federal agency concerned with the question as to whether a particular Ohio corporation should be permitted to become a federal savings and loan association. The imposition of such conditions and limitations on the exercise of the power so granted does not constitute a delegation of legislative power." 33

It was the "imperative" nature of the law in Piskura that made it unlawful, added the Court. Acts which only authorize or permit the performance of acts are not subject to the same standards in determining whether there has been an unlawful delegation.

A vigorous dissent in Opdyke concentrated upon the question of whether the statutes involved constitute an attempt to delegate legislative power to a federal agency. (The majority and dissent took a different view as to whether the question had been properly raised in lower courts, the majority maintaining that it had not.) The dissent argued that "neither the General Assembly nor any administrative officer or department of the government of Ohio has any control or authority over the Congress or any federal bureau authorized by Congress to adopt rules and regulations or fix standards which must be observed and followed when the Ohio association is

thus caused to 'cease to exist' and its articles of incorporation are cancelled and annulled, all of its property and assets are transferred to a new corporation and the power and authority of the Superintendent of Building and Loan Associations over it is terminated."[34]

Annotated in at least two volumes of the American Law Reports is a topic entitled "Constitutionality, construction and application of provisions of the state tax law for conformity with federal income tax law or administrative and judicial interpretation." See 166 A.L.R. 516 and 42 A.L.R. 2d 516. Most cases there compiled support the proposition that a state legislature does not delegate its legislative authority by adopting Congressional legislation that is already in existence. As has been noted in commentary, however, problems arise when a state attempts to adopt prospective federal legislation. The writer of the Comment in the 1963 Wisconsin Law Review, cited above, there argued against application of traditional analysis to tax simplification bills--i.e. bills adopting prospective federal legislation. To the date of his commentary the only court test of the constitutionality of a federalized-state income tax statute incorporating future federal amendments and modifications was Alaska Steamship Co. v. Mullaney, 180 F. 2d 805 (9th Cir, 1950). The Court had said:

> "We think it far from clear that any invalid delegation is attempted. There are, of course, many cases which have held attempts by a legislative body to incorporate provisions into its enactments by reference to future acts or amendments by other legislatures, to be invalid. But where it can be said that the attempt to make the local law conform to future changes elsewhere is not a mere labor-saving device for the legislators, but is undertaken in order to attain a uniformity which is in itself an important object of the proposed legislative scheme, there are a number of precedents for approval of this sort of thing."[35]

In Anderson v. Tiemann, 182 Nev. 393, 155 N.W. 2d 322 (1967) the Nebraska Constitution had been amended to provide: "When an income tax is adopted by the Legislature, the Legislature may adopt an income tax based upon the laws of the United States." The Court held that such amendment granted to the Nebraska legislature the authority to enact income tax legislation which adopts by reference future income tax laws of the United States as they become effective.

In Thorpe v. Mahin, 43 Ill. 2d 36 (1969) the Illinois Supreme Court held that the 1969 income tax act, by making numerous references to the Internal Revenue Code and specifying that terms used in the Act shall have the same meanings as when used in a comparable context in the Code, does not result in a delegation of the General Assembly's law-making power to Congress, where the Act does not contemplate that subsequent changes in the code shall be automatically applied to the Act. The opinion acknowledged: "There is some scholarly opinion, as well as case law from other jurisdictions that the legislature could adopt a statute providing that future modifications of the Code would have consequences in the meaning and application of the Act." However, it found that the legislation before it did not by its terms contemplate automatic application of subsequent changes.

Another instance in which a state constitution had been amended was Garlin v. Murphy, 51 Misc. 2d 477, 273 N.Y.S. 2d 374 (1966). Here the amendment specifically provided: "Notwithstanding . . . any other provision of this constitution, the legislature, in any law imposing a tax or taxes on, in respect to or measured by

income, may define the income on, in respect to, or by which such tax or taxes are imposed or measured, by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision." The prospective aspect of the amendment was not before the court in Garlin. The case held that this amendment supersedes another constitutional provision that prohibits the taxing of undistributed profits.

Wallace v. Commissioner of Taxation, 289 Minn. 220 (1971) involved adoption by reference of the definition of adjusted gross income. The amendment of the federal provision was held to be of no force in the state. The Court reasoned:

> "In considering the issue of whether a change in Federal law may alter the force and effect of provisions in a prior state law governing the same subject, it may be said that the principle which controls is that a state legislature may not delegate its legislative powers to any outside agency, including the Congress of the United States. The reason for this rule is that changes in the foreign legislation may not fit the policy of the incorporating legislature and the person subjected to the changed law would be denied the benefit of the considered judgment of his legislature on the matter. The basic objection derives from the principle that laws should be made by elected representatives of the people responsible to the electorate for their acts"[36]

> "We must accordingly hold that the effect . . . was to adopt the Federal law by reference as it existed at the time that statute was adopted. The legislature did not, or could not, grant to Congress the right to make future modifications or changes in Minnesota law . . ."[37]

These cases are noted as later cases, related to the annotation in volume 42 of American Law Reports 2d. The statement in the 1963 commentary continues to be true that to date the only court test of the constitutionality of a federalized-state income tax statute incorporating future federal amendments and modifications has been Alaska Steamship v. Mullany. The Wallace case held that the statute could not be construed as incorporating future amendments, but it also distinguished Alaska Steamship on the basis that Alaska was a territory, not a state, at the time of the decision.

Footnotes

1. 1 Debates 259 (May 31, 1850)
2. 2 Debates 215 (Dec. 31, 1850)
3. Ibid.
4. 2 Debates 217 (Dec. 31, 1850)
5. Id. at 221 (Jan. 2, 1851)
6. Ibid.
7. Ibid.
8. Parker v. Commonwealth, 6 Barr. Pa. State Reports 507, 524 (1847)
9. 2 Debates 227 (Jan. 2 1851)
10. Id. at 228 (Jan. 2 1851)
11. Id. at 578 (Feb. 11, 1851)
12. Id. at 579 (Feb. 11, 1851)
13. State ex rel. DeWoody v. Bixler, 136 Ohio St. 263, 270 (1940)
14. Cincinnati W. & Z. R.R. Co. v. Clinton County Commissioners, 1 Ohio St. 77, 87, (1852)
15. Ibid.
16. Ibid
17. Ibid.
18. 66 Ohio St. 555, 564 (1902)
19. Ibid.
20. 136 Ohio St. 263, 270 (1940)
21. Ibid.
22. Fuldauer v. Cleveland, 20 Ohio App. 2d 237, 245 (1972)
23. Comment, 1963 Wis. L. Rev. 445, 450
24. Ibid.
25. Id.at 452
26. 142 Ohio St. 329, 342 (1944)
27. Id. at 348
28. Ibid.
29. Strain v. Southerton, 148 Ohio St. 153, 161 (1947)
30. Fuldauer v. Cleveland, supra at 250
31. Ibid.
32. Cleveland v. Piskura, 145 Ohio St. 144, 156 (1945)
33. 157 Ohio St. 121, 154 (1952)
34. Id.at 159
35. 180 F. 2d 805, 816 (1950)
36. Wallace v. Commissioner of Taxation, 184 N.W. 2d 588, 591 (1971)
37. Id. at 593

Ohio Constitutional Revision Commission
Finance and Taxation Committee
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Research Study No. 15

Income Tax
Article XII, Section 8

Section 8 of Article XII was added to the Ohio Constitution as a result of the work of the 1912 constitutional convention. It reads as follows:

> Section 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.

The existence of the section in the Constitution poses a question for those concerned with constitutional revision: If the section were repealed, would the General Assembly have the power to levy a state income tax?

Another question, assuming the answer to the first one is "yes", is: If the section were repealed, and the General Assembly retains the power to enact a state income tax, could such a tax be graduated or progressive (these two terms being assumed to mean the same thing)?

Two questions posed by the language of the section itself are:

1. How should the language "a part of each annual income not exceeding three thousand dollars may be exempt" be interpreted?

2. What does the expression "such incomes" mean?

These four questions will be discussed briefly in this memorandum. Separate memoranda will explore these related constitutional questions:

1. Pre-emption of a tax source by the state.

2. Adoption of federal tax provisions prospectively by the General Assembly.

3. The effective date of tax laws, and laws which contain tax levies and other provisions in the same act.

The 1912 Debates as they relate to the income tax section have been reviewed in Research Study No. 12.

The Power of the General Assembly to Levy a Tax on Incomes

It is almost axiomatic in Ohio that the power to tax is an attribute of the sovereignty of the state, and belongs to the General Assembly pursuant to the general grant of legislative power contained in Section 1 of Article II of the Constitution ("The legislative power of the state shall be vested in a General Assembly"). The power to tax is plenary except as restricted by the Constitution, including restrictions contained in the Bill of Rights.

The Ohio Supreme Court has declared that the power to tax belongs to the General Assembly by virtue of the general grant of legislative power in cases both before and after the 1912 constitutional convention. For example:

> The power of the state to collect taxes for public purposes is an inherent and indispensable incident of sovereignty. Without it no civilized state could discharge its functions. The power would not exist without a written Constitution. The object of constitutional provisions is to regulate its exercise by such limitations and restrictions as will protect the people against unjust or arbitrary action of the governing power. . . . the Constitution provides that "the legislative power of the state shall be vested in a General Assembly." The power to raise revenue for public purposes, being a legislative power, is thus expressly committed to the General Assembly. It is a grant of general power of taxation.
>
> Western Union Telegraph Co. v. Mayer, 28 O.S. 521 (1876)

> The power to tax is an attribute of sovereignty and in this state is included in the general legislative power which is conferred by Section 1 Article II of the Constitution upon the General Assembly without limitation.
>
> Saviers et al. v. Smith 101 O. S. 132 (1920)

Why, then, did the delegates in 1912 deem it necessary to add Section 8 to Article XII? There was little or no discussion about the point that the General Assembly could levy an income tax if it so desired without constitutional authorization. The first effort by Congress to levy an income tax, and a very limited one at that, had been held unconstitutional by the Supreme Court in the case of Pollock v. Farmers' Loan and Trust Co., 157 U. S. 429 (1895) on strictly federal constitutional questions--involving the interpretation of Section 2 of Article I of the federal Constitution which reads "Representatives and direct taxes shall be apportioned among the several states according to their respective members", and which has no counterpart in any state Constitution. Although some states may have felt it necessary to authorize, specifically, an income tax in their constitutions because of the federal decision, this factor did not enter into the discussions in 1912 in Ohio. Rather, it seems clear that both the inheritance and income tax sections of Article XII were proposed by the 1912 convention because of a prior decision in Ohio holding an inheritance tax unconstitutional, not because the General Assembly had no power to levy such a tax, but because of its graduated aspects and exemption aspects. These elements will be discussed later.

However, once a specific authorization has made its way into a Constitution, its repeal can always raise a question of the intention of the people in repealing: were they merely removing from the Constitution some unnecessary verbiage or did they intend, by the repeal, to remove the authority granted?

A Graduated Income Tax

Although it may reasonably be concluded that the General Assembly has the power to levy a tax on incomes without specific constitutional authorization, some doubt exists whether such a tax could be graduated (or progressive) - that is, levied at "different rates on different segments of taxable income." (Kuhn v. Department of Treasury, 183 N. W. 2d 796, 1971, Michigan).

In 1894 the General Assembly imposed a graduated tax on inheritances, or the right to receive an estate. Estates valued at not more than $20,000 were entirely exempt; but estates valued at more than $20,000 were taxed on the entire amount,

at graduated rates. The Ohio Supreme Court held this tax to be unconstitutional in State ex rel. Schwartz v. Ferris, 53 O. S. 314 (1895). The basis for the decision was not the inability of the General Assembly to levy such a tax, and the Court cited the Telegraph case as showing that there is no validity to the argument that the legislature is restricted by Section 2 of Article XII to taxing property, and only property. However, the exemption feature and the graduation of the amount of the tax by imposing a tax at a greater rate on larger estates were held to violate the equal protection clause of Section 2 of Article I of the Ohio Constitution which reads: "Government is instituted for their (the people's) equal protection and benefit . . . "

The "equal protection" clause restrains the legislature from creating classifications which are unreasonable. "Legislation must apply alike to all persons within a class, and reasonable grounds must exist for making a distinction between those within and those without a designated class; within the limits of those restrictive rules, a legislative body has a wide measure of discretion." State v. Buckley, 16 O. S. 2d 128 (1968).

In the Ferris case, the Court held that an exemption must operate equally for all, and the rate of taxation must be the same on all estates. The General Assembly proceeded, in 1904, to levy a new inheritance tax, which contained a $3,000 exemption applied to all estates, and a flat tax rate of 2% applicable to all estates. This act was upheld by the Supreme Court in 1904 in State ex rel. Taylor v. Giulbert, 70 O. S. 229. In the Ferris case, the Court had indicated that the maximum exemption which could be permitted was $200 (reasoning from a constitutional provision permitting a $200 personal property exemption), but this statement was rejected by the Court in the subsequent Guilbert case. In upholding the new act, the Court said:

> "We are of the opinion that an excise tax which operates uniformly throughout the state and applies equally to all the subjects embraced within its terms cannot be said to deprive any one of the equal protection of the law, or in any manner to violate the bill of rights, or any section of the constitution. . . . When it is determined . . . that the authority to impose the tax is conferred by the general grant of legislative power, then the selection of the subjects on which the tax will be imposed must be within the legislative competency."

If the decisions seem inconsistent in the treatment of the exemption question, the matter was resolved by the 1912 convention which added section 7 to Article XII, authorizing a graduated inheritance tax, and permitting "a portion of each estate not exceeding twenty thousand dollars" to be exempt from taxation.

It seems apparent that section 8 of Article XII, authorizing the graduated income tax, was also drafted with the inheritance tax history fresh in the minds of the delegates. In 1919, the Supreme Court upheld the constitutionality of a city tax on occupations as an excise tax (State ex rel. Zielonka v. Carrel, 99 O.S. 220). In the course of the opinion, the Chief Justice reviewed the various provisions of Article XII. He laid to rest the contention that an income tax is a property tax, (therefore it was not subject to the uniform rule) and made the following additional comments, obviously dictum in relationship to the subject matter of the decision:

> "We are likewise of the opinion that the power to levy taxes . . . comes from the grant in Section 1. Article II, and that there was no necessity for the inclusion in the Constitution of new sections 7, 8 and 10, Article XII, except for the purpose of providing for the graduated method of levying taxes and for the permissive feature of exemption of the lesser inheritances and incomes.
>
> . . . . Section 7 of this article is a new product, and is in no sense a limitation of power, being rather a special grant, and has to do with taxation on inheritances.
>
> . . . Section 8 of the same article, providing for the taxation of incomes, for the same reason cannot be said to be a limitation of power, nor can it be said to be equivalent to a conclusion that without such express grant incomes might not be the subject of taxation. It is much more likely that the incorporation of this new section by the constitutional convention of 1912 was occasioned by a desire on the part of its members that the method of levying taxes on incomes should be precisely similar to taxation of inheritances, in so far as it might relate to graduation of rates and exemption."

The General Assembly was given clear powers to determine exemptions from taxation by the constitutional amendment adopted in 1929 which permitted the classification of personal property for taxation purposes. The exemption language, in Section 2 of Article XII, reads: ". . . without limiting the general powers, subject to the provisions of article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed . . ."

However, both classification of subjects of taxation and determination of exemptions are still subject to "equal protection" which means, as noted above, that reasonable grounds must exist for classification, and that the legislation must apply alike to all persons within the class.

In Saviers et al v. Smith, cited above, the Supreme Court upheld a tax on motor vehicles against a number of challenges, including the contention that, because it was a graduated tax, it violated the "equal protection" clause. The Court, however, without much discussion of the graduated aspects of the tax, noted that the classifications of different types of motor vehicles and the exemptions set forth in the law were all reasonable, and therefore constitutional. It would thus appear that classifications based on types of personal property as subjects of different amounts of tax, even though all fell within the general classification of personal property known as "motor vehicles" was proper. However, classification of personal property solely according to value and the levy of different rates of tax on different classifications was held unconstitutional by the Court in Kroger Co. et al. v. Schneider, 9 O. S. 2d 80 (1967). It is the latter case which renders of doubtful constitutionality a graduated tax on incomes without specific constitutional authorization.

Syllabus No. 2 of the Kroger case is as follows:

> "When personal property has been properly classified for purposes of taxation, all such property within the same class that has not been lawfully exempted from taxation must be assessed and taxed in the same manner; and the equality of burden required by the Constitution of Ohio cannot exist unless the rate of assessment

and the rate of taxation borne by all such personal property within the same class are uniform."

The "equality of burden" is derived by the Court from Section 2 of Article I, the equal protection clause, and not from Section 2 of Article XII, which specifically applies the uniform rule to real property taxation only.

The Kroger case involved the taxation of the inventory of merchants, held for retail sale, which was the classification deemed by the Court to be a proper subject of taxation. Within this general classification, the first $100,000 of inventory was assessed at a lesser percentage of true value than the amount of inventory over $100,000; and the assessed percentage of the first $100,000 was to be gradually reduced until it was assessed at 50% of value, while the inventory over $100,000 would continue to be assessed at 70% of value. This, the Court held to be unconstitutional. In reviewing the history of the constitutional changes, and the recommendations which led to the adoption of the amendment to Section 2 of Article XII in 1929, Judge Matthias stated that graduated taxation of personal property was not intended by the 1929 amendment, only reasonable classification and determination of exemptions. Moreover, according to the decision, the different rates of assessment cannot be viewed as a form of exemption. Exemption, held the Court, "is freedom from the burden of enforced contributions to the expenses and maintenance of government or an immunity from a general tax."

It is not possible to predict with certainty how the Court would view a graduated income tax in the absence of a specific constitutional provision authorizing it, but it is likely that the reasoning of the Kroger case would be applied, and such a tax would be viewed as violating the "equal protection" clause of Section 2 of Article I.

Other States. Graduated income taxes have been prohibited by the Constitutions of some states. The Michigan Constitution prohibits an income tax "graduated as to rate or base", although this provision has not been held to prohibit classification of taxpayers as individuals, corporations, and estates or trusts and applying different rates to each class; it also permits the use of federal adjusted gross income, which has already had applied to gross income certain exclusions, as the base; permits exemptions; and permits tax credits. (Kuhn v. Department of Treasury, 183 N.W. 2d 796, 1971). The new Illinois Constitution provides: "A tax on or measured by income shall be at a non-graduated rate." This provision expresses the culmination of the attempts in Illinois to levy an income tax. The legislature first enacted such a tax in 1931, when the Illinois Constitution was silent on the question of an income tax. The Illinois Supreme Court, in Bachrach v. Nelson, 394 Ill. 579 (1932) held that the tax, which was graduated and applied only to personal and fiduciary incomes, was unconstitutional because the legislature can only impose ad valorem taxes on property, (and taxes on certain occupations and profession); the income tax was viewed by the Court as a property tax which could only be proportional to value and could not be graduated. This case was overruled, however, in 1969 in the case of Thorpe v. Mahin, 43 Ill. 2d 36, which permitted to stand a non-graduated income tax (no longer viewed as a property tax), permitting exemptions to be made.

Graduated income taxes have also been held unconstitutional in Pennsylvania and Washington, but the basis for the decision in each case was a constitutional provision that "All taxes shall be uniform upon the same class of subjects . . ." The language of this provision, obviously, differs from uniform rule of the Ohio Constitution; but it may be said to be not too different from the "equal protection"

clause of the Ohio Constitution as interpreted by the Supreme Court in the Kroger case.

Federal Income Tax The progressivity of the federal income tax has been upheld by the U. S. Supreme Court against the charge that such a feature violated the "due process" clause of the fifth amendment. The 16th amendment to the federal Constitution, adopted in 1913 after the original income tax was held unconstitutional, provides: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." Among the early cases upholding the constitutionality of the progressive income tax was Brushaber v. Union Pacific Railroad Co., 240 U. S. 1, 36 S. Ct. 236, 60 L. Ed. 493 (1916). The "equal protection" clause of the 14th amendment applies only to state action.

Exemptions

At the time of the 1912 convention, the interest of advocates of an income tax was focussed on Wisconsin, which pioneered among the states in levying an income tax on personal incomes. An income tax provision had been added to the Wisconsin Constitution in 1908 and read, as it still reads:

> "Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided."

Applying the hindsight of historical perspective, it seems unfortunate that the convention delegates did not borrow the Wisconsin language at least with respect to exemptions, instead of inserting the language which now appears in Section 8: " . . . but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation." There was no federal income tax in 1912, however, and the problems of exclusions, adjusted gross income, taxable income, exemptions, deductions, and tax credits were not as familiar to the 1912 delegates as they are to the drafters and administrators of state income taxes today. As noted before in this study, the exemption provision of the Ohio income tax section was undoubtedly modeled on the inheritance tax provision which, in turn, was drafted the way it was in order to enable the General Assembly, if it so chose, to enact the type of inheritance tax law which had been held unconstitutional by the Supreme Court of Ohio.

If Section 8 were silent on the exemption question, Section 2 of Article XII would contain sufficient authority for the General Assembly to enact exemptions; the question of constitutionality would then be resolved by testing "reasonableness" or other measure found appropriate under the "equal protection" or other suitable provision of the Ohio Bill of Rights, or the 5th or 14th amendments to the federal constitution.

The personal income tax law enacted by the 109th General Assembly (Chapter 5747. of the Revised Code, Am. Sub. H. B. 475) provides for exemptions designed to fall within the requirements of this language by permitting (section 5747.02) "an exemption of $500 each for the taxpayer, his spouse, and each dependent up to a maximum of $3000 on each separate income tax return . . ." Whether "each separate income tax return" is the same thing as "each annual income" is a possible subject for litigation.

Other interpretations of the present law may also be required because of this language. Adjusted gross income, as computed for federal income tax purposes, is the

base of the Ohio income tax; adjusted gross income, however, has already had certain income excluded from it pursuant to federal law. The Ohio law varies the exclusions somewhat from the federal, by including some types of income excluded from taxation under the Internal Revenue Code, and excluding some types of income not excluded under the Internal Revenue Code; for example, the $4000 exclusion of retirement income provided by Am. Sub. S. B. 464. Exclusions of certain types of income before determining the income upon which tax liability is based may well be justified under the Ohio constitutional provisions because of the authority in Section 8 to apply the tax to "such incomes as may be designated by law" or because of the general authority of the legislature to provide reasonable classifications of subjects of taxation; on the other hand, it is possible that exclusions could be held unconstitutional if they exceed, or could exceed, $3000 of each annual income on the theory that exclusions and exemptions are essentially the same thing.

Another question which could be raised with respect to the Ohio income tax law because of the exemption language contained in the constitutional provision is the question of tax credits. A tax credit is understood to mean a reduction in the amount of the tax, once the tax has been computed. Credits are not specifically mentioned in the Ohio Constitution, and the exemption language places a limit on exemptions from income. Unless credits are provided for in terms that appear to the Court to be exemptions from income (and cause the $3000 to be exceeded) rather than reductions in the tax, the use of tax credits would not seem to create a problem, assuming that they meet the "equal protection" tests.

Such Incomes

The final phrase of Section 8 which is subject to several interpretations is the authority to apply an income tax "to such incomes as may be designated by law." As noted above, this phrase has been interpreted by the 109th General Assembly as justification for choosing federal adjusted gross income as a tax base and as applying still further exclusions from the base, including at least one exclusion (the $4000 retirement income exclusion) which is partial in nature.

History does not offer much help in determining what the 1912 convention delegates intended this expression to mean, although the various drafts of the 1912 convention do give some meaning to it. The first draft of the income tax section accepted by the Convention (it was the minority report of the Committee on Taxation, replacing the majority report) permitted the tax to be "either general or confined to incomes derived from investments not directly taxed in this state"; the version finally agreed to changed this language to "applied to such incomes as may be designated by law." There was no debate on this change. Commentary by the Political Science Club at OSU intended to help the voters decide on the amendments submitted by the 1912 convention states that the phrase gives the legislature "permission to classify incomes according to their source."

Perhaps some assistance in interpretation is found in the federal provision (the 16th Amendment) which gives Congress the power to tax incomes "from whatever source derived". Of course, the 16th Amendment had not been adopted at the time of the 1912 convention, but the federal income tax which had been held unconstitutional in the Pollock case in 1895 provided for taxation of incomes from specified sources (such as rents) and did not tax all incomes.

Ohio Constitutional Revision Commission
Finance and Taxation Committee
September 22, 1972

Article XII, Section 5a

Purpose of Memorandum

The purpose of this memorandum is to provide the committee with supplemental information on Article XII, Section 5a. Three general areas are discussed. The first section of this memorandum concerns the history and background of Section 5a and similar provisions in the constitutions of other states, the question of how these "good roads" amendments have been interpreted. The second section of the memorandum focuses on the amount of revenue that is collected in Ohio subject to the limitations of Section 5a and the costs of highway operation defrayed by the collected funds. Finally, the desirability of constitutional provisions such as Section 5a is explored in the contexts of modern-day state government and the present need for financing of transportation systems designed to best service a growing population.

Historical Background and Construction

Currently twenty-eight of the fifty states have provisions in their constitutions similar to Ohio's Article XII, Section 5a, which demand that all of the revenues derived from the registration of motor vehicles and from the taxes imposed on the purchase of fuels for motor vehicles be expended on the requirements of the state's highway system. While nearly all such sections in state constitutions were adopted in the decade that began with the mid-1930's, an understanding of the provisions must begin with the years shortly after 1900. The registration of automobiles began in 1901 and the first motor vehicle fuel taxes were levied in 1919. Gasoline taxes enjoyed a rapid acceptance as a method of producing state revenue and the adoption of these taxes flourished so that by 1929 literally every state had imposed a tax on the use of motor vehicle fuels. In the early years of vehicle registration fees and motor vehicle fuel taxes, almost all of the revenues derived from these sources were devoted to the construction, maintenance and operation of highways. But with the economic depression of the early 1930's, the availability of federal funds for the improvement of highways and the great fiscal demands of urgent social problems caused the funds gained from highway-related taxes to be diverted from being applied to highway costs. The highway lobbies voiced their interest in having the funds gained through fuel taxes and registration fees returned to the highway programs rather than being diverted to other causes, and in 1934 Congress passed the Hayden-Cartwright Act, 23 U.S.C. 126. The new federal legislation required that for a state to receive federal funds for highway projects after June, 1935, the state would have to apply the revenue it gained from highway-related taxes to highway-related purposes. The influence on the states of the requirements for federal aid to highway programs ignited the efforts of the highway interest groups, which eventually led to the adoption of constitutional amendments similar to Article XII, Section 5a of the Ohio Constitution in more than half of the states. These constitutional provisions were based on the simplistic theory that those who pay the highway taxes should be the ones who benefit from the expenditure of the funds so collected. The provisions have been colloquially styled "earmarked highway funds" or "good roads" and "anti-diversion" amendments. A survey of the states having constitutional provisions limiting the expenditure of highway-related taxes and fees to highway purposes reveals no common denominator in the nature of population density, size, economy, or geographical locations of the states. The twenty-eight states are:

Alabama	Missouri
Arizona	Montana
California	Nevada
Colorado	New Hampshire
Florida	North Dakota
Georgia	Ohio
Idaho	Oregon
Iowa	Pennsylvania
Kentucky	South Dakota
Louisiana	Texas
Maine	Washington
Massachusetts	West Virginia
Michigan	Wyoming
Minnesota	Utah

The language of most of the constitutional provisions is basically the same although some material variations do exist. The texts of Ohio's Article XII, Section 5a, and the parallel sections contained in the constitutions of a few neighboring states are illustrative.

Ohio's Section 5a became effective in 1948 and reads:

> No moneys derived from fees, excises or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

The "anti-diversion" amendment to the Kentucky Constitution was adopted in 1945 as a second paragraph of Section 230. It reads:

> No money derived from excise or license taxation relating to gasoline and other motor fuels, and no monies derived from fees, excise or license taxation relating to registration, operation, or use of vehicles on public highways shall be expended for other than the cost of administration, statutory refunds and adjustments, payment of highway obligations, costs of construction, reconstruction, rights-of-way, maintenance and repair of public highways and bridges, and expense of enforcing state traffic and motor vehicle laws.

Michigan originally ratified a "good roads" amendment in 1138. Revised in the Constitution of 1963, the provision appears as Article 9, Section 7, as follows:

> Sec. 7. All specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles shall, after the payment of necessary collection expenses, be used exclusively for highway purposes as defined by law.

The Pennsylvania Constitution includes a more detailed and slightly broader provision which is presently Article 8, Section 11, reading:

> All proceeds from gasoline and other motor fuel excise taxes, motor vehicle registration fees and license taxes, operator's license fees and other excise taxes imposed on products used in motor transportation after providing therefrom for (a) costs of administration and collection, (b) payment of obligations incurred in the construction and reconstruction of public highways and bridges shall be appropriated by the General Assembly to agencies of the State or political subdivisions thereof; and used solely for construction, reconstruction, maintenance and repair of and safety on public highways and bridges and air navigation facilities and costs and expenses incident thereto, and for the payment of obligations incurred for such purposes, and shall not be diverted by transfer or otherwise to any other purpose, except that loans may be made by the State from the proceeds of such taxes and fees for a single period not exceeding eight months, but no such loan shall be made within the period of one year from any preceding loan, and every loan made in any fiscal year shall be repayable within one month after the beginning of the next fiscal year.

The "anti-diversion" amendments to state constitutions have elicited a significant number of court cases and official advisory opinions of attorneys-general and supreme court justices. These decisions and opinions go largely to interpreting the meaning of phrases similar to 5a's "construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes," and to deciding what possible expenditures from highway tax and fee funds come within the terms of these constitutional amendments. From the interpretations of the various provisions, two basic rules have emerged to distinguish the constitutionally acceptable expenditures from those that do not come within the meanings of the sections. The first rule for determining the legality of an expenditure is perhaps the most obvious, given the language commonly used in the amendments, and may be termed one of actual physical relationship. Under this rule of interpretation, which requires that the object of an expenditure be a physical appurtenance to the road itself, the legal possibilities are restricted to items such as labor and materials that go into the construction and maintenance of the roadbed. The second, and more inclusive, rule requires that the expenditure of "earmarked" funds result in some benefit that inures to the highway system. The second rule provides for the allowance of expenditures for administration, planning, advertising, and the like. Because of the obviously narrow applicability of the first, of "physical association rule," the later rule of benefit to the highways is the more commonly applied.

In Ohio both rules have been used to interpret and apply Article XII, Section 5a. But while both rules have been used, neither one has been in any way precisely formulated. Likewise, the "physical association rule" has been applied in several instances where the "benefit rule" would seem to have made for a more logical decision and vice versa, e.g. State ex rel. Walters v. Vogel, 169 Ohio St. 368, 159 N.E. 2d 892 (1959) and 1964 opinions of the Attorney General 894. As a general matter in Ohio it may be said that a physical appurtenance to the roadbed that benefits the vehicular traffic on the road is a permissible expenditure of highway funds, and that the expense required to provide benefits bearing a fairly close relationship to the construction and maintenance of the road itself and to the safety and convenience of the vehicular traffic on the road constitute legitimate outlays of highway funds.

Earmarked Highway Revenues in Ohio

The Ohio Revised Code provides for three major taxes on the operation of motor vehicles and the use of the highways in the state. These taxes are the gasoline or motor vehicle fuel tax, the highway use tax, and the motor vehicle license or registration tax. A fourth highway tax, the motor transportation tax, is levied upon common and contract carriers. This tax is payable to the Public Utilities Commission and is applied first to defray the expenses of the Motor Transportation Department of the Public Utilities Commission, then to the State Highway Bond Retirement Fund, the Highway Improvement Bond Retirement Fund, and the Highway Safety Fund, in that order.

The motor vehicle fuel or gasoline tax is codified in Chapters 5728 and 5735 of the title on Taxation in the Revised Code. The tax is based on the use, distribution, or sale of motor vehicle fuel. It is divided into three 2 cent taxes and one 1 cent tax for a total tax rate of 7 cents per gallon. Disposition of the revenue from the gasoline tax is basically a two step process. First, statutory deductions are made and then any remainder is distributed by formula to the state and its local government entities to be applied to highway purposes. Generally, the statutory deductions include: amounts paid into rotary funds for the refund of taxes that have been paid by consumers within the very narrow classes which are exempted from the tax; reimbursement to the General Revenue Fund for amounts appropriated or authorized for emergency administration of the tax; a transfer of 1/2 of 1% to the Waterways Safety Fund; and, amounts required, if any, for state highway bond retirement. After the statutory deductions, the remainder goes into the Gasoline Excise Tax Fund, the Highway Construction Fund, the Supplementary Highway Construction Fund and the State Highway Bond Retirement Fund. Of the remainder the state gets a total of 75.01%, the rest going to municipalities, counties, and townships. Portions of the revenue from the motor vehicle fuel taxes also go to the Highway Maintenance and Repair Fund and the Highway Improvement Bond Retirement Fund.

The highway use tax is set forth in Chapter 5728, Revised Code. The tax is based on the privilege of operating commercial vehicles on the public highways. It is essentially a mileage tax the rate of which varies from 1/2 cent to 2 1/2 cents per mile traveled. The applicable rate is determined by the type of commercial vehicle and the number of axles the vehicle has. After allocations to a rotary fund for the refund of taxes already paid and certified refundable and to the General Revenue Fund to reimburse funds expended for emergency administration of the tax, the revenues are credited to the State Highway Bond Retirement Fund and the Highway Improvement Bond Retirement Fund. When the current balance of those funds

along with the estimated receipts for those funds from the 1 cent portion of the gasoline tax for the rest of the calendar year are determined to be sufficient to meet the debt requirements of bonds issued under Article VIII, Sections 2c and 2g of the Constitution for the current and next calendar year, the remaining revenues go to the Supplementary Highway Construction Fund.

Chapters 4501 and 4503, Revised Code, include the motor vehicle license tax. Depending upon the type of vehicle, this tax is either a per vehicle tax or a tax determined by the weight of the vehicle. Commercial cars, trailers or semi-trailers, buses, and farm trucks are the vehicles upon which the license tax is levied according to weight. The motor vehicle license tax is payable to the Registrar of the Bureau of Motor Vehicles in the Department of Highway Safety. The revenues from the motor vehicle license tax are deposited to the credit of the State Highway Bond Retirement Fund and the Highway Improvement Bond Retirement Fund until it is certified that sufficient monies exist therein to meet all payments due during the calendar year on the bonds. The remainder is then distributed to municipalities, townships, and counties according to statutory formulae based on vehicle registrations, vehicle owner residence, the number of counties, and the miles of roads in the townships and counties.

Enclosed with this memorandum is an excerpt of the official statement issued in connection with the sale of the Series C Highway Obligation Bonds, under authority of Article VIII, Section 2i, in November 1971. This excerpt summarizes in more detail the types and amounts of highway user receipts used to pay highway obligations, and the extremely complicated statutory and constitutional scheme through which this is accomplished. The excerpt also points out the stringent limitations placed by Section 5a of Article VIII on the purposes for which such funds may be used.

According to the Department of Finance, the following amounts of Section 5a-related revenues (in millions) were collected for the fiscal years indicated:

	FY 70	FY 71	FY 72
Gasoline Tax	$329.7	339.4	352.3
Highway Use Tax	31.3	30.6	34.6
Motor Transportation Tax	1.4	1.5	1.6
Motor Vehicle Operators Licenses	9.6	7.4	9.7
Motor Vehicle Licenses	116.9	123.1	78.8
Other Revenues* deposited in Hwy and Hwy Safety Funds	28.0	21.2	24.6
	$516.9	523.2	501.6

* During the same period, the Department indicates the following amounts were "earmarked" for bond retirement.

Earmarked Revenues Deposited in Bond Retirement Funds	FY 70	FY 71	FY 72
1¢ Gasoline Tax	$45.5	46.9	47.3
Highway Use Tax	30.4	29.6	33.6

	FY 70	FY 71	FY 72
Operating Funds (2¢ Gas Tax) Used for Bond Retirement	$ 1.3	122.2	16.2
Totals	$77.2	198.7	97.1

The two cent gas tax which is shown as "Operating Funds Used for Bond Retirement" is shown as such because, were it not needed in the Highway Obligation Bond Retirement Fund to pay bonds, it would be available to the Supplementary Highway Construction Fund. (Please see page 11 of enclosed excerpt).

According to the Office of the Commissioners of the Sinking Fund, the following were the amounts paid on highway obligations during this period.

Fiscal Year	Major Thorofare 2c	Highway Improvements 2g	Highway Obligations 2i	Totals
1970	$35,830,911	50,501,453	1,402,572	87,734,936
1971	34,850,762	52,651,293	7,236,815	94,738,870
1972	33,865,569	55,359,531	13,123,950	102,449,050

Earmarked Highway Funds and Modern Transportation Needs

A substantial part of the present interest in Section 5a and the similar provisions of other state constitutions arises from the growing recognition of a need for mass transportation facilities which can supplement the existing highway systems. The arguments for mass transportation are well circulated and rely, at least in part, on the following: the increasing urban population; the increasing monetary and social costs of constructing conventional highways; and the cyclical, self-defeating phenomenon that new and larger highways only induce greater numbers of vehicles to use them and do not relieve transportation congestion. The problem resolves itself to whether present constitutional "earmarkings" of highway tax funds allow expenditures for mass transit facilities and whether the amendments should be revised or repealed to allow the dedication of some highway funds to alternative transportation systems. Highway interest groups argue the ongoing validity of extensive highway systems and the equity of highway taxes being devoted to strictly highway purposes. Proponents of mass transportation counter by arguing that the earmarking of highway funds is an anachronism left over from the 1930's and 1940's without utility in a day when highway costs approach a point of diminishing returns; that the earmarking of any tax revenue is an unnecessary impediment to public decision making; and that highway taxes are not equitable in that the

taxpayers often do not receive benefits in relationship to the taxes they pay.

A number of recent efforts to change constitutionally imposed restrictions on the expenditure of highway funds have met with little success. Legislatively initiated repeal efforts have failed in Georgia and in Washington. In Oregon, California and Massachusetts attempts to revise the constitutional provisions so as to include mass transportation have been defeated. The Model State Constitution of the National Municipal League suggests that all "earmarking" of revenues should be eliminated from the financing of state governments. It should be noted that Section 7, Article 9 of the Michigan Constitution of 1963, previously referred to, includes the language "as defined by law." Theappearance of such an amendment is that it would allow the legislature to broaden the meaning of "highway purposes" to include mass transportation facilities. However, the Comments to the revision indicate that the intention was to allow the legislature to define and limit the meaning of the provision.

In an article on this subject, Salaman, Towards Balanced Urban Transportation: Reform of the State Highway Trust Funds, 4 The Urban Lawyer 77 (1972) a strong case is made for the application of highway funds to mass transportation. It is there suggested that constitutional repeal or revision are not practical possibilities given the power of highway interest lobbies in state politics. Rather, judicial interpretation is seen as the most viable possibility for applying highway funds to mass transportation needs. Such interpretation could rely on the "substantial benefit rule" for determining appropriate expenditures. The argument would be that "anti-diversion" amendments were intended to improve highways as means of transportation and communication and that by improving transportation by the addition of mass transit systems the highways would directly benefit.

The Indigent Persons Clause in Section 5a

Interest has also been expressed in the final clause of Section 5a with respect to whether or not it is implemented in the statutes. The language in question is "for hospitalization of indigent persons injured in motor vehicle accidents on the public highways." Section 4515.03, Revised Code, through Section 4515.11, Revised Code, set forth in some detail the procedure for reimbursing hospitals for the care they render injured indigents. The statutes provide definition for, "indigent persons," require the annual certification of the per diem costs of every hospital, and establish channels through which hospitals may have their claims for services rendered paid. Section 4501.06, Revised Code, which sets up the State Highway Safety Fund recites that monies from this fund are used to pay claims for care given to injured indigents.

Ohio Constitutional Revision Commission

September 22, 1972, amended

Article VIII

Section ~~13~~ 6. To create OR PRESERVE jobs and employment opportunities and to improve the economic welfare of the people of the state, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, and research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of such property, structures, equipment, and facilities. Laws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, the state, or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, and to authorize the making of guarantees and loans and the lending of aid and credit, which laws, bonds, obligations, loans, guarantees, and lending of aid and credit shall not be subject to the requirements, limitations, or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under ~~or ratified, validated, confirmed, and approved by~~ this section.

EXCEPT FOR FACILITIES USED PRIMARILY FOR POLLUTION CONTROL, ~~No~~ NO guarantees or loans and no lending of aid or credit shall be made under laws enacted ~~or validated, ratified, confirmed, and approved~~ pursuant to ~~or~~ by this section of the

Constitution for facilities to be constructed for the purpose of providing electric or gas utility service to the public.

The powers herein granted shall be in addition to and not in derogation of existing powers of the state or its political subdivisions, taxing districts, or public authorities, or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities.

Any corporation organized under the laws of Ohio is hereby authorized to lend or contribute moneys to the state or its political subdivisions or agencies or instrumentalities thereof on such terms as may be agreed upon in furtherance of laws enacted pursuant to this section ~~or validated, ratified, confirmed, and approved by it.~~

~~Amended Substitute House Bill 270 enacted by the General Assembly on June 4, 1963, and Amended Senate Bill 360 enacted by the General Assembly on June 27, 1963, are hereby validated, ratified, confirmed, and approved in all respects, and they shall be in full force and effect~~ from and after the effective date of this section as laws of this state until amended or repealed by law.

Ohio Constitutional Revision Commission — Research Study No. 14A
Finance and Taxation Committee
October 4, 1972

Income Tax: Adoption of federal tax provisions prospectively

When the Ohio General Assembly enacted income tax legislation, it adopted the approach taken by increasing numbers of states in recent years to incorporate by reference the federal definition of "adjusted gross income." An issue immediately raised by such referential legislation is whether it constitutes an unconstitutional delegation of state legislative powers to the federal government.

In the Ohio Constitution, the non-delegability of legislative power results from Section 1 of Article II, vesting legislative power of the state in a General Assembly, and from the constitutional prohibition against the passage of acts "to take effect upon the approval of any other authority" in Section 26 of the legislative article. Ohio courts have apparently recognized little or no distinction between these two inhibitions upon the delegation of legislative power and have stated that the delegation questions arising under the two provisions "are so akin to each other that the currents of discussion naturally cross and intermingle." The cases are clear that the Ohio General Assembly may not delegate to any other authority the power to make laws.

Under Ohio Revised Code Section 5747.01 (A) "adjusted gross income," subject to some exceptions, is defined as "adjusted gross income as that term is defined and used in the internal revenue code..." Under division (I) of that section, the term "internal revenue code" is defined as meaning "the 'internal revenue code of 1954,' 68A Stat. 3, 26 U.S.C. 1, as now or hereafter amended." (Emphasis added.)

The rule has been universally accepted that a state legislature does not delegate its legislative authority by adopting Congressional legislation already in existence.[1] However, if the federal law that is incorporated by reference is amended frequently, state conformity with such law on a continuing basis may depend upon the reference statute adopting both the law as of a specific date and subsequent amendments to it. Because federal income tax law is amended frequently, the desirability of incorporating future amendments is obvious. In its 1965 Report of Federal-State Coordination of Personal Income Taxes the Advisory Commission on Intergovernmental Relations notes that continued uniformity might otherwise require annual legislation and points out the problem that could arise where Congress amends the income tax law in July of a given year if a state legislature could not act to conform state law until the following year.

Income tax laws in a growing number of states use federally defined adjusted gross income as a basis for state income tax imposition. However, according to a 1963 commentary,[2] constitutional lawyers have generally considered adoption by a state statute of prospective federal statutes or administrative rules to be an invalid delegation. To avoid challenge, some states have adopted constitutional amendments specifically to authorize the state legislature to define income subject to state taxation by reference to federal law, including subsequent amendments. Constitutional provisions of this sort are set out in full below.

In some jurisdictions courts have upheld state statutes permitting future provisions of various federal laws to affect or determine state law. In only one instance has a court upheld the constitutionality of an income tax statute incorporating future federal amendments and modifications. The case, Alaska Steamship Co. v. Mullaney, 180 F. 2d 805 (9th Cir. 1950), is considered a significant one because the opinion recognizes the point that state economy and taxpayer convenience are served by the uniformity of federal and state income tax laws. Huber points out that "the ultimate and controlling policy decision as to whether there shall be uniformity of federal-state legislation is by the adopting government, and is not imposed by the other government."[3]

However, two factors weaken the value of the Mullaney case as precedent. At the time, the federal income tax law had not been changed from the date of enactment of the Alaska law, so the court did not have to decide whether the prospective amendment feature invalidated the statute. The court's statements about incorporation to attain uniformity "which is in itself an important object of the proposed legislative scheme" must be categorized as dictum. Furthermore, Alaska was a territory and not a state at the time of the decision, a distinction recognized by the Supreme Court of Minnesota in a 1971 case which held that a Minnesota statute that adopted the federal definition of adjusted gross income adopted the federal law "as it existed at the time the statute was adopted. The legislature did not, or could not, grant Congress the right to make future modification or changes in Minnesota law..."[4]

As noted earlier, some prospective adoption has been upheld. Some statutes incorporating standards in federal acts or authorizing the use of documents prepared by private organizations have been in existence for a long time. Examples of documents from nongovernmental sources include statutory references to mortality tables, definitions of drugs, and the meaning of the term "kosher." Future amendments, supplements and revisions are often specifically included in the state reference statutes. Many references to federal law and privately prepared documents have never been challenged.

An exhaustive search of Ohio law has been made in an attempt to determine whether an Ohio court has ever considered questions pertaining to the statutory adoption of federal or other laws or documents prospectively--i.e. as amended or modified subsequent to the adoption of the Ohio reference statute.

A variety of expressions and word combinations having to do with incorporation by reference, federal laws, and statutory references to acts "as amended" were used to run a computer search of Ohio case law in the hope of locating cases that would discuss the question of incorporating by reference future amendments and revisions of other laws or materials. Any prior positions taken on this question would have a bearing on predicting the outcome of a challenge to the present provisions of the Ohio income tax law, incorporating federal definitions as now or hereafter amended.

The only case so located could be used in support of a challenge to that legislation. State v. Emery, 55 Ohio St. 364 (1896) involved prosecution for the sale of drugs not meeting standards in the pure drug statute, which contained a reference to the U.S. Pharmacopoeia. The ediciton of the pharmacopoeia in general use when the statute was enacted was the 1880 edition. Although the statute did not specifically incorporate subsequent editions, the state had been permitted at trial to introduce the 1893 edition, which had raised standards of strength, quality and purity and was in general use when the sale was made. Defendant argued that the legislature cannot incorporate into law a

book or work which is not yet in existence. The Court agreed, ruling that the reference in the statute to the U.S. Pharmacopoeia could be to no other than the edition of the book in use and recognized when the statute was enacted and went into effect. "It is not to be supposed that the legislature intended to adopt, by reference, as part of the penal laws of the state, an edition of the book not then in existence and of the contents of which the legislature could then have no knowledge...To hold that the sale would thus be made unlawful, would be equivalent to holding that the revisers of the book could create and define the offense, a power which belongs to the legislative body and cannot be delegated."[5]

It can be argued, of course, that the Emery case is not contemporary and perhaps that it is distinguishable as a "penal" statute. A 1953 Wisconsin case[6] turned on a statute defining drugs to be articles recognized by selected professional publications "or any supplement of them." Though not required to decide the effect of definitions in supplements published after enactment of the reference statute, the Court indicated in dictum that a reference to terms incorporated in future publications was not an invalid delegation. Arguably the rationale could be used to overturn a decision made at a point in time when delegation was a particularly sensitive issue. After characterizing the United States Pharmacopoeia as "broadly and truly representative of the medical and pharmaceutical professions" and "an institution now firmly fixed," the Wisconsin Court said the act "should not be held void because it provides for the inclusion of new discoveries, if approved by persons most eminent in the profession who are most interested in maintaining the highest standards known or to be known to science. This is not a case of the delegation of legislative powers. The publications referred to in the statute are not published in response to any delegation of power...The compendia are published independently of the statute and not in response to it."[7]

Moreover, Huber's thesis has merit that traditional analyses of delegation problems do not fit tax simplification schemes. The enunciation of tests as to whether a particular statutory provision is an unconstitutional delegation of legislative power is frequently mere rationalization. The reasons why delegation in tax simplification bills might be sustained as an exception to customary analysis, according to Huber[8], are the following:

1. Fear that delegation carries dangerous opportunities for oppression is unreal when applied to Congress.

2. A tax simplification bill relates to a single subject, having its own natural limits and boundaries.

3. An analogy may be made between such delegations and statutory vesting in political subdivisions of powers of government in matters local in scope.

4. Conformity of state and federal law, as a convenience or necessity, might itself be a fundamental consideration in favor of allowing prospective intergovernmental delegation.

Nonetheless, the status of challenged legislation on the same subject elsewhere and the unequivocal statements in the Emery opinion support consideration of a constitutional

amendment in Ohio, specifically allowing in future inforporation of federal income tax definitions or provisions. Other state models for this purpose are set forth below.

Colorado Article X, Section 19

The General Assembly may by law define the income upon which income taxes may be levied under Section 17 of this article by reference to provisions of the laws of the United States in effect from time to time, whether retrospective or prospective in their operation, and shall in any such law provide the dollar amount of personal exemptions to be allowed to the taxpayer as a deduction. The General Assembly may in any such law provide for other exceptions or modifications to any of such provisions of the laws of the United States and for retrospective exceptions or modifications to those provisions which are retrospective. (Adopted Nov. 6, 1962)

Illinois Article IX, Section 3(b)

Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed. (Adopted as part of new constitution December 15, 1970; effective July 1, 1971.)

Convention Comment: Subsection 3(b)

Subsection 3(b) was included because of the Convention's concern that absent such a provision any attempt by the State to use a so-called "moving base" income tax statute, automatically incorporating changes as they are made in the Federal Internal Revenue Code, "would probably constitute an unlawful delegation of authority by the State to the Federal government." It appears that the limited purpose specified in Subsection 3(b), for which Federal statutes and regulations may be adopted by reference, would preclude the use of such adoption to impose graduated tax rates contrary to the requirement of Subsection 3(a) that any state income tax be at a non-graduated rate.

Kansas Article 11, Section 11

Taxation of incomes; adoption of federal laws by reference. In enacting any law under section 2 of this article 11, the legislature may at any regular, budget or special session define income by reference all or any part of the laws of the United States as they then exist, and, prospectively, as they may thereafter be amended or enacted, with such exceptions, additions or modifications as the legislature may determine then or thereafter at any such legislative sessions. (Adopted Nov. 8, 1966)

Nebraska Article VIII, Section 18

When an income tax is adopted by the Legislature, the Legislature may adopt an income tax law based upon the laws of the United States. (Adopted 1966)

In Anderson v. Tiemann, 182, Neb. 393, 155 N.W. 2d 322 (1967) the Court held that this amendment granted to the Nebraska legislature the authority to enact income tax legislation which adopts by reference future income tax laws of the United States as they become effective.

New Mexico Article III, Section 16

...Notwithstanding Subsection A of this section or any other provision of this Constitution, the legislature, in any law imposing a tax may define the amount on which the tax is imposed or by which it is measured, by reference to the provisions of any of the laws of the United States as the same may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision.

New York Article III, Section 22

...Notwithstanding,...any other provision of this constitution, the legislature, in any law imposing a tax or taxes on, in respect to, or measured by income, may define the income on, in respect to, or by which such tax or taxes are imposed or measured, by reference to any provision of the laws of the United States as the may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision. (Adopted Nov. 3, 1959, eff. Jan. 1, 1960)

North Dakota Article XI, Section 175

No tax shall be levied except in pursuance of a law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied. Notwithstandong the foregoing or any other provisions of this Constitution, the legislative assembly, in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on, in respect to or by which such tax or taxes are imposed or measured or may define the tax itself by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision. (Adopted September 6, 1966)

Footnotes

1 See annotations entitled "Constitutionality, Construction and Application of Provisions of the State Tax Laws for Conformity with Federal Income Tax Law or Administrative and Judicial Interpretation" at 166 A.L.R. 516 and 42 A.L.R. 2d 797

2 James O. Huber, "Constitutionality of a Federalized Income Tax," 1963 Wis. L.R. 445,449

3 Huber, op. cit., 457

4. Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W. 2d 588,593 (1971)

5 State v. Emery, 55 Ohio St. 364, 369-70 (1896)

6. State v. Wakeen, 263 Wis. 401, 57 N.W. 2d 364 (1953)

7 Id., 57 N.W. 3d 364, at 369

8 Huber, op. cit. 457.

Ohio Constitutional Revision Commission
Finance and Taxation Committee
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Research Study No. 18

The "Indirect" Debt Limit
Article XII, Sections 11 and 2

Summary

Statutory debt limitations are imposed by the General Assembly on all political subdivisions which are authorized to issue general obligation debt without a vote of the people. The amount of general obligation debt which may be incurred is restricted to a percentage of the assessed valuation of the property in the subdivision. Certain types of debt are excepted from the statutory limits.

"General obligation" debt is debt to which the full faith and credit of the issuer is pledged. This pledge is, essentially, one of all the tax resources of the issuer. If the debt is to be repaid entirely from the revenues of the facility to be built or purchased, and the bonds evidencing the debt do not pledge the full faith and credit of the subdivision but restrict the bond purchaser's remedies to the facility and the revenues derived therefrom, the debt is not general obligation debt and does not fall within any debt limit, either statutory or constitutional.

A political subdivision may find it advantageous to issue general obligation bonds to finance the purchase or construction of a project even though it anticipates that the project will produce sufficient revenues to repay the bond principal and interest when due, or that special assessments will be adequate to support the bonds. Lower interest rates are available for full faith and credit bonds than for revenue bonds, as a general rule; or the production of sufficient revenues by the project may not be certain enough for the bond purchaser to rely solely on the project and not at all on the tax-collecting ability of the subdivision; or there may not be time to go to the voters for approval.

All unvoted general obligation bonds issued by a subdivision are subject to what is known as the "indirect" debt limit, imposed by an interpretation of Section 11 of Article XII and Section 2 of Article XII, taken together, of the Constitution, even though it is anticipated that revenues from the project will be sufficient to repay the bonds, even though the amount falls within the statutory debt limit prescribed by the General Assembly, and even though the bonds are excepted from that limit. Section 11 requires the levy of a tax to support all general obligation bonds, and since Section 2 places a limit of 10 mills (by statutory interpretation) on property taxes, without vote of the people, unvoted bonds can only be issued which can be serviced within the 10 mills.

The issuance of unvoted debt by one subdivision, perhaps a municipal corporation, could preclude other overlapping subdivisions such as a county from issuing debt they are otherwise entitled to incur. It is also possible for a subdivision to use the entire 10 mills for debt, which has priority, and require seeking voter approval for levies for operating expenses.

Alternatives for Dealing with the Indirect Debt Limit Problem

Several suggestions have been made for dealing with the indirect debt limit problem which the Committee may wish to consider.

1. Repeal Section 11 of Article XII. Since this section gives bondholders a guarantee of repayment from the revenues of the subdivision, it might be well to consider statutory (or even constitutional) language which will require such a guarantee of repayment making it clear that the guarantee can be satisfied other than by levying a property tax.

2. Amend Section 2, whether or not Section 11 is repealed, to specify that the 10-mill limit is not intended as a debt limit.

3. Retain Section 11 but amend it to specify that it does not include bonds for which revenues other than taxation are available.

4. Prohibit local subdivisions from contracting debt within the 10 mill limit proposed by Professor Edwin L. Smart, Jr., in an article in the Ohio State Law Journal in 1958 (19 O.S.L.J. 24). This would have the effect of requiring political subdivisions to go to the voters for all debt other than pure revenue bonds. Professor Smart argues that a state insurance fund would be a better way to handle emergencies that could arise than using millage within the 10 mills. This would leave the 10 mills for operating expenses.

The Indirect Debt Limit

A. Political Subdivision Debt Limits

The General Assembly, by statute, regulates the amount of debt which may be incurred by political subdivisions. Restrictions on debt--on both total debt and on debt which may be incurred without a vote of the people--are found in Chapter 133. of the Revised Code (the "Uniform Bond Law") for municipal corporations (cities and villages), counties, townships, and school districts. These general restrictions are as follows:

1. Cities and villages (Section 133.03)

All cities and villages - total net indebtedness (with or without a vote of the people) not to exceed 10½% of total assessed valuation of all property listed and assessed for taxation;

Charter cities with a charter provision enabling the levy of taxes outside the ten-mill limit without a vote of the people, 5½% of such valuation without a vote of the people;

All other cities and villages - 4% of such valuation without a vote of the people.

2. Counties (Section 133.05):

Total net indebtedness not to exceed:

3% of the first $100 million of the tax list; plus

1½% of the amount over $100 million up to $300 million; plus 2½% of the amount over $300 million;

Without a vote of the people, not to exceed 1% of the tax list.

3. Townships (Section 133.07):

Total net indebtedness not to exceed 2% of the tax list. No township indebtedness may be incurred without a vote of the people with certain specific exceptions.

4. School Districts (Section 133.04):

Total net indebtedness not to exceed 9% of the tax list;

Without a vote of the people, not to exceed .1 of 1% of the tax list.

There are statutory exceptions to all of these limits--particular bond issues or bonds issued for specific purposes--which are not included in computing whether the limit has been reached.

The legislature needs no specific constitutional authority to regulate debt for counties, townships, and school districts, because none of these units acquire such powers directly from the Constitution in the absence of legislative authority.

In the case of municipal corporations, however, which do derive powers directly from the Constitution, the Constitution has also given the General Assembly the specific power to regulate their debt and taxing powers. Section 6 of Article XIII reads as follows:

> The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

In addition, Section 13 of Article XVIII provides as follows:

> Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

The first of these two provisions was part of the 1851 Constitution and appears in the Article dealing with corporations. The Constitution then contained very little else relating to local government, and the provision should be read in conjunction with the first section of the same Article which forbade the General Assembly from passing special acts conferring corporate powers. The second of the two Sections was added to the Constitution in 1912 as part of Article XVIII which conferred extensive powers on cities and villages. Article XVIII seems, logically, to have superseded the earlier section, although the latter was never repealed. In any event, the power of the General Assembly to restrict municipal debt seems unquestionable.

B. What is Debt

Before discussing the "indirect" or "constitutional" debt limit on political subdivisions, it should be noted that all the debt under consideration in this memorandum, whether the limitation is direct or indirect, is general obligation debt. Debt which is secured only by the revenue of the facility purchased or constructed with the money borrowed, or by a mortgage on the facility itself, is not included in either type of limit, although only municipal corporations could engage in an enterprise of that nature without specific authority from the General Assembly. The Ohio Supreme Court held, in State ex rel. Gordon v. Rhodes, 156 O.S. 81 (1951) that off-street parking bonds of the City of Columbus which were to be secured by a mortgage on the facility and the revenues derived from the facility and did not pledge the faith and credit of the city nor provide for levying a tax were not a debt of the city and did not come under any statutory provisions limiting the amount of debt. Nor would they be restricted by the indirect limit. Some confusion as to the application of the debt limit arises because some types of bonds which are exempt from the statutory debt limits are bonds issued for facilities which generate revenue. Municipal recreational facility bonds, for example, "to the extent that revenues of the municipal recreational facilities, from sources other than taxation, are sufficient to pay all operating expenses of such recreational facilities, and the principal of and interest on bonds issued for such purposes as they become due" are excepted from the statutory debt limit, (Section 133.041). However, the bonds in question are general obligation bonds even though the facility is a revenue-producing facility. For a variety of reasons, including

probable lower interest rates, a city may wish to issue general obligation bonds, pledging the faith and credit and taxing power of the city, for a project which is revenue producing.

A recent decision of the Ohio Supreme Court has added another element to "what is debt?" The Court held that a lease-purchase agreement, pursuant to which the City of North Olmstead planned to acquire a swimming pool by installment payments over a period of ten years, created a debt of the city because the city was obligated to make the payments, and the remedy of the seller, in the event the city defaulted in making a payment, was not to repossess the swimming pool but rather against the city to enforce the city's obligation to pay (State ex rel. Kitchen v. Christman, 21 O. S. 2d 64, 1972). The entire contract price thus became part of the bonded indebtedness of the City, which was precluded without a vote of the people because there was not any available millage within the 10 mills.

C. The "indirect" limit

All unvoted general obligation bonds of a political subdivision are subject to the indirect limit, regardless of whether or not the political subdivision ever levies or expects to levy any tax to service the bonds.

The "indirect" debt limit results from a reading of Section 11 of Article XII of the Constitution in conjunction with the 1% (10 mill) limit of Section 2.

Section 11 reads as follows:

> No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

It was adopted by the 1912 Convention as part of the Taxation Article. Although the Convention Debates reveal some discussion of this provision, it is overshadowed, as is practically everything else relating to taxation at that Convention, by the Great Debate over classification vs. uniformity. Another matter debated at the Convention was whether to incorporate the "Smith One Percent Tax Law" into the Constitution. The statutes, at the time of the Convention, already limited property taxes to one per cent of value without a vote of the people. The convention stuck with uniformity, which remained the rule in Ohio until 1929, and rejected incorporating into the Constitution any limit on the amount of taxes. Another matter debated and rejected was placing a constitutional limit on local debt. Section 11, requiring the state and political subdivisions to provide, by taxation, for the annual collection of moneys sufficient to pay the principal and interest on the debt, together with Section 6 of Article XIII, (and Section 13 of Article XVIII, adopted also in 1851) which authorize the General Assembly to regulate local debt, were deemed sufficient to prevent abuses of the past in which local governments incurred debt for public improvements and then failed to make contributions to a sinking fund so that there was not sufficient money to repay the debt when it fell due.

In 1929, the people, after a debate which began even before the 1851 Constitution was written, eliminated the rule of uniformity except as it applies to land and improvements thereon, and, at the same time, incorporated into the Constitution a limit on the amount of property taxes that could be levied of one and one-half percent of true value in money. In 1933, this limit was lowered to one per cent.

Translated into statutory terms, the limit is ten mills without a vote of the people.

The significance of the 10-mill limit in Section 2 in incurring local debt was made clear in a 1935 Ohio Supreme Court case, Portsmouth v. Kountz, 129 O. S. 272. The City of Portsmouth wanted to issue $65,000 of unvoted bonds for sewer construction. During the year 1935, it was conceded, the amount necessary to service these bonds and other outstanding obligations of the City would exceed 10 mills, but the City contended that other obligations maturing in that year (1935) would eliminate the necessity for consideration of the levy of those taxes in future years and that the 10 mills would be adequate. Moreover, some of the obligations were being paid from special assessments or revenues other than taxation. However, the Court held that the 10 mills could not be exceeded without a vote of the people in any year; that the 10 mill limit constitutes an indirect debt limit and that the people must have intended this when they adopted the constitutional amendment placing the tax limit in the Constitution; that, in computing the amount of taxes necessary to pay the debt of the city, it was necessary to include an amount to service all outstanding general obligation debt, even debt which, in practice, is serviced from special assessments and other sources of revenue other than general taxation; and, finally, that the outstanding general obligation unvoted debt of overlapping subdivisions must also be included in computing the possible tax levy to ascertain whether it will go over 10 mills. In this case, the school district was the only overlapping subdivision with outstanding unvoted general obligation debt. Overlapping subdivisions whose debt must be taken into consideration in most cases will include a city or village, a school district, and a county.

Decisions prior to the Portsmouth case had already established the principle that Section 11 was mandatory and that, if unvoted bonds pledge the faith and credit of the issuing subdivision, a tax must be levied to pay them if the special assessments or other revenues are insufficient and that such a tax consumes the potential tax-levying ability within the ten-mill limit to the exclusion of taxes for operating expenses of the subdivision. (State ex rel. Bruml. v. Brooklyn, 126 O. S. 459, 1933; Rabe et al v. Board of Education of Canton, 88 O. S. 403, 1913; Link v. Karb, 89 O. S. 326, (1914) Moreover, a subdivision cannot use the 10-mill limit as an excuse not to incur debt when it is required to do so by a valid order of a state agency, even though it will then be required to go to the voters for an operating levy. (State ex rel. Southard v. City of Van Wert, 126 O. S. 78, 1932).

A tax levy to pay debt which existed prior to the imposition of the 10-mill limit need not be computed within the 10 mills, nor need the 10 mills include a levy to refund such debt nor to refund debt which was originally serviced by a voted levy, even though the refunding takes place after the 10-mill limit took effect and the refunding bonds are not voted by the people. (State ex rel. Markel et al v. Columbus, 139 O. S. 351, 1942; State ex rel. v. Schafer, 131 O. S. 233, 1936; State ex rel. v. Steel, 130 O. S. 90, 1935).

The overlapping subdivision rule may create substantial problems, since one subdivision may "use up" the entire 10 mills without consideration for either future debt or current or future operating levies of other subdivisions. A subdivision which includes more than one other subdivision within its boundaries (in this case, the Cleveland School District which includes Cleveland and other municipal corporations in the school district) is limited, in incurring debt, to the amount of debt which can be incurred within the 10-mill limit in the subdivision which already is closest to the limit--that is, the 10-mill limit cannot be exceeded without vote in any of the subdivisions. (State ex rel. v. Morris, 135 O. S. 23, 1939) On the other hand, no subdivision is limited in incurring debt by the amount of millage it has available by statute within the 10-mills. When the 15 mill limit was imposed, and again when it was reduced from 15 to 10 mills, the legislature established, by

formula, the amount each subdivision was entitled to levy within the limit. But if a subdivision otherwise has the ability to incur debt (according to the statutory provisions discussed earlier in this memorandum), it does not have to do so within its share of the 10 mills. This argument was made in State ex rel. v. Gesell, 137 O. S. 255 (1940), in which the City of Cleveland wished to issue emergency bonds for poor relief pursuant to statutory authority enacted during the depression. Although theoretically supported by delinquent tax collections, the bonds were full faith and credit bonds of the City. The highest millage which might be required in the City (together with its overlapping subdivisions, the School District and the County) for debt service was, at the time of the issuance of the bonds, 8.9171 and the theoretical amount which might be necessary to service the bonds was .2997 mills, or a total of 9.2168 mills. The School District intervened to claim that the City was only entitled to 4.4793 mills within the 10 mills, but the Court held that neither the Constitution nor the statutes determine how debt service levies shall be apportioned among overlapping subdivisions. "As the law now stands," said the Court, "it is possible for one subdivision by creating unvoted debt to monopolize the full ten mills to its service. If this is unfair and operates unjustly, the General Assembly is at liberty to remedy the situation."

What taxes?

The 10-mill limit is, of course, a limit on property taxes; there are other taxes available, at least to municipal corporations, without specific legislative authorization. The principal such tax is the income tax; most major Ohio cities derive more income from an income or wage tax than from the property tax. However, the pledge to a bond holder of the full faith and credit of the city is a pledge of all the tax resources of the city. Even though the city may plan to pay its debt, if not payable from the revenues of the project or special assessments, from a tax source other than property taxes, and even though it may have the demonstrable ability to do so, the debt service must still be included in the ten mills, if the bonds are unvoted, and may serve to limit not only that city but all the overlapping subdivisions in the issuance of debt which they would otherwise have the statutory ability to issue.

H. B. 475

One problem in the past, from the bond holder's point of view, with relying upon a city income tax as support for city bonds, has been the possibility that the state might enact a state income tax and pre-empt the right of cities to use that tax source. Pre-emption is the subject of another memorandum to the committee. However, Am. Sub. H. B. 475 of the 109th General Assembly, which levied a state income tax, specifically provides, in both the individual income and the corporate franchise portions of the bill that the state tax does not prevent the levy by a municipal corporation of a tax on, or measured by, income. H. B. 475 contains a section which apparently is intended to make clear the authority of a municipal corporation to pledge income tax receipts to the payment of unvoted general obligation bonds. This section, section 5705.51 of the Revised Code, also attempts to relieve the restrictions of the indirect debt limit to the extent that "true value in money", which is the constitutional base for the application of the one per cent limit, may actually be greater than the assessed value of property to which the 10-mill limit is applied.

Since section 5705.51 has not yet been used, and since there may be constitutional problems with its application as well as practical problems in ascertaining

"true value in money" in order to apply it, it cannot be viewed as the final solution to the indirect debt limit problem.

The State

Section 11 of Article XII, and Section 2 as well, apply to the State as well as to political subdivisions. Section 11 requires the state to provide for levying and collecting annually by taxation an amount sufficient to pay the interest on its bonded indebtedness and to provide a sinking fund for its redemption on maturity; the one per cent limit on property taxes in Section 2 is absolute, without a vote of the people, regardless of what unit of government is levying the tax.

Because of the present constitutional limit on state debt ($750,000), no general obligation debt is incurred by Ohio without a vote of the people--by constitutional amendment. Each bond issue provides for a tax to support it. But a pledge of the full faith and credit of the state would seem to include, theoretically, a pledge of the ability of the state to levy a property tax, and thus the state, as the ultimate "overlap", could preclude other units of government from incurring debt or even obtaining operating expenses without going to the people (unless there is another tax source such as the income tax). As a practical matter, the constitutional amendments authorizing state debt generally exclude from the full faith and credit pledge "ad valorem taxes on real and personal property and income taxes" as well as taxes and fees relating to motor vehicles and fuel, which are earmarked by the Constitution for highway use.

Ohio Constitutional Revision Commission
Finance and Taxation Committee
November 6, 1972

Research Study No. 19

Exemptions from Taxation: Real Property

Of all the sections on public taxation, finance, and debt in the Ohio Constitution, perhaps none sets forth so many important provisions as does Article XII, Section 2. Section 2 includes the organic law on uniformity, the ten mill limitation, and the exemption of property from taxation. Those provisions of Article XII, Section 2, which provide for the exempting of real property from the burden of taxation are the focal interest of this memorandum.

For the present purposes, the pertinent parts of Article XII, Section 2, are as follows:

> . . . laws may be passed to reduce taxes by providing for a reduction in value of the homestead of residents sixty-five years of age and older, and providing for income and other qualifications to obtain such reduction . . . and without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

This paper will present the following: the major considerations for and against the exemption from taxation of real property; an explication of the real property exemptions specifically mentioned in Article XII, Section 2; a discussion of the real property exemptions provided for by the General Assembly but not expressly suggested by the Ohio Constitution; and, the so-called "homestead exemption."

Throughout the text of this memorandum and at the end in a section designated Tables, data on the valuation of tax exempt real property provided by the Board of Tax Appeals is presented. It is of importance to note several things about the valuation of exempted real property in Ohio. While the Board of Tax Appeals carefully compiles and analyzes the valuations of exempted property as reported to it by the auditors of the various counties, it is assumed that the reported valuations are lower then they should be--perhaps by as much as 20%. This under valuation is best explained by the reasonable presumption that, as the property is exempt from taxation anyway, it is not evaluated as carefully as it would be were it to be productive of tax revenues. Furthermore, it may be that some parcels properly entitled to exemptions under the Constitution and the statutes have not had applications filed for exemption, and continue to be carried on the tax rolls although no taxes are paid and the delinquent taxes which accumulate are seldom collected.

Considerations For and Against Exemptions

Convincing arguments for and against the use of exemptions have been repeatedly made, and an extensive review of them would do little to further the purposes of this memorandum in relating the Ohio exemptions to the constitutional provisions for exemptions in Article XII, Section 2. But at the same time, a synthesis of the arguments

may serve the committee's needs in considering revision of the exemption clauses in Section 2.

A review of the arguments in favor of exemptions and an effort to determine the basis of each reveals these fundamental considerations;

a) The benefits derived from the existence of institutions which receive tax exemptions for their real property outweigh the benefits the state and its subdivisions would receive from the additional tax revenues such property could produce;

b) In the instance of publicly held exempt property, the payment of real estate taxes by governmental entities to governmental entities would be unnecessarily cyclical, and

c) Many of the property owners enjoying tax exemptions have such low incomes and are so poor in liquid assets that they would be unable to pay property taxes without curtailing beneficial public services or divesting themselves of parts of the very property that is exempt.

A similar review and analysis of the considerations militating against the use of real property tax exemptions reveals these basic arguments:

a) Exemptions narrow the tax base and increase the tax burden on other property owners;

b) Exemptions provide the owners of exempt property with what is essentially an indirect subsidy subject to very few controls as to expenditure or desirability of distribution;

c) The ratio of exempt to taxable property varies in each taxing district creating unequal tax burdens on the taxpayers of the different districts without regard to the direct benefits received by the taxpayers of the districts;

d) the tax exemptions are determined at the state level while much of the tax burden is carried at the local level; and

e) The realization that property will be exempt encourages expenditures which are perhaps unnecessary and would not be made were the property taxable.

The Power of the General Assembly to Determine Exemptions

As even a cursory reading of the pertinent passages from Article XII, Section 2, will indicate, the exemptions are permitted but not mandated by the constitution. Therefore, discussion of statutory implementations is necessary to an understanding of the exemptions, for without the statutes there would be no exemptions. Central to any discussion of the power of the General Assembly to enact real property tax exemptions by statute, and, indeed, to an understanding of the meaning of the entire exemptions section of Article XII, Section 2, is the case of Denison University v. Board of Tax Appeals, 2 Ohio St. 2d 17, 205 N. E. 2d 896 (1965). The state Supreme Court in Denison found that the residence of the university's president and certain farm lands belonging to the university were eligible for exemption from taxation. In reaching its decision, the Court determined the power of the General Assembly under the exemption provisions of Section 2. Working from the words of Article XII,

Section 2, reading, "without limiting the general power . . . to determine . . . exemptions therefrom . . .," the Court reasoned that, "exemptions thereform," could refer only to exemptions from taxation. With that limitation excluded, the Court found that the state legislature is left with a power to exempt property as it sees fit to do, so long as no transgression of the basic rights in Article I, the Bill of Rights, is committed. The Supreme Court saw fit to be of further significance that the word "all" in the uniformity clause of Article XII, Section 2, had been dropped by an amendment to the 1851 version of the section. The result of this rewriting was analyzed by Taft, C. J., writing for the Court at page 27:

> The removal of the specific requirement that "all" real or personal property be taxed fortifies our conclusion that the people intended,as they stated, to return to the General Assembly as a part of its legislative power "the general power . . . to determine . . . exemptions" from taxation subject only to the limitations set forth in Article I of the Ohio Constitution .

In capsule form, the effect of Denison on the reading of Section 2, must be that the types of property mentioned in the exemption clauses of the section are little more than constitutional suggestions as to types of property the legislature might wish to exempt. While the five classes of property mentioned are among those that have historically been exempted from real property taxation in England and the United States, the Ohio courts have often observed that the legislature is not required to exempt such property and that the courts are bound to strictly construe the exemptions the legislature does establish.

The Constitutionally Suggested Types of Real Property Tax Exemptions

As might logically be assumed, the state legislature has provided in the statutes for the exemption of real property within each of the five categories set out in Article XII, Section 2. These specifically mentioned subject areas of exemptions will be considered in turn along with valuation information indicating the amount of realty exempted within each of the categories. The legislature has also established exemptions for real property that cannot be said to conveniently come within any one of the five areas. This latter group of exemptions will be reviewed following discussion of the five constitutionally suggested classes.

Burying Grounds

The statutory provision implementing Article XII, Section 2's mention of burying grounds as a subject for exemption from real property taxation is codified in Chapter 5709. of the Revised Code, which is styled Taxable Property: Exemptions. Chapter 5709. contains not only the statute pertaining to the exemption of burying grounds, but also the statutes carrying out the exemption of other types of real property. Section 5709.14, Revised Code, provides the basic exemption for graveyards, or burying grounds. This general exemption of burying grounds is subject only to the conditions that the land so exempted be used exclusively as a graveyard and that it not be operated or held with a view toward profit or speculation on sale. The requirement of exclusive use as a graveyard has been construed with reasonable conservatism, but has not been applied so strictly as to exclude a graveyard from exemption for the operation of services for the convenience of living users so long as such services are not operated with a view toward profit.

The Board of Tax Appeals reports that the valuation of property excluded from taxation under the "burying grounds" clause of Article XII, Section 2, and the

statute mentioned above amounts to only 1.49% of the total valuation of exempted real estate in Ohio. But the small percentage of total valuation of exempted property is deceiving until it is noted that the total valuation of all the exempted realty is $4,959,764,930 or 16.27% of the assessed valuation of all the real property in the state. Thus, the valuation of realty exempted from taxation under the "burying grounds" provision of Section 2, is $73,990,630.

Public School Houses

The exemption of "public school houses" is provided for in the statutes as a part of Section 5709.07, Revised Code. Cases on the exemption from taxation of schools have been decided, as well, under Section 5709.12, Revised Code, which allows the exemption of property used for charitable purposes. The traditional construction of these statutes and the constitutional language, "public school houses," has included not only public colleges, academies, and institutions of learning, but also private educational institutions which are operated in a lawful manner and are open to the public without discrimination as to race, creed, or nationality. The real property exemption in the area of "public school houses" extends to all buildings connected with the institution and all the land used in carrying out the objectives and purposes of the institution without a view toward profits. See, e.g. Denison University, supra at page 4.

The Board of Tax Appeals does not use the category of "public school houses" in listing the valuation of exempted real property. However, the Board does report that Boards of Education hold exempted real property valued at $1,232,199,080 or 24.84% of total exempted value. Private colleges and academies are credited with having exempted real estate valued at $327,459,560 or 6.60% of the total exempted valuation.

Houses Used Exclusively for Public Worship

Section 5709.07, Revised Code, also includes the statutory exemption of "houses used exclusively for public worship". Traditionally, the exemption for church property has been strictly construed in this state. The basic standard applied to determine the eligibility for property tax exemptions for land and buildings belonging to churches is that the church building itself and the surrounding land necessary to the proper use and enjoyment of the house of worship are subject to exemption. Dwellings for clergy, parish houses, and unused vacant land have all been held to fail the qualifications for real property tax exemption. As to what is a religious institution that might have a house of worship, the courts, at least in recent years, have been somewhat more liberal. For example, in Miami Valley Broadcasting Assn., d.b.a W. P. O. S., FM v. Porterfield, 29 Ohio St. 2d 95, 279 N. E. 2d 863 (1972) the Court held that if a nonprofit religious institution could show the essential attributes of a church it could not be denied an exemption for its building just because it happened to operate a radio station on the premises in conjunction with its other religious activities.

Despite any limitations on exemptions for "houses used exclusively for public worship", a significant amount of property has been exempted under this category. The valuation of exempted church property is set by the Board of Tax Appeals at $753,162,850 or 15.19% of all the exempted real property in the state.

Institutions Used Excluaively for Charitable Purposes

This constitutional category of exempted real property has perhaps enjoyed the

broadest and most inclusive statutory implementation. The basic provision is found in Section 5709.12, Revised Code, and "exclusive charitable use" is given definition in Section 5709.121, Revised Code. It appears that the bare bones of the constitutional language indicate the only practical limitation on the statutory exemption--the purpose of the property use must be charitable. The recipients of the charity need not be needy, nor must the owner of the property be exclusively charitable in purpose. However, the use of the property must be exclusively charitable, and any income derived from the property must not inure to the benefit of any private person. Section 5701.13 permits exemption for homes for the aged which provide specified services at reasonable cost; the only real restrictions being the nonprofit nature of organization operating the home and the requirement that not more than 95% of the costs be paid by the residents.

As in the instance on "public school houses," the Board of Tax Appeals does not report valuation in a way that comports exactly with the constitutional language. The Board does indicate that private charitable institutions hold exempted real property of a value of $475,184,640 which comprises 9.58% of all exempted valuation in Ohio.

Public Property Used Exclusively for Any Public Purpose

Sections 5709.08, 5709.09, and 5709.10, Revised Code, are the basic statutes enacting this constitutionally mentioned exemption. The requirements for qualification for tax exemption in this area are public ownership and exclusive use for a public purpose. The public must have access to the property and no income gained from the use of the property may accrue to the benefit of private persons. Section 5709.08, Revised Code, provides, in part, for the exemption of real property belonging to the federal government when used exclusively for a public purpose. But, even if the state desired to tax such property it could not because Congress may exempt from state taxation any property held or used by the federal government in furtherance of federal purposes. See, e.g., City of Cleveland v. United States, 323 U. S. 329, 65 S. Ct. 280.

A community arts center may be exempted under a hybrid charitable, educational, public purpose exemption under section 5709.121.

Once again, the Board of Tax Appeals data are not perfectly suited to the instant purposes. The Board reports that the valuation of real property held in Ohio by the United States of America, the State of Ohio, the counties, the townships, the municipalities, and the public park districts amounts to $2,097,768,170 or 42.30% of the total exempted valuation. (Reference may be made to the attached tables for more specific details.)

Legislative Exemption of Real Property Outside the Constitutional Suggested Categories

The General Assembly has on several occasions exercised its power to create exemptions for types of real property outside those classes of realty mentioned in Article XII, Section 2. Sections 5709.15 and 5709.16, Revised Code, exempt from taxation the property held and used as monuments and monumental buildings in honor of the veterans of the state and distinguished deceased persons. Prehistoric earthworks and historic buildings which have been purchased for the purpose of preserving the property are exempted from taxation by Section 5709.18, Revised Code, on the conditions that such properties are dedicated to public uses and operated on a nonprofit basis.

Sections 5709.20 through 5709.27, Revised Code, establish a system whereby property designed, constructed or installed for the purpose of air pollution control may be certified as such. When a pollution control certificate has been issued, the pollution control facility is no longer considered an improvement on the land where it is located and is, therefore, exempt from real property taxation.

The Board of Tax Appeals does not report separately the valuation of property exempted under the statutes referred to in this section of this memorandum.

The "Homestead Exemption"

Article XII, Section 2, was amended effective January 1, 1971, to provide some relief from property taxation for homeowners sixty-five years of age and older. This new constitutional provision has popularly been referred to as the Ohio "homestead exemption". While many states do include in their tax laws homestead exemptions, the Ohio provision is not in any real sense an exemption but a formula reduction of the taxable value of realty subject to property taxation. The premise behind homestead exemptions is that by reducing the tax load on property the ownership and continued ownership of houses can be made easier and can be generally encouraged. It is also assumed that homeowners will enjoy some measure of protection with homestead provisions in periods when the economy is depressed. Homestead exemptions and reductions, based on the homeowner's age, as in Ohio, or otherwise, have been in and out of the laws of a number of states for at least half a century.

The language in Article XII, Section 2, pertaining to the homestead "exemption" or reduction is in the permissive as is the language setting out the constitutionally mentioned exemptions discussed above. The legislature has implemented the constitutional provision in Sections 323.151 through 323.155, Revised Code. Under these statutes, a number of conditions must be met precedent to the availability of any reduction in taxes. The subject property, a house and not more than one acre of surrounding land necessary to the use and enjoyment of the house, must be owned and occupied by a resident of Ohio who is sixty-five years of age or older. If these conditions are met, then the combined incomes of all the residents of the homestead, not just that of the owner or those other residents sixty-five years of age or older, must be less than $8,000 per annum before any reduction in real property tax is possible. The actual reduction in tax due is a function of the applicable local tax rate and the total income of all the residents of the homestead..

Because the homestead provision is a relatively new facet of the state tax structure, the Board of Tax Appeals does not yet have sufficient data on the use of the "homestead exemption" to even estimate the total reduction in taxable valuation. The Board expects that this data will soon be accumulated and a preliminary analysis available by December, 1972.

The Increase in Real Property Tax Exemptions

The total valuation of all tax exempt real property has steadily increased for a number of years as has the percentage of all real property valuation which is exempt. This table shows the trend in Ohio for the last decade.

Year	Valuation of all exempted real property in Ohio	Total valuation of all real property in Ohio	Percentage all real property which is exempt
1962	$2,873,058,292	$22,111,441,016	12.99
1963	3,069,428,164	23,040,231,014	13.32
1964	3,346,006,380	23,725,942,650	14.10
1965	3,450,922,470	24,350,151,537	14.17
1966	3,571,290,677	25,149,014,529	14.20
1967	3,677,286,785	25,830,165,278	14.24
1968	3,791,940,100	26,571,207,693	14.27
1969	4,354,063,310	28,065,716,380	15.51
1970	4,708,107,820	29,535,297,080	15.94
1971	4,959,764,930	30,492,323,910	16.27

The pattern is quite clear--each year a larger part of the total valuation, the real property tax base, is exempt from property taxation. When the cost of government is rising, and in a state like Ohio where heavy reliance is placed on revenues from real property taxation, this trend poses a direct question to revisors of a constitution. In its most basic form that question is whether or not a constitutional limit should be placed on the exemption of real property?

Tables

1. Valuation of exempted real property by classes in tax year 1971

Class	Valuation	% of total
United States of America	$ 641,301,740	12.93
State of Ohio	455,864,500	9.19
Counties	192,377,490	3.88
Townships	41,943,140	.85
Municipalities	697,083,010	14.05
Boards of Education	1,232,199,080	24.84
Public Park Districts	69,198,290	1.40
Private Colleges & Academies	327,459,560	6.60
Private Charitable Institutions	475,184,640	9.58
Churches	753,162,850	15.19
Graveyards and Monuments	73,990,630	1.49
Total	4,959,764,930	100.00

2. Counties

Highest valuation of real property exempt from taxation:	Cuyahoga County	$1,130,524,270
Lowest valuation of real property exempt from taxation:	Adams County	$ 3,299,650
Highest percentage of total valuation exempt:	Pike County	81.24
Lowest percentage of total valuation exempt	Richland County	5.12

3. State

1971 Assessed Valuation of Real Property		$25,532,558,980
1971 Valuation of Real Property Exempt		4,959,764,930
	Total	$30,492,323,910
Percentage of Taxable Real Property		83.73
Percentage of Exempt Real Property		16.27
	Total	100.00

Ohio Constitutional Revision Commission
Finance and Taxation Committee
January 26, 1973 (Revised)

Recommendations on Article XII
(Part 1)

Introduction

The Committee on Finance and Taxation hereby submits its recommendations on the following present sections of Article XII:

Section	Subject
Section 1	Poll tax
Section 4	Revenue
Section 5	Levying of taxes, and application
Section 7	Inheritance tax
Section 8	Income tax
Section 10	Excise and franchise taxes; mineral production tax
Section 12	Excise tax on sale or purchase of food prohibited, when

The Committee also submits its recommendations on two new provisions, one modifying the Ohio doctrine of preemption and the other permitting the prospective adoption of provisions of federal tax laws by the state.

The Commission has already recommended to the General Assembly the repeal of present Section 6 of Article XII in its report on Article VIII, having concluded, as did this Committee, that the provisions of the proposed Article VIII acequately and completely cover the question of state debt, and that, therefore, present Section 6 of Article XII is unnecessary.

Section 1. Poll tax

Present Constitution

No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

Committee Recommendation

The Committee recommends no change in this section.

Comment:

Webster's Third New International Dictionary defines a poll tax as "a tax of a fixed rather than a graduated amount per head or person which is levied on adults and payment of which is often made a requirement for voting."

Ohio was one of the first states to ban poll taxes by a constitutional provision. The Bill of Rights of the Constitution of 1802 contained a provision stating: "That the levying of taxes by the poll is grievous and oppressive, therefore the Legislature shall never levy a poll tax for county or state purposes."

As one commentator remarked in 1906: "The members of the convention of 1802 had no theories on taxation except on one point. They made a declaration that the levying of taxes by the poll was grievous and forbade the legislature to levy any poll tax for state or county purposes. They were determined that no tax gatherer should be permitted to call on citizens of the new state and demand a per capita based on their manhood."

The substance of the 1802 provision was incorporated into the Constitution of 1851 as Section 1 of Article XII, which read: "The levying of taxes by the poll is grievous and oppressive; therefore, the General Assembly shall never levy a poll tax, for county or state purposes."

Neither the 1802 provision nor the 1851 provision appears to have been aimed at voting rights, however, but at the practice of requiring male citizens to work on roads. This is particularly evident from the Debates of the Constitutional Convention of 1850-1851: ". . . under our present system of laws, there is but one manner in which a tax by the poll is levied--for road purposes. This law enforces upon every citizen the obligation to perform a given amount of labor on the public highway, and this, without regard to the amount of property he may possess or, in fact whether he may have property or not." 2 Debates 34-35 (1851). ". . . the obligation to labor on the highway is really and truly a poll tax." 2 Debates 745 (1851). ". . . what /we/ desire to provide against is, the practice of making a man perform labor on the road, who has no property." 2 Debates 746 (1851).

There is little in the Proceedings and Debates of the Constitutional Convention of 1912 to indicate the intended effect of the language changes made in this section at that time. It appears to have been adopted without debate, and apparently is a restatement and strengthening of the 1851 provision, for despite this provision, Ohio continued to require either two days' work or a $3.00 contribution, annually. As Attorney General Denman stated in 1909: "It is true that we have had in this state for years, and still have laws which require male persons over twenty-one years of age to give two days of their time in each year, a merely nominal requirement, toward the improvement of streets and highways of the road district in which they

respectively may reside. At the option of any such person, however, he may contribute $3.00 to the road fund of the district in lieu of his labor. The poll tax for this purpose has never been considered, and in fact is not, burdensome because the limits within which it may be required are narrow and no abuse of the power in this regard has ever been attempted."

The framers of the 1912 provision, which not only prohibits a poll tax per se, but also the requiring of service which could be commuted in money, apparently wanted to assure that no abuse in this regard could ever take place, and that the spirit of the poll tax provision, which first appeared in 1802, was fully observed.

However that may be, in the minds of most people today a poll tax is associated with the abridgement of the right to vote. Although there is little likelihood that the removal of present Section 1 from the Ohio Constitution would result in the resumption of the practice which the section was originally intended to prevent, and although requiring the payment of a poll tax as a precondition to the exercise of the right to vote is barred by present-day federal constitutional interpretation and federal law--so that the removal of present Section 1 would not now affect anyone's right to vote--the Committee nevertheless feels that this section should be retained as an added protection for the people of Ohio. In addition, the Committee firmly believes that any poll tax, for whatever purpose, should be discouraged.

Proposed Section 3	Parallel Section of Present Article XII
(A) LAWS MAY BE PASSED PROVIDING FOR:	Section 7 Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation
(1) THE TAXATION OF DECEDENTS' ESTATES OR OF THE RIGHT TO RECEIVE, OR SUCCEED TO, SUCH ESTATES, AND THE RATES OF SUCH TAXATION MAY BE UNIFORM OR MAY BE GRADUATED BASED ON THE VALUE OF THE ESTATE, INHERITANCE, OR SUCCESSION. SUCH TAX MAY ALSO BE LEVIED AT DIFFERENT RATES UPON COLLATERAL AND DIRECT INHERITANCES, AND A PORTION OF EACH ESTATE MAY BE EXEMPT FROM SUCH TAXATION AS PROVIDED BY LAW.	
(2) THE TAXATION OF INCOMES, AND THE RATES OF SUCH TAXATION MAY BE EITHER UNIFORM OR GRADUATED, AND MAY BE APPLIED TO SUCH INCOMES AND WITH SUCH EXEMPTIONS AS MAY BE PROVIDED BY LAW.	Section 8 Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation.
(3) EXCISE AND FRANCHISE TAXES AND FOR THE IMPOSITION OF TAXES UPON THE PRODUCTION OF COAL, OIL, GAS, AND OTHER MINERALS; EXCEPT THAT NO EXCISE TAX SHALL BE LEVIED OR COLLECTED UPON THE SALE OR PURCHASE OF FOOD FOR HUMAN CONSUMPTION OFF THE PREMISES WHERE SOLD.	Section 10 Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals. Section 12 On and after November 11, 1936, no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold.
(B) THE LEVYING OF A TAX BY THE STATE DOES NOT PRECLUDE THE LEVYING OF AN IDENTICAL OR SIMILAR TAX BY A MUNICIPAL CORPORATION OR OTHER POLITICAL SUBDIVISION DULY AUTHORIZED, UNLESS THE LAW IMPOSING THE TAX BY THE STATE, OR AN AMENDMENT THEREOF, SPECIFICALLY SO PROVIDES.	None
(C) LAWS IMPOSING TAXES MAY ADOPT BY REFERENCE PROVISIONS OF THE STATUTES OF THE UNITED STATES AS THEY THEN EXIST OR THEREAFTER MAY BE CHANGED.	None

Comment

This section contains, in amended form, the provisions of several present sections of Article XII, and adds two new provisions, one on preemption and the other on the state's adoption of federal tax laws prospectively. The provisions of the proposed section are discussed in more detail below, the lettering of each paragraph corresponding to the respective division of the proposed section:

(A) (1) This division corresponds to present Section 7, relating to the inheritance tax. Apart from suggesting that the provision be renumbered, the Committee suggests changes in it for two substantive reasons: (1) Ohio has changed, by statute, from an inheritance tax to an estate tax, and some doubt has been cast on the constitutionality of the estate tax, in the absence of specific authorization thereof in this section, although it has not been challenged in court (see note, 37 Cin. L. Rev. 559); and (2) the limit on the exemption in the Constitution would seem to be legislative detail, better left to the discretion of the General Assembly, particularly when it is noted that the estate tax, like the income tax, is modeled to a large extent, on federal law.

The Committee feels that the proposed substantive changes effectively deal with these concerns. The other changes proposed here, in the view of the Committee, serve to simplify the language of the provision to some extent and to make it more contemporary. For example, the term "decedents' estates" is used because it has a readily understood meaning in probate law, and the reference to "rates of taxation" is intended to reflect the fact that most people today tend to think of taxation with this term in mind.

The Committee recommends the retention of the substance of Section 7 because the section specifically authorizes the graduation of taxes, an option which the Committee believes should continue to remain available. In the absence of such specific authorization, some question might arise as to the constitutionality of a graduated tax, under certain circumstances, because of the requirements of equal protection.

(A) (2) This division corresponds to present Section 8, relating to the income tax. The only substantive change intended is a change from specifying a fixed dollar amount as the maximum amount of income which can be exempted to providing that exemptions may be made as provided by law. This has the effect of removing a legislative detail from the Constitution. The revision would also remove the problem of defining "each annual income" as used in Section 8 at the present time.

This division, like Division (A) (1), authorizes the graduation of a tax, and to that extent the statement made in the last paragraph of the comment on Division (A) (1) also applies to Division (A) (2).

(A) (3) This division is derived from two present sections of Article XII. The portion of the division which precedes the semicolon is identical in substance to present Section 10, relating to excise and franchise taxes, and the portion which follows the semicolon is--with the exception of the removal of the phrase "On and after November 11, 1936"--identical in substance to present Section 12, which forbids the imposition of an excise tax on food sold or purchased for human consumption off the premises.

The Committee has concluded that the power of taxation is an inherent power of the sovereign, reserved to the states except as limited by the Constitution of the United States. Therefore, in a real sense, there is no need for the Constitution of Ohio to authorize the state to levy and collect specific kinds of taxes. In commenting on Section 10, for example, the Supreme Court of Ohio said in State ex rel. Zielonka v. Carrel, 99 Ohio St. 221 (1919), at page 224:

> "Section 10 of Article XII of the new Ohio Constitution declares that laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.
>
> It is to be concluded that the incorporation of this new section in the constitution was to make certain the authority of the general assembly to levy tax on the specified minerals named, for certainly in view of the legislation and construction thereof by the supreme courts of both Ohio and the United States no express grant of power was required in order to sustain either excise or franchise taxation.
>
> A majority of this court are of the opinion that there is no constitutional limitation resting upon the authority of the general assembly to levy tax on property of every kind and character, except that it must be uniform and according to its true value in money. Nor is there even this limitation on its power to provide for the levy of taxation on incomes, inheritances and franchises, including the imposition of excise taxes."

The above comment by the Court on the severance tax has caused some theorists to question whether a severance tax may not in fact be a property tax subject to the uniform rule, and thus needing constitutional authorization in order to permit the levy of such a tax in other than a uniform manner. This does not appear to have been litigated, but it is apparent that the 109th General Assembly, in H. B. 475--which inter alia imposes a severance tax on minerals--did not treat this tax as a property tax, since it imposed the tax on a unit basis--so much per ton, and not on the value of the minerals severed. At the present time, however, the Committee does not feel justified in recommending the removal of specific authority to levy a severance tax from the Constitution.

Since present Section 10, which authorizes the severance tax, also authorizes excise and franchise taxes, the possibility exists that removing the reference to excise and franchise taxes while leaving the reference to the severance tax might be construed to negate the state's power to levy excise and franchise taxes, even though, as Zielonka v. Carrel points out, these taxes could have been levied without specific constitutional authorization. The Committee also feels that the deletion of the reference to excise and franchise taxes, which are clearly transaction taxes, might be construed in the future to give a different meaning to the severance tax authority than was originally intended when the section was adopted. For these reasons, the Committee recommends the retention of the substance of Section 10, in toto.

The Committee has also concluded that the prohibition of an excise tax on food contained in present Section 12 represents a policy judgment of sufficient importance to merit continued constitutional attention. Since present Section 10 authorizes the

imposition of an excise tax while Section 12 prohibits a specific type of excise tax, it was thought appropriate to combine them in the division proposed here.

The deletion of the reference to a specific date, now in Section 12, merely removes a legislative detail from the Constitution.

(B) The purpose of this proposed provision, which has no present counterpart in the Constitution,is to modify the Ohio doctrine of preemption by implication, enunciated in a line of cases beginning with State ex rel. Zielonka v. Carrel, 99 Ohio St. 220 (1919). It is not the intent of this provision either to enlarge the taxing powers granted political subdivisions in other sections of the Constitution or by statute, or to prevent the state from preempting a field of taxation should it choose to do so. However, the provision would impose a positive duty on the General Assembly to state that the levying of a tax by the state precludes political subdivisions from levying an identical or similar tax, if that is the legislative intent, in order to avoid possible confusion or inadvertent preemption.

(C) This proposed provision likewise has no counterpart in the Constitution at the present time. In recent years, several states have adopted provisions of a similar nature, as the practice of "dovetailing" portions of the tax laws of the states on the federal tax law has become more common. These states include Colorado, Illinois, Kansas, Nebraska, New Mexico, New York and North Dakota. One example of such a law in Ohio is Section 5731.01 (E) which states, in part: "The value of the gross estate /for state estate tax purposes/ may be determined, if the person required to file the estate tax return so elects, by valuing all the property in the gross estate on the alternate date, if any, provided in section 2032 (a) of the Internal Revenue Code of 1954, or any amendments or reenactments thereof, as such section generally applies, for federal estate tax purposes, to the estates of persons dying on the decedent's date of death."

Absent a provision such as here proposed, there is a question in the minds of some constitutional theorists as to whether a law which permits the adoption of federal laws by reference, prospectively, constitutes an unlawful delegation of a state's legislative power to Congress within the meaning of provisions of the Constitution of the United States. This provision would lay such uncertainty to rest in Ohio.

Section 4. Revenue

Present Constitution

The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the State, for each year, and also a sufficient sum to pay the interest on the State debt.

Committee Recommendation

The Committee recommends the amendment of this section to read as follows:

The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the ~~State~~ STATE, for each year, and also a sufficient sum to pay ~~the~~ PRINCIPAL AND interest AS THEY BECOME DUE on the ~~State~~ STATE debt.

Comment

The Committee believes that this section, which as it now reads is an original part of the Constitution of 1851, states a sound basic fiscal policy and should be retained in the Constitution, with the amendments proposed in this report. The inclusion of a reference to the principal of the state debt, the Committee believes, makes the statement more complete and logical. Adding the phrase "as they become due" is recommended to emphasize that the requirement of this section in regard to the payment of principal and interest on the state debt is intended to apply only to that portion of the debt for which provision must be made in any fiscal year, and not to the entire debt. Removing the capitalization of the word "state" is recommended for purposes of style.

Section 5. Levy of Taxes, and application

Present Constitution

No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

Committee Recommendation

The Committee recommends no change in this section.

Comment

The Committee recommends that this provision be retained. The first clause, which prohibits the imposition of any tax unless it is authorized by statute, would seem to state the obvious but would nevertheless, seem to be an appropriate safeguard to be retained in the Constitution. The second clause requires each taxing statute to define the object of the tax and to require that the revenues received from the tax be used only for the stated purposes. Although the Committee has been advised that the provision contained in this second clause can be rather easily circumvented by providing broad, general objects in taxing statutes, nevertheless there seems to be no compelling reason for deleting the requirement. This also seems to be a proper subject for inclusion in a state constitution.

Ohio Constitutional Revision Commission
Finance and Taxation Committee
February 19, 1973 (Revised)

Recommendations on Article XII
(Part 2)

Introduction

The Committee on Finance and Taxation hereby submits its recommendations on the following present sections of Article XII:

Section	Subject
Section 2	Taxation by uniform rule; taxation not to exceed one per cent of true value; exemptions
Section 5a	Motor vehicle-derived fees and taxes
Section 9	Apportionment of inheritance and income taxes
Section 11	"Indirect debt limit"

Under the Committee proposal, Section 5a, as amended, would be renumbered as Section 6, since the repeal of present Section 6 has already been recommended. Further, present Section 9, as amended, would be renumbered as Section 7, and Section 11, if retained in Article XII, as Section 8.

Section 2. Taxation by uniform rule; taxation not to exceed one per cent of true value; exemptions

Present Constitution

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of residents sixty-five years of age and older, and providing for income and other qualifications to obtain such reduction. All bonds outstanding on the 1st day of January, 1913, of the state of Ohio or of any city, village, hamlet, county or township in this state, or which have been issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds were outstanding on the 1st day of January, 1913, and all bonds issued for the world war compensation fund, shall be exempt from taxation, and without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

Committee Recommendation

The Committee recommends no change in this section.

Comment

In regard to exemptions, it must be noted that the Constitution does not mandate the exemption of any types of property, but only gives the General Assembly the discretionary power to do so. This discretionary power is very broad, being limited only by the Equal Protection Clause of Article I of the Ohio Constitution. Denison University v. Board of Tax Appeals, 2 Ohio St. 2d 17 (1965). There are, in fact, many exemptions provided for by statute, some of which can not be traced to or related to language in the Constitution, but these exemptions only represent the application of the wide-ranging power of the General Assembly in this field. If, as has been suggested by some, exemptions should be limited or reduced from their present levels, it is clearly within the prerogative of the General Assembly to do so. Unless the Commission wishes to enumerate exemptions in the Constitution and prohibit all others or prohibit exemptions altogether--neither of which the Committee recommends--exemptions are, in the Committee's view, essentially a legislative rather than a constitutional matter.

In regard to the "one per cent limitation", which is a ten-mill limitation as imposed by statute and which applies to both real and personal property, the Committee has concluded that the basic principle of the right of the people to vote on matters

of local debt and taxation which involve levies on property in excess of this limitation should be preserved in the Constitution as it now stands. The Committee considered three alternatives in regard to the limitation: (1) deleting it, (2) increasing it to some higher figure, or (3) recommending no change. The Committee feels that the deletion of the limitation would be inadvisable for the reason stated above, and unacceptable to the people. It also feels that recommending a higher limitation would not accomplish a valid purpose, because there is no way to determine what constitutionally fixed limitation would be adequate or appropriate in the future. The Committee is also mindful of the present generally negative feeling of the people toward the burden of real property taxation in particular.

At this point, it should again be noted that the ten-mill limitation is a creature of statute, and not of the Constitution. The pertinent part of Article XII, Section 2 states: "No property taxed according to value, shall be so taxed in excess of one per cent of its true value in money ***" The "one per cent of true value" concept is translated into the "ten mill limitation" by statute. Section 5705.02 of the Revised Code provides:

> "The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the "ten-mill limitation," and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution."

Further, Rule BTA-5-01 (B) of the Board of Tax Appeals, which board prescribes equalization procedure, states that "/t/ he 'taxable value' of each parcel of real property for each year, beginning with the tax year 1972, shall be 35% of the true value in money of said parcel as of tax lien date of that year." Therefore, assuming that a parcel of property is assessed at 35% of true value, the statute and the rule combine to impose an unvoted property tax burden on that parcel which is little more than one-third of that permitted to be imposed by the Constitution.

The Committee believes that the position that the people ought to retain the right to vote on matters of local concern involving levies on property, and the position set forth in the proposed Article VIII that the General Assembly should be given the power to incur state debt within constitutional limits but without referenda, are not inconsistent, since local referenda are much more limited in size and scope, and therefore much more readily comprehended than the constitutional referenda which are now part of the process of authorizing state debt.

In regard to the uniform rule, which applies only to real property, the Committee concluded to recommend no change, because it has no basis for believing that the classification of such property, were it permitted, would necessarily lead to more equitable taxation. The uniform rule has served Ohio well in the past, and except in connection with a few specific types of real property such as agricultural land and land in urban renewal areas--which can be handled in ways other than the repeal of the rule--there appears to be little sentiment in Ohio for changing it. Few states have full-scale real property classification (Hawaii and Minnesota are perhaps the leading examples) and even in those states which have no constitutional bar against it, it is sparingly used. Minnesota, which has

permitted classification of property for decades, has in the view of many had an unhappy experience with it. On January 1, 1970, for example, that state recognized thirty classes of property--about half of them, classes of real property--under its general property tax laws, many of which classifications appeared to reflect the influence of special interest groups. After a thorough study of the system, a former Tax Commissioner of Minnesota recommended that classification be abolished in that state. Rolland F. Hatfield, Report To Governor's Minnesota Property Tax Study Advisory Committee, (Minnesota State Planning Agency, November, 1970).

At the time the Committee decided not to recommend a change in the uniform rule, however, Committee members expressed concern that this position not be construed as a stand either for or against Am. H. J. R. No. 13, which proposes the classification of agricultural property and is presently before the General Assembly. As previously noted, the Committee was aware that the question of the classification of agricultural property is a matter of current interest and concern. However, knowing that the matter was being considered in connection with H.J.R. No. 13, the Committee felt that it would be inappropriate and undesirable to duplicate the hearings and research being devoted to it by the General Assembly.

Section 5a. Motor Vehicle-derived Fees and Taxes

Present Constitution

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

Committee Recommendation

The Committee recommends the amendment of Section 5a to read as follows:

Section 5a. 6. EXCEPT AS MAY BE OTHERWISE PROVIDED BY LAW PASSED WITH THE CONCURRENCE OF TWO-THIRDS OF THE MEMBERS ELECTED TO EACH HOUSE OF THE GENERAL ASSEMBLY, No NO moneys derived from fees, excises or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

Comment

The Committee recognizes that in early 1973 there may not be sufficient funds collected under Section 5a--which would be renumbered Section 6 to fill a vacancy created by the proposed reorganization of Article XII--to permit the use of any such funds for purposes other than what they are being used for now. However, it is possible that such funds may become available in the future, and the Committee believes that in any event the General Assembly should have the option to set priorities in regard to their disposition. The extraordinary majority required to effect a change from the present situation would assure that such a change would never be made lightly. This is especially significant because Section 5a originated by initiative petition. A two-thirds vote is suggested because that is the majority now required by the Constitution for the enactment of emergency legislation.

Parenthetically, it may be noted that Section 5a is the only section now in the Constitution, other than those which pledge specified revenues to the repayment of bonded debt, which "earmarks" revenues derived from a specific source for specific purposes.

Section 9. Apportionment of Inheritance and Income Taxes

Present Constitution

Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income or inheritance tax originates, or to any of the same, as may be provided by law.

Committee Recommendation

The Committee recommends the amendment of Section 9 to read as follows:

Section 9 7. Not less than fifty per ~~centum~~ CENT of the income, ESTATE, and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income, ESTATE, or inheritance tax originates, or to any of the same, as may be provided by law.

Comment

This section would also be renumbered to fill a vacancy left by the proposed reorganization of Article XII.

The change from "per centum" to "per cent" is simply a matter of style, while the addition of the reference to estate taxes, as in the proposed Section 3(A) of Article XII, recognizes the fact that Ohio, at the present time, imposes such a tax. (The Committee has been advised that the estate taxes which are being collected are now, in fact, being returned to local units as if estate taxes were specifically mentioned in Section 9).

This section has been construed to apply only to taxes applied directly to incomes, and not to taxes measured by income, such as the present corporate franchise tax. The Committee considered the possibility of requiring the return of part of this tax under this section, but was advised that this would cause extreme problems in administration, particularly in regard to the allocation of income of corporations which derive income from several counties or from state-wide operations. Additional problems could be caused by a change in the basis on which a corporation pays income taxes, which may change from year to year.

The Committee also considered deleting or clarifying the requirement that a tax returned under this section be returned to the entity in which it originates. Deletion of the requirement could conceivably result in the passage of laws pursuant to which none of the taxes originating in a particular county, for example, would be returned to it. Perhaps the deletion of this requirement may be held desirable in the future but the Committee believes that at the present time such a course of action would be too much of a departure to be acceptable to the people.

The Committee has also concluded that any change in the "origination language" of this section would be as likely to create problems of administration and interpretation as it is to solve existing ones. For example, if this section were modified to require the return of a tax to the county of residence, determining the

county of residence, for purposes of meeting the constitutional mandate, could be difficult. Under present law, the mandated share of the personal income tax is in fact returned to entities within the taxpayer's county of residence if he is an Ohio resident, but to entities within the county in which he works in Ohio if he is not a resident of the state. A constitutional "county of residence" requirement would obviously create difficulties in the latter situation.

Section 11. Bonded Indebtedness; Payment

The Indirect Debt Limit

Present Constitution

No bonded indebtedness of the state, or any political sub-divisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

Committee Recommendation

The Committee recommends deletion of the reference to the state from this section. State debt is comprehensively covered in the Commission's recommendations on State Debt (Article VIII), Part 2 of the Commission's recommendations to the General Assembly, and Section 11 of Article XII is not needed to assure repayment of the general obligation debt of the state.

If the reference to the state is deleted from the section, it will refer only to political subdivisions; the Committee believes that it should be located in the Constitution elsewhere than in Article XII, if a more appropriate place can be found. If, however, there is no other appropriate Article, the Committee then recommends that the section be renumbered "8" in Article XII since the intervening sections are suggested for repeal elsewhere in this Committee's reports to the Commission.

Finally, the Committee recommends that the General Assembly enact legislation which will permit municipal corporations, and perhaps other political subdivisions, to place before their voters the question of approving the levy of a certain number of mills outside the 10-mill limit to be used, if needed, by the subdivision to service general obligation debt issued for capital improvements. This recommendation, in the Committee's opinion, will offer one solution to the indirect debt limit problem, discussed in the comments, and is consistent with the Committee's recommendations regarding state debt. However, the Committee also feels that the question of the indirect debt limit and of the payment of interest on and the principal of general obligation local government bonds should be considered by the Local Government Committee and, therefore, recommends that the section be referred to that committee before a final recommendation is made by the Commission to the General Assembly.

Comment

The "indirect" or "constitutional" limit on local government debt very simply stated, holds that political subdivisions cannot issue unvoted general obligation bonds which may necessitate going outside the one per cent (10 mill) limit on unvoted property taxes imposed by Section 2 of Article XII. Section 11 of Article XII requires that taxes be provided for to repay general obligation bonds. It has been construed to give bondholders of such bonds a first claim on the revenues and taxing power of the subdivision even though the subdivision may have to use millage within the 10 mills for debt service and go to its voters for levies sufficient to provide for the operation of government.

The Committee has been advised that many of the bonds of local government which are issued as general obligation bonds are for capital improvement projects which are revenue-producing and, frequently, the revenues produced are sufficient to service the bonds. Moreover, many municipalities rely upon revenues from taxes other than property taxes--primarily, revenue from income taxes -- to provide funds for servicing general obligation bonds. However, in spite of the fact that property taxes will not be needed to repay the bonds, general obligation bonds are subject to the 10-mill limit. The Committee is further advised that the county is often the political subdivision to be precluded from issuing bonds, even though the bonds it proposes to issue are well within the statutory limits, because it is the overlapping subdivision which is precluded if any city or village (or school district) within the county has gone to the limit in issuing unvoted general obligation bonds.

Although the Committee feels that the indirect debt limit creates an unfortunate situation in instances where the necessity of levying a property tax to meet bond obligations is remote, and where it is clear that other revenues are likely to be sufficient to pay bonded indebtedness, and where the issuing subdivision is within its statutory debt limits, the Committee has, nevertheless, been unable to see a solution to the problem without admitting the possibility, however remote, that an unvoted levy outside the 10-mill limit might be imposed. This the Committee is unwilling to do. For reasons stated in the comments to Section 2 of Article XII, the Committee is of the opinion that the one per cent (10 mill) limit should not be changed.

However, the Committee has recommended, in its report on state debt, that the General Assembly be given, by the people of the state, the authority to create debt for capital improvements within certain limits which would be measured by state revenues. If the people approve, the necessity of amending the Constitution each time a capital improvement project is needed will be eliminated; the decision as to priorities in capital improvement projects will be clearly lodged with the General Assembly, the peoples' representatives, where the Committee and the Commission believe it should be. Following the same reasoning, the Committee feels that municipal corporations, and possibly other subdivisions, could be authorized by the General Assembly to seek voter approval for a similar local authority, whereby the voters would authorize the levy of a certain number of mills, if necessary, to service capital improvement general ogligation bonds of the subdivision. A somewhat analogous situation already exists in Section 5705.192 of the Revised Code which authorizes continuing (or permanent levies) for school district current expenses subject to voter approval. Such levies can be decreased from year to year by the school board or by the voters in a referendum. This permanent authority could be circumscribed by the legislation enacting it so that it would apply only in instances where the officials of the subdivision anticipate that other revenues would be sufficient to repay the bonds, and would need the property tax levy only in the event of failure of such other revenues. Such authority, if approved by the voters, would enable the more orderly planning and execution of local capital improvement projects, would not raise the possibility of unvoted taxes outside the 10-mill limit; and would give noncharter cities a possible solution to the indirect debt limit problem which is already available to charter cities. The authority of the General Assembly to control local debt; authorized by two separate constitutional provisions, would not be changed.

Elections and Suffrage Committee

Chairman, Mrs. Claude Sowle

First Meeting, June 14, 1973

Last Meeting, January 23, 1975

Minutes begin on page 1805

Research begins on page 2303

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
June 14, 1973

Summary of Meeting

Present at the June 14 meeting were Chairman Sowle, Mr. Bartunek, Mr. Carter, Mr. Wilson, and Staff Member Hudak. Also attending was Mr. James Marsh, Assistant Secretary of State, and Mrs. Peg Rosenfield, League of Women Voters.

Mrs. Sowle opened the meeting by reviewing some of the topics for committee consideration.

Mrs. Sowle - The first, detailed in Research Study No. 23 presented to the committee, concerns provisions in the Ohio Constitution which are invalid or of doubtful validity under the federal law and Constitution. These include the constitutional provision for voting age, which is still 21 in the Ohio Constitution, and residence, which is 6 months in Ohio. Also, the voting rights of persons in the armed forces stationed in Ohio, section 5 of Article V. The second main area, which is suggested for clean-up, is section 2, which provides that all elections shall be by ballot. The committee might wish to look at comparable provisions in other states. Does the use of voting machines conflict with this section? Important policy questions concern section 2a, a provision for the office-type or Massachusetts ballot which prevents the straight party ticket. That is a controversial area. Section 7, the bedsheet ballot,as far as election of delegates to the national party conventions, is an expensive procedure. The next question concerns qualifications for voting beside age and residency. Section 4 of Article V permits the General Assembly to exclude from the privilege of voting or holding office any persons convicted of bribery, perjury or other infamous crime. We might look at the state laws implementing this provision to see whether the constitutional provision should be changed at all. Section 6 excludes from voting rights any idiot or insane person. How have these words been interpreted? Persons concerned with the rights of epileptics, for example, might have thoughts about this section. The next question is, should the Constitution say anything about registration? This is also a controversial political issue. It seems inexplicably entangled with the question of door-to-door registration. We might want to be concerned with it if registration is the kind of fundamental question that ought or ought not to be dealt with in the Constitution. And then the final question, should the Constitution deal with the mechanics of elections? These are the broad questions that seem to me to be involved. Some of them we will want to take up and some of them not. Mr. Marsh, would you like to join us at the table?

Mr. Marsh - It's my pleasure. Ann met with the Secretary and suggested we give the committee an overview of what we thought might be some problems with the Constitution about elections. We have presently pending in the General Assembly one amendment which has passed the Senate and is now ready for hearing in the State Government Committee which would eliminate the bedsheet ballot for the election of delegates and alternates. We're hopeful that that will move on to the ballot so that that can be resolved. Our way of handling that is to provide that only the first choice for President would be on the ballot--that the delegates and alternate candidates themselves would not be on the ballot, they would be handled much like the presidential elector candidates--a vote for those candidates would be an automatic vote for those candidates who are pledged to vote for him when the electoral college convenes, and, likewise, a vote for the first choice for President would be a vote to send the delegates and alternates pledged to him. That seems to us to be the way to handle it with the multiplicity of candidates and we expect that will probably continue.

Mr. Brown is recommending that a three member committee be created to prescribe the form of the constitutional amendment ballots. We think that there's a problem communicating with voters. Frequently ballots are designed to satisfy any possible legal challenges; consequently, the wording tends to be legalistic and voters just don't know what they're voting for. I think that a three member committee could prescribe ballot language which would be less legalistic and more easily understood. It's difficult, when you've got one eye on the court, to take really into consideration full understanding by the voter. There is a precedent in Article II, relating to initiated issues, for those issues to not be judged insufficient after a certain point. We feel that when this three member committee prescribes the form of the ballot, the ballot could not be determined to be insufficient because of language. This I think will make those issues more understandable. I believe your committee is concerned with more than just ballot language as far as conveying to the voters what these issues are about, and the Secretary has instructed me to convey to the committee that we have no objection whatsoever to formulating some kind of a pamphlet describing in detail the issues or even candidates if the committee deems that that's necessary. We would not like to have to make a mailing to all the voters as some states do because that's tremendously expensive. We presently dispense voter information in the form of candidates guides, and we think that maybe it might be better if this kind of information could be put into that kind of pamphlet which could be dispensed as we dispense other election material.

Mr. Carter - How do you dispense them?

Mr. Marsh - We make them available to anyone who wants them. We circulate them through boards of elections. Political parties pick them up for passing out. The League of Women Voters is always a very big customer. I think that generally speaking that probably 100,000 such pamphlets are distributed.

Mr. Carter - How about the media?

Mr. Marsh - The media of course utilizes them.

Mr. Carter - But you don't have any formal program of sending to the media?

Mr. Marsh - We make them available. When a question comes up that the media is interested in they may pick up a pamphlet. Usually they work on a story, and I don't think that they gather this information just to have it available. They need a particular purpose before they want it.

Mr. Carter - The concern of the Commission, as discussed at our last meeting, is that it is very difficult to get information to the voters on constitutional amendments. They're not always a hot question. We have been searching for ways that you could educate the people on what the meaning of these constitutional issues are, but the concommitant problem is that any time you have the state in control of an information flow it can be biased by somebody, or directed by somebody toward a purpose that they have in mind. In our preliminary talks we were thinking of having a committee of people, both pro and con, to a particular question, and to be sure that the issue was presented pro and con and then we were even thinking of going so far as to possibly require publication of pros and cons without taking a definitive stand on that. Would your feeling be that the Secretary of State would oppose that kind of concept?

Mr. Marsh - No, I don't think that we would. I'm sure that we would be able to support that. I think anything that you can do to convey the meaning of these things to the voters is helpful. I agree that one person can sometimes be biased and if the committee can do it we prefer to have the committee do it as to have our office do it.

Mr. Bartunek - What is the cost of sending a publication to each registered voter?

Mr. Marsh - The last mailing we made, to my knowledge, was when we had the right to work issue on the ballot and we were talking there in excess of half a million dollars. Since that time there has been a big jump in postage rates as well as printing and everything else. I would think it would run in the neighborhood of a million dollars. I think there does need to be an improvement and we don't oppose that concept. The committee idea with the publication of pros and cons with possibly a direction to the Secretary of State to publish this informational pamphlet as well as to advertise in the newspapers would be an excellent way to do it. Legal advertising, depending on how lengthy it is, probably wouldn't run more than a few thousand dollars.

Mr. Wilson - I am not so much concerned with getting it to the people. What with television, it's a far cry from 1803. But the nonlegalistic language is very important. The thing that brought this home to me was when the Local Government survey was made about what people think of local government. The same man conducted a survey on Issue 2 last fall. His results proved to him that one out of five wanted to keep the income tax and one out of two wanted to get rid of the income tax. With that amount of confusion, I think it's important to put it so the average person can understand it.

Mr. Carter - We had a couple of examples on the last ballot. There isn't anyone in the state that was opposed to getting rid of the Supreme Court Commission, and yet the people I talked to had a feeling that we were trying to get rid of the Supreme Court. We need to put in laymen's language an explanation of what these things mean. If you had offered the opportunity to be against it, no one would have shown up.

Mr. Bartunek - We have failed to interest people in what we're doing and why we're doing it. There's been no real newspaper coverage or radio or television coverage. Until the people understand what we've been doing and why and how there's not going to be any changes.

Mr. Wilson - You've got to get it to them and you've got to get them to understand it.

Mr. Bartunek - I do have one question about your proposal, Mr. Marsh, and that is that it would not be subject to judicial review.

Mr. Marsh - It's done now with initiated proposals. Once you have an initiative petition which reaches a certain point, the petition cannot be declared insufficient because something is wrong with it. We think ballot language could be handled the same way.

Mrs. Sowle - Is there challenge up to a point in time?

Mr. Marsh - According to our proposal, no, because the three member committee would prescribe the form of the ballot. It would not be subject to determination that it

was insufficient because of the language in the ballot. Frequently, when these things get on the ballot you're faced with a deadline, you've got a five weeks advertising requirement, and you've got to get the issue to the boards so that they can release bids for the printing. It has to be ready for absentee ballots. If you get into court not only does the judicial challenge create the problem of legalistic ballot language but you've also created the problem that you're making last minute changes in the ballot which in our judgment and in the judgment of the general accounting office which made an investigation of voting failures nation-wide, these last minute changes just play havoc with a smooth and efficiently run election. You place yourself in the position where you're going to have problems, because somebody is not going to do what they're supposed to do.

Mr. Bartunek - The whole system of government is a system of checks and balances. Supposing you put on the ballot you want to give everybody $100 but it's really dependent on a tax on everyone. If the three member committee doesn't say that, it's really an error and there ought to be some way to have court review.

Mr. Marsh - Courts are always well intentioned, but very legal in their proceedings. I appreciate what the courts do, but I think also that when you draft a ballot, you have to consider the first problem is if you get a hot issue you're going to have challenges. It's not a question of whether you're going to have a lawsuit. It's a question of how many lawsuits you're going to have. Frequently we just forget the voter. Unless there is something in the Constitution that limits court jurisdiction, they're going to have to assume jurisdiction and say that the issue is improper and that maybe it should be ruled off the ballot or maybe if the election is held it is invalid.

Mr. Carter - I tend to agree with Joe and I am uneasy about not having any kind of a review. Perhaps we can come up with some safeguards. You're doubtful that that can be done.

Mr. Marsh - That's my personal view. We have no objection if the committee decides that they want to establish some kind of a review procedure or to eliminate the limitation of court jurisdiction. The establishment of a three member commission to draft ballot language is an improvement over what we have. A further improvement would be some way for that committee to prepare the ballot language so it is meaningful to voters and I think that you have to get into nonlegalistic terms and to limit judicial review to fully accomplish this. However, I can fully appreciate the problem that goes with the misuse of power or even a mistake.

Mrs. Sowle - What is the selection process?

Mr. Marsh - We would propose that those three be the Secretary of State and that the other two be designated in some way by act of the General Assembly.

Mrs. Sowle - Why the General Assembly?

Mr. Marsh - I think that if you make the other two appointments of the Governor you might as well have one. I think you would have a less biased committee.

Mr. Carter - Well it brings up the question of suppose the Secretary and one member agreed one way and one member violently disagreed.

Mr. Bartunek - That's no problem. What I fear more is a strong Governor who dominates

the legislature and the Secretary of State may not be of the same party. There are several possible combinations.

Mrs. Sowle - Mr. Marsh, do you envision judicial review after the election?

Mr. Marsh - I don't think that we would cut it off after the election if the issue were unconstitutional or if it were defective in some way, but it shouldn't be ruled unconstitutional because of ballot language.

Mr. Bartunek - How could it be unconstitutional after election?

Mr. Marsh - If it were in violation of the United States Constitution.

Mrs. Sowle - But not by reason of ballot language. It's an interesting problem. It's one of those like the degree of negligence problems, certainly there would come a point where the language would be so far off if you said you were going to give them $100 when you were going to tax them $100--at that point certainly there would have to be something available by way of judicial review.

Mr. Carter - I think it is very important.

Mrs. Sowle - Shall we move on to Number two?

Mr. Marsh - The second issue that we would like to present for the committee's consideration is a provision for the election of the unexpired term for Governor and for the other state offices. As you know the other state offices are now subject to an election for an unexpired term in the event that there is a vacancy. The office of Governor is not. It's an automatic succession by the Lieutenant Governor who serves the balance of the term. We feel that the office of Governor is the most important office in the state, and consequently the people should have more voice in its filling. We would also like to see the Constitution changed so that the election for an unexpired term for any statewide office not be deferred until the even-year election but rather that it be held at the first regular general election within a reasonable time after the vacancy.

Mr. Bartunek - Isn't there a regular general election only once every two years?

Mr. Marsh - Statewide offices are filled in the even-numbered year but there is always a general election in the odd-numbered year for local offices, although there is not a primary everywhere in the odd-numbered year.

Mr. Bartunek - Also, don't different municipalities have different primary dates?

Mr. Marsh - Many of them do. In November all the polling places would be open. Unless it were a charter municipality where all of their offices would not be up for election.

Mr. Bartunek - The City of Cleveland once had the provision that if you got 50%, plus one vote in the primary election for council or mayor, you, in effect, won the election.

Mr. Carter - So your point is that any gaps are minor and in view of the importance of filling the office by ballot that is the overwhelming priority?

Mr. Marsh - In our judgment. And I think maybe half the polling places in the state

wouldn't be open in a primary.

Mrs. Sowle - Then the state would pay for having an election in the off year?

Mr. Marsh - Not unless the General Assembly requires them to. They have a provision in the Revised Code now for the state to pick up the cost of constitutional issues that are placed on the primary ballot, where there's no other election. There's no provision like that for an election for an unexpired term for candidates unless the General Assembly writes the law.

Mrs. Sowle - The committee on executive offices did consider succession. Did they consider a proposal like this?

Mr. Carter - I don't think so. I think they just considered the succession question until the successor was duly elected. I don't think there's a conflict.

Mr. Wilson - Do you have any knowledge of the situation in other states?

Mr. Marsh - No, we have not made a study of other states. We are not trying to make the office of Lieutenant Governor meaningless. We think that the office of Governor is so important that we think people often vote for Lieutenant Governor without the idea of voting for him as Governor. It's one of the lesser offices on the ticket, like the Secretary of State, and he doesn't receive the attention that he would receive if he were a gubernatorial candidate.

Mr. Wilson - Assuming that the Governor and Lieutenant Governor ran as a team would you still want this?

Mr. Marsh - We think that it should be because even if they run as a team you're still focused in on the Governor--you're electing a Governor and you get a Lieutenant Governor along with that election and you may or may not have a Lieutenant Governor that you would have voted for for the office of Governor.

Mr. Bartunek - Have you given any consideration to having all state offices except Governor appointed?

Mr. Marsh - We think that there are not too many offices, statewide, for the voters to consider. Appointment would make these officers less responsible to the people.

Mr. Carter - If you were to follow through on this concept of filling the vacancy, suppose the Lieutenant Governor wanted to run for Governor. If we are willing to elect a new Governor, should we elect a Lieutenant Governor at the same time?

Mr. Marsh - That would have to be considered. If you have the Governor and Lieutenant Governor, even if they were running as a team, if the Lieutenant Governor moves up, he should always have the right to move back, The General Assembly has provided this now in municipal succession. For example, when the president of council moves up to the office of mayor, he holds the office only so long as the office is vacant, and then he moves back. The same thing could be accomplished on the state level.

Mr. Bartunek - Suppose that in 1974 A and B were elected Governor and Lieutenant Governor, A dies immediately, then in 1975 there is an election for governor again and B Wins, then in 1976 there would be an election for Lieutenant Governor. You would have an election 4 times in 4 years.

Mrs. Sowle - I gather that this provision would apply at any time during the four years. The term to which the individual would be elected would be the remainder of the term?

Mr. Marsh - The remainder of the unexpired term. We would not propose short-term elections. We assume you would want to keep the present constitutional provision which is that if the remaining term is less than 1 year you do not subject the office to an election. There would be only 3 years, under our proposal, in which you would have an election.

The third area we feel is most important is as follows: we've had challenges to the constitutionality to the use of mechanical equipment because of the rotation requirement. Presently such equipment provides rotation of names by precinct. The Supreme Court now has under consideration a case raising the constitutional question about the use of that kind of equipment since it cannot achieve perfect rotation. The Constitution requires that rotation be as complete and perfect as can be done in a practical way. We think the court will uphold the constitutionality of the use of the equipment and thereby uphold the constitutionality of precinct rotation as far as mechanical equipment is concerned, but it still raises a spectre for boards of election because, even with that kind of an interpretation, in order to satisfy the requirements of the Constitution, boards will probably have to have their precincts of nearly equal size in population. If there is great disparity in precinct size, you have a rotation which is not as perfect as the court could expect it to be. The Court of Appeals, in upholding the constitutionality of the use of mechanical equipment, said that even though the equipment per se was not unconstitutional, the use could be if the board had improperly aligned its precincts and they specifically noted that Hardin County precincts were improperly aligned and the use of such equipment in the particular county would have been unconstitutional. The use of automatic equipment is growing more prevalent. We think that it is very expensive and complicated for boards of elections to have to achieve perfect rotation. We think a rotation on a precinct basis would probably be better. In any event, we think that the provision for perfect rotation should be eliminated from the constitution, and left to the authority of the General Assembly. Present law would permit, in the use of automatic equipment, rotation on a precinct basis and still would require paper ballot counties to have perfect rotation. There would be no real change in the outcome but it would eliminate a tremendous problem for us.

Mr. Bartunek - I'd be willing to recommend that right now. Cuyahoga County just got voting machines. Years ago I owned a printing company that did the printing of the ballots and it was a fantastically difficult job to accomplish this rotation--you have Republican and Democratic candidates for each position, etc. It was a job for a mathematician. Figuring it out took more time than printing. Now we have machines. I think it is more practical and eminently fair particularly with this court case facing the Secretary of State. It's likely they're going to have a resolution. I don't see any reason why we can't act on the recommendation right now.

Mr. Carter - I'm not quite sure I understand what the recommendation is. Is it to eliminate the requirement from the constitution and leave that to the General Assembly?

Mr. Bartunek - What does the constitutional provision say right now?

Mr. Marsh - Section 2a of Article V requires alternation of names on the ballot, insofar as may reasonably be possible so that each name appears an equal number of times in each position.

Mr. Wilson - If you're going to allow the General Assembly to do this--supposing the House and Senate are both controlled by the same party--Mr. Aardvark decides to run for election and he is a good Democrat or Republican as the case may be and so the General Assembly changes the statute so that his name appears first.

Mr. Bartunek - I always thought that the fellows whose names begin with W or Y don't have as good a chance, but that can happen in the case of perfect rotation too.

Mr. Marsh - If the committee has reservations about eliminating from the Constitution any requirement for rotation certainly we would not object. Write into the Constitution, instead of a perfect rotation requirement, a precinct by precinct requirement.

Mr. Carter - It doesn't say perfect. It says insofar as may be reasonably possible.

Mr. Marsh - This is what creates the problem.

Mrs. Sowle - At what stage is the current litigation, Mr. Marsh?

Mr. Marsh - It's presently pending in the Supreme Court. The Court is receiving briefs and arguments and is expected to set it down for hearing sometime in the fall. But I think even if the court upholds the constitutionality of this kind of equipment and precinct by precinct rotation you still have the requirement that the rotation be perfect insofar as may be reasonably possible and I would personally not expect the Court to eliminate the language in the Court of Appeals decision which said that if your precincts aren't reasonably equal that you haven't really met the mandate. Because the board is dividing up political subdivisions into precincts and they're trying to take into consideration that this school district cuts across here and a congressional district comes in here and you have one whale of a job trying to make precincts equal. Plus the fact that you may have a district like Athens, for example, where the board is sitting there with maybe 300 registered voters in a precinct and then along comes the opening of school and students register and you may end up with a precinct with 4,000 students in it. It's just completely out of proportion to any other precinct that you have in the county. The Court may determine that there is just nothing you can do about that--that the rotation is good but they may also determine that it is bad. If they knock your ballot out just before election, what do you do?

Mr. Bartunek - It may be that everybody can vote from his own home.

Mrs. Sowle - It seems to me that the problem here is that probably most of us would agree that this is a problem that ought to be cured but it is the method of curing it that we might well want to consider. Obviously 2a was put in to solve a problem of abuse and if we just take it out we have the possibility of abuse. I have a question myself whether the commission simply proposes to delete this requirement, whether we would get anywhere at all with it. Perhaps we can find a way to solve it that still preserves its purpose.

Mr. Bartunek - Don't you have specific language in mind?

Mr. Marsh - If you feel that there's a possibility of abuse, and we certainly would not want that, and we would not want to see rotation eliminated--we think rotation is highly desirable--if it could be accomplished on a precinct by precinct basis as you presently do for voting machine equipment or automatic tabulating equipment this would be most satisfactory. You could write the same or similar language as is in

sections of the Revised Code relating to the rotation for that kind of equipment.

Mr. Carter - We could require the legislature to determine how this should reasonably be done, and the court would always have the power of ruling on the constitutionality of that statute, which would get us away from the problem of doing it on a case by case basis.

Mr. Bartunek - Why couldn't you, where the parentheses start, strike out the rest of the sentence and say "the legislature shall determine"?

Mr. Carter - "As provided by law."

Mrs. Sowle - We'll have to mull it over and any further suggestions from your office, Mr. Marsh, will be welcome.

Mr. Marsh - The fourth and fifth recommendations that we have are, I gather, things that you're going to take up in the future and we would recommend that the Constitution reflect the 18 year old voting age which is mandated by the 26th amendment. Likewise we would recommend the elimination of the six month durational residence period for voting purposes. I think that that is in line with the Supreme Court rulings and the district court rulings which have already overturned that particular provision which is no longer enforced in Ohio. It's a clean-up matter, but one that should be done.

Mrs. Sowle - Do they at present have any validity at all in any elections?

Mr. Marsh - No validity at all in any elections. The 26th amendment to the United States Constitution supersedes all this. As to the durational residency we're still in a state of flux on that. We don't really know what we've got except that we know that the Ohio durational residence requirement has been declared unconstitutional by the U. S. Federal District Court. We're precluded from enforcing that which leaves us with a void.

Mr. Carter - And you might as well take it out.

Mr. Bartunek - If you live in a place 30 days you can vote but if you move to another place you have to wait 40 days. Is that right?

Mr. Marsh - We changed the 40 day to 30 days to comply with the Federal Voting Rights Act which set up a 30 day requirement for federal offices and obviously you can't have one requirement for state and local and another for federal. This was done by the last session of the General Assembly and we now have a 30 day requirement to qualify for registration.

Mr. Bartunek - Thirty days before the election.

Mr. Marsh - Right.

Mr. Carter - Would it make sense just to eliminate the matter from the Ohio Constitution since the federal constitution has preempted the issue?

Mr. Marsh - Likewise, the second paragraph of Article V, section 1 contains language which used to apply to people who moved into this state who had resided here less than one year and who were therefore eligible to vote only for President and Vice

President and this is changed with the 30 day period. If they're qualified to vote at all they are qualified to vote for everything. So that language is completely unnecessary,

Mr. Wilson - I disagree with that philosophy. Anyone living in the United States is aware of its problems. A longer period of local residence is desirable before you have to vote on local affairs because you don't know local affairs.

Mr. Carter - I agree, but it doesn't make any difference at this point.

Mr. Marsh - The six months period in our judgment doesn't make any difference at all as to whether you can move it up and hedge a few days on the 30 day provision. I think there have been some decisions in Arizona which indicate that maybe they would go along with 50 days. They sort of backed up the Supreme Court decision but they got 50 for local and 30 for federal. I don't see any advantage to that at all. I think we are probably going to live with no durational residence period, other than the time necessary to process registration and voting.

Mr. Bartunek - If we believe that the integrity of the vote should be protected so people will understand local issues maybe we should preserve a residence requirement.

Mr. Carter - What you're saying is that we could put something in the Ohio Constitution which presumably would be effective until it was challenged in the courts.

Mrs. Sowle proposed that the staff memorandum on the federal law be reviewed prior to the next meeting.

Mr. Wilson - Delaware has a three year state residence requirement for a candicate for state legislature.

Mr. Marsh - Ohio has a one year requirement for candidate for state legislature. The City of Kent had a three year requirement for running for city council, and that was declared unconstitutional a few short months ago.

Mrs. Sowle - We're right in the middle of that kind of problem. So far the students have not voted in the number that they could, and they did not take things over. They had an influence but it's good in a sense. And you talk to the students and you can see their side of it too. A man who has spent 4 years in college and 2 in in the graduate school feels that Athens is his home.

Mr. Marsh - The fifth recommendation we have you also touched on and that's the repeal of a provision which would restrict military personnel from acquiring a voting residence by virtue of residing on any military installation in this state which was found unconstitutional by the U. S. District Court very recently. Since it's not enforceable it should be eliminated.

Mrs. Sowle - That one should be easy.

Mr. Bartunek - Big brother could station 4,000 guys and they could take over the city.

Mrs. Sowle - Correct me if I am wrong but my reading of a situation like that would be very similar to the situation of the student. The residency requirements would be there but you couldn't apply the residency requirement differently to the military than you could to a transferee of General Motors being brought in from another state.

Just because he was not military doesn't mean that he would be considered any differently. The normal residency requirements which apply to everybody would apply in that situation.

Mr. Marsh - That's correct.

Mr. Carter - Could we request Mr. Marsh to be a little bit more specific in the proposed language?

Mr. Marsh - We would be most happy to draft proposed amendments for your consideration. If you have any areas where you would not like amendments, we will of course refrain.

Mr. Wilson - We would like to see your proposals.

Mr. Carter - In particular, this item no. 1 is of great interest to us. It may be that you might want to propose some alternatives. Just so long as we don't jeopardize an independent review somewhere along the line. So perhaps you could come up with several alternatives. It doesn't mean that you have to be in a position of subscribing to them, but at least giving us some alternatives and a commentary on the pros and cons.

Mr. Marsh - We would be most happy to do that, and to meet with you again.

Mrs. Sowle - I think we should decide when we will meet again and discuss briefly the agenda. We will take up the staff memorandum on the areas of possible conflict with federal law and then we will continue to discuss what's been presented to us today. Any further material that Mr. Marsh sends us we will distribute to the committee. Does that meet with everyone's approval? I would want to think about the order of topics in terms of the way I had mentally organized it myself. The first issue presented by Mr. Marsh is not one that I had summarized. I think that is of primary concern to the Commission and I think we ought to proceed to consider that, and take that up with priority.

Mr. Carter - If we're going to do that I think I could terminate this ad hoc committee, and ask Bill Taft and Linda to join us for that discussion.

Mr. Bartunek - I had the impression that the ad hoc committee was going to get at the mechanics of getting information to the people, not the constitutional language.

Mr. Carter - Both, because we have some constitutional problems involved. You can't promote elections with public funds.

Mr. Bartunek - There are other ways to get funds. I think the ad hoc committee could be instrumental in figuring out a way that a campaign could be conducted for the ultimate amendments. I think ways have to be calculated as to how to get attention, not just advertise them in 6 pt. type.

Mr. Carter - I agree. That is not an acceptable procedure. Here's one of the practical problems that's involved. This kind of citizens group takes a tremendous amount of organization and volunteer work. If you have all the constitutional questions on the ballot at one time like a Con-Con type of thing where everything comes on the ballot at once this is a very practical and good device to use. The experience in other states and it is certainly true of my observations in Ohio where you spread out over a period of six years or so and deal with constitutional matters on a

piecemeal basis has advantages but it's also got the great disadvantage--you can't gear up an organization for that period of time and it's very possible to spend a lot of time once and then the next time around not again.

Mr. Bartunek - But it was sold to us piecemeal. In one lump, constitutions were defeated.

Mr. Carter - Not everywhere.

Mr. Bartunek - I really feel that a lot of fine effort may be wasted if we can't find a way to see what we are doing.

Mr. Carter - In a constitutional convention, you go directly to the people. But we must go through the legislature.

Mrs. Sowle - When we have a proposal about to come up on the ballot, we could use press conferences all around the state, invite the press and get some television coverage of the press conference.

Mr. Bartunek - I'm not sure we would get doverage that way. They're not going to be too excited about us changing the Constitution, to conform to the federal constitution to allow a soldier to vote.

Mrs. Rosenfield of the League of Women Voters noted that it was difficult to get a committee interested in promoting the issues on the last election ballot because of the feeling that more important things would be coming up in November.

There was discussion about the strategies involved in presenting issues to the voters, and the necessity for a separate committee to promote constitutional issues. There was also noted the fact that some amendments may come from the Revision Commission and some from the legislature, and one committee may not wish to support or promote all of them.

Mr. Carter - To what extent can we spend public money for dissemination of information?

Mr. Bartunek - I think that since we are created for the purpose of studying and making recommendations, we can certainly spend our money to inform the public of our recommendations; otherwise there is no reason for us to be here and argue about these things.

Mr. Carter - On this no. 1 item, it is possible we could make it the duty of the committee drafting the ballot language to widely disseminate information.

Mrs. Sowle asked whether the committee wished to assign no. 1 priority to the first of the propositions presented by Mr. Marsh, and discuss that matter further at the next meeting, asking the staff to put together a memorandum on all the ideas that they should consider.

Mr. Bartunek: Our objective should be to get constitutional amendments before the voters in a form in which they can act intelligently. It is the end result of our entire effort.

It was agreed to meet in July on the morning of the day of the Commission meeting.

Ohio Constitutional Revision Commission
Elections Committee
July 23, 1973

Summary

Attending the meeting were Mr. Carter, the Commission Chairman, Mrs. Sowle, the Committee Chairman, Committee member Wilson, Mrs. Orfirer of the ad hoc committee, Mr. James Marsh, Assistant Secretary of State, Ms. Buchbinder, staff member, and Mrs. Rosenfield of the League of Women Voters.

Mrs. Sowle: If there are no corrections of the minutes that were mailed to the members, they will stand approved. Let me quickly review what we did at the last meeting. Mr. James Marsh, the Assistant Secretary of State appeared before the committee, and presented several proposals for constitutional change. These concerned, first, how ballot language concerning constitutional proposals should be drafted and a related issue of whether judicial review should be permitted and the question of disseminating information about constitutional proposals to the public. These issues coincide with the problem which Mr. Carter had created an ad hoc committee to consider. The Chairman has since determined that the ad hoc committee be disbanded and that the committee on Elections and Suffrage take up this question. One of the members of that ad hoc committee, Mrs. Orfirer, is with us today. It was the consensus of the Committee at the end of the last meeting that this subject should be taken up first by the Committee, since it is of fundamental importance to the work of this Commission. The staff has prepared a memorandum for our consideration and the Secretary of State has submitted two alternative proposals concerning ballot language and the dissemination of voter information. Just so we might keep in mind, though where we are headed, I might mention that the next item on our agenda, after we conclude with these issues of ballot language and voter information, is the topic we had originally designated as first on the agenda, the subject of Staff Memorandum Research Study number 23. The first issue to consider is the ballot issue and the first thing under that heading is the question, Who should prepare the language? Who drafts the ballot language? Then the second problem is should there be judicial review, and the third problem is the timing. When the proposals have to be made would depend very much on whether judicial review was provided for or prohibited.

Mr. Carter: Then the fourth is the powers of the Secretary of State to disseminate information.

Mrs. Sowle: And possibly related to that a much more minor issue, whether information should be provided at the polling place. Would it be helpful if we turn directly to the proposal of the Secretary of State, since that gives us a focus of language? That is the language of the two proposals of the Secretary of State's office regarding Article XVI, Section I, and this pretty well encompasses all the issues.

Mr. Carter: Mr. Marsh, how much time do you really need from the time the ballot language is fixed to get the issue on the ballot. Is it 75 days? From a practical standpoint.

Mr. Marsh: Well, from a practical standpoint I think really we can get it on in less than 75 days although we don't recommend it. Instead of printing ballots, we'd have to mimeograph them, and send those to the boards. The boards then have to let printing contracts. They have to either notify by mail, by registered mail, the printers in the county, or else they have to let it out on bids and that requires a certain amount of time. And the court has said that if you substantially deprive

persons of the right to vote absentee on it because of lateness of an issue, this isn't valid. You're pushing the deadline for getting the absent voter ballot ready with the 75th day.

Mr. Carter: I do not like the idea of taking out the courts altogether on this. I'm not sure that we can, because I suspect there might be legal questions under the Federal Constitution that would interfere with that, and, I think it would be a very unpopular thing to do. What I suggest is that we go 90 days instead of 75 days and then give 15 days to permit the Supreme Court to respond to any objections so that you would know where we stood 75 days in advance and not cut out court review.

Mrs. Sowle: There is a paragraph in the memorandum of the Staff on page 4 that I think might well be helpful, suggesting that the proposed ballot language could be available for examination by any person for a limited period of time.

Mr. Carter: Yes.

Mrs. Sowle: Another limited period of time designated for filing court challenges, another limited period given for court decisions, and perhaps a 90 day overall period would allow for these. Would you agree that these steps are the proper ones?

Mr. Carter: Yes.

Mrs. Sowle: Do you thing we ought to proceed immediately to decide we do want judicial review?

Mr. Wilson: I hesitate giving the authority for this to someone without any court review whatsoever. If we can force a court decision in a period of time, then, I'd be much more in favor of that than allowing carte blanche to the Secretary of State and whoever these two other people might be, however well-intentioned they are. They probably have their own prejudices, and I think without judicial review we'd be in a lot of trouble. If not, then it's wide open for court cases as soon as it is adopted. The constitutionality of it is going to be held in question until a case might be decided. I think you're better off at least to get the constitutionality of it determined ahead of time.

Mrs. Sowle: Mr. Bartunek certainly seemed to be of that mind at the last meeting. I think that we can resolve that the Committee has adopted the idea of judicial review, then.

Mr. Carter: Is 90 days enough time?

Mr. Marsh: That's putting a time limit on the courts. That's hard to do.

Mrs. Sowle: Is the period required to provide for absentee ballots fixed? Is there a proposal before the House now to shorten that?

Mr. Marsh: There is. We're not necessarily in favor of it. You need at least 30 days for voting inside the United States and I don't see how you can shorten it beyond that period. 60 days for persons overseas and sometimes that's a real challenge between the time they actually make their application and the ballots are transmitted to them and they get them and vote them and send them back, it

can use up a lot of time.

Mr. Carter: Maybe 90 days is not enough. My view in general is that constitutional amendments are of sufficient importance that you'd want to make sure that there is adequate time. Maybe we should make it 120 days, to make sure the court has enough time. Jim, are you a lawyer?

Mr. Marsh: Yes,

Mr. Carter: I am interested in your comment. Is it possible to mandate the courts to act in a certain period of time?

Mr. Marsh: Oh, I think you could.

Mr. Carter: Well, could we do it on the basis that if they don't act, the ballot language of the proposed commission becomes final?

Mr. Marsh: I think that you probably could. There is similar language in the iniative section. If something isn't done by the 40th day before an election that there cannot be challenges to the validity of the issue thereafter.

Mr. Wilson: I somehow doubt that you can approve something as a constitutional directive by negative action. What's to prevent someone from coming along later and saying the court has not ruled that this is constitutional, and therein does not actually guarantee constitutionality.

Mrs. Sowle: Let's not confuse two things. Correct me if I'm wrong, Mr. Marsh. This would not really concern the constitutionality of the amendment which could be tested later. What we're talking about is the validity of the ballot language to make the actions of the voters and voting on it valid.

Mr. Marsh: I was reviewing some old ballots, some old constitutional issues in the early 1900's I think, and the ballot language was so very simple there. We have to come up with a condensed text, and I think any committee, regardless of how well intentioned, as long as they're subject to judicial review, will want to come up with some language that the court will approve. They won't want to have ballot language that the court will just throw aside and rule invalid, and have the court substitute its own language. The real problem isn't that the court knocks the issue out so close to the election, they can do that as they've done before. The real problem is getting the voters to understand the issue once its presented to them.

Mrs. Sowle: Perhaps we could ask the staff to prepare some information about timing and prepare some alternatives on the timing. What has to be taken into account, how long it might take, whether there are any analogous provisions mandating a period of time for court action and that kind of thing. Do you think we need some specific studies on the timing?

Mr. Carter: Well, I think we do, yes, in cooperation with Jim. I would like to make sure that we understand what he is saying. Your real concern is that if we leave the judicial review in there, we're not accomplishing very much, even though we create a commission to prepare the language. Is that correct?

Mr. Marsh: I think the commission would be a step forward, but the commission

would be operating under the same limitations that the Secretary of State is operating under now. I would like to see these issues come out readable and understandable by the voters. You shouldn't need a law degree to vote on constitutional issues.

Mr. Carter: Would it be helpful if we put in the amendment the intent of this commission is to write in English instead of legalese?

Mr. Marsh: I think it would be helpful. It would at least serve as a guide to the court.

Mr. Carter: That's what I mean. The purpose of this commission would be to make the ballot understandable in so far as possible to the average voter.

Mrs. Sowle: It seems to me that we might very easily build into the provisions a way of restricting the review of ballot language and there is something in this memorandum that might be very helpful on that. For example, we could restrict review to the standards used in Thrailkill v. Smith, that early case referred to in the memorandum, and under the language of that early Supreme Court Case, the court said that the language on the ballot is not all important so long as it does not deceive or defraud voters, and maybe we could add something about intent that it be intelligible to the voters, that that be part of the objective of the ballot language.

Mr. Carter: I though that case made a lot of sense.

Mrs. Orfirer: I came in late; were you talking about the timing? My concern as I read over some of this material is that if you provide for judicial review, at what point in this does the legislature have to pass what we give them in order to get it on the ballot?

Mr. Carter: We're talking of 90 to 120 days.

Mrs. Orfirer: In our county charter proposal we changed to 95 days at the Secretary of State's suggestion. Is there any limit to how long it can take once the court starts deciding that it's not the correct language? Supposing the court revises the language that this committee or commission has determined on, and then somebody wants to appeal the court language. Supposing they get it into a language that we or a legislature decides is too legalese or slants it the wrong way and this committee or commission that you're going to appoint wants another review, then where are you?

Mrs. Sowle: We would get into the problem of the delay and maybe not getting it on the ballot until the following election.

Mr. Carter: This is one of the things you're going to have to accept if you read in the concept of court review at all.

Mrs. Sowle: Yes, that the court can knock the language out and if it does, it might mean postponment until the next election.

Mr. Carter: And that's not the end of the world.

Mrs. Sowle: Yes, but if we do build in this Thrailkill concept, that will help

some.

Mrs. Orfirer: It would help a great deal, I would think.

Mrs. Sowle: The objective is that the language be intelligible to voters and not in highly technical legal terms.

Mr. Carter: I like that concept, "because voters should study the issues before entering the voting booth." Jim, would it be helpful to have a statement that it should be simple language?

Mr. Marsh: I think that it would. I think that anything that you can put in that would cause the court not to nitpick the language, the more freedom you're going to give the commission that is drafting it, I think the better the language will be.

Mr. Carter: Now, you skipped over the commission.

Mrs. Sowle: I know. I think we'll want to talk about the commission. But, is there anything else on this? Yes.

Mrs. Rosenfield: Yes, I have another concern and maybe it goes too far afield, I don't know. Would there be any point in and would it be possible of we could provide for, in some way ballot language which would give the result of the change. To me this is very important; I was thinking back to the proposal that went down last time on who can be seated in the general assembly. Obviously it wasn't clear that the results were not going to change by that amendment. It may have been a very impartial statement and a very clear factual statement of what the amendment did, but it did not give the result of the proposed amendment which was that there wasn't going to be any change of who actually was seated.

Mr. Marsh: I think under current statutes, we're obligated either to provide the full text of the proposed amendment or a condensed text which accurately describes it, and I think an analysis of what is or is not accomplished by the amendment is very necessary, but I don't know whether, if it's to be part of the ballot language, I think that the court would knock it out under current law. If we attempted to put that kind of an analysis in, if there is to be a provision in the current law, I think either it must be spelled out in the constitution or else in statutory changes.

Mrs. Sowle: If we restrict the court review to certain issues and we include the objective that it be intelligible to the voter, then although we're talking about a very few words on the ballot, really, maybe we could work with the idea of making intelligible to the voter what the impact of it would be. It would be difficult to write.

Mr. Marsh: In voting machine counties, its just a title on the machine, and you don't even get a very adequate explanation of the issue, let along an analysis.

Mrs. Sowle: And really, that's what we're talking about is the ballot language, right?

Mr. Wilson: Skipping down in this proposed amendment, the section here says the

secretary of state may cause to be published and distributed pamphlets for the purpose of informing the electorate concerning such proposed amendments, that it may or shall, perhaps your idea could be accomplished without actually trying to clutter up the ballot language itself. I hesitate to see this much explanation on a ballot.

Mrs. Orfirer: It probably wouldn't be read if it were.

Ms. Buchbinder: When the Secretary of State, or whoever it may be that would disseminate the information to the voters, is there any review of what he says? In other words, if the language of the proposed amendment was included in some pamphlet or at the voting booth or something like that, and he put the meaning of it, consistent with the ballot language, but in plain English, to inform the voters - this is what it means for you, or this is what it will do - is there any review of that kind of thing, of his interpretation of it?

Mr. Marsh: I think that if you get something into the constitution regarding the pamphlet language, the general assembly could probably implement by statute maybe a procedure like we use for initiated laws or initiated changes in the constitution might be a practical way. That way provides for pro and con statements.

Mrs. Sowle: But under that there is no judicial review of the pamphlet language, is there?

Mr. Marsh: There isn't explicitly, no.

Mr. Carter: Presumably, if you went out and misrepresented the question the courts could always say, well, this is not a valid election because it wasn't properly presented.

Mr. Wilson: There's another problem, too, with putting a lot of leeway in the Secretary of State by saying he shall cause to be published the pamphlet. Perhaps that should also be a requirement of this ballot commission.

Mr. Carter: What you're suggesting is that the commission not only approve the ballot language but also approve at least the pamphlet language, the information that is disseminated publicly.

Mrs. Sowle: I think we have further work to do on working out the timing. We have further work to do about proposing language restricting the scope of court review. Does anybody at the moment have any specific language that they want to suggest on either of these matters?

Mr. Carter: I suggest that we take a look at that decision, that 1922 decision. I like the words that are in the summary here. Why don't we have the staff in cooperation with the Secretary of State's office come up with some alternatives that we can use for that. To Mr. Marsh: Your participation would be helpful because you have a pretty good idea of what the problem is better than we do. I really feel that throwing out judicial review is not acceptable. Let's see what we can do to accomplish your purposes without rejecting that apparent safeguard.

Mr. Marsh: We'll be glad to.

Mr. Wilson: I have no strong objection to your idea of bringing in a period of time which if there's no affirmative action shall be deemed to be approval of the language. I think that would effectively accomplish what we want to do. Whether you could force the court to operate in a restricted period of time, that I don't know.

Mr. Carter: I think the court would respond to that when it is the expressed intent of the Constitution.

Mrs. Sowle: I think that it would be a legitimate purpose of forcing the court's hand within a reasonable period of time. It's also mentioned in the memorandum and I just wanted to get a consensus on this if we can, it says that "if the Supreme Court were designated the court in which to file such challenges as is the case in legislative apportionment cases, no appeal time would be needed." Is there agreement that that should be done?

Mr. Carter: Yes.

Mrs. Sowle: Shall we look, then, at the idea of the commission? Who should make the decisions on ballot language or who should in the first instance make that decision.

Mr. Carter: The proposal that was made by the Secretary of State's office is that this consists of the Secretary of State and two members to be designated in a manner provided by law. Now the only other alternative to that as I see it is to specifically say who the other two members are, and I'm not sure that's proper to put in the constitution. In one way you leave it up to the legislature this whole question, 'Do you believe in a representative form of democracy or not?' If you do, that's where it should be. If you don't trust the legislature, you ought to put it in the constitution.

Mr. Wilson: And, of course, if you do try to name specifics, we immediately think of the two houses in the legislature. There is no guarantee that we'll have that type of state government forever.

Mr. Carter: I would think that the Attorney General might be a good one to stick on this commission, the chief law officer of the State.

Mrs. Sowle: The memorandum lists the alternatives. The Secretary of State, the Attorney General or chief legal officer, the General Assembly or legislative body, or a committee composed of some or all of the foregoing, or by persons appointed by one of the foregoing officials or appointed by the Governor. Mr. Marsh, at the last meeting, you mentioned that you thought we should avoid having the committee dominated by the Governor. Do you recall?

Mr. Marsh: No, I don't recall that.

Mr. Carter: It was discussed in the committee, as I recall, as the danger of having the Governor or any single...

Mrs. Sowle: Any single political elected official dominate the commission, and I just wonder of that's an objective that we ought to take into account in considering the composition of the commission.

Mr. Marsh: I think that it would be a valid observation, that the Governor has the kind of prestige and position where he could and probably would dominate the commission.

Mr. Wilson: If we do not come up with some specifics, we run the risk of allowing this commission to be created at the whim of the party in control of the legislature, because they're the ones who are going to determine it by laws. So again, you're still going to have this domination by one party. Even if we come up with some specific officers, they might be all of the same political party at some time. The Attorney General, the Secretary of State and somebody else. I don't know how we can get around this one, to try to maintain political neutrality.

Mrs. Orfirer: My concern would be much more that the people appointed to it would be people who would say to the Secretary of State, whoever that may be, "Okay, you go ahead and do it, it's allright with us" kind of thing. People like the Speaker of the House or the President of the Senate who would be too busy with a lot of other kinds of things. I'd almost rather see two dedicated citizens who would stand up against an official and say, "No, that's not right".

Mrs. Rosenfield: This has nothing to do with anything official, except somebody suggested at some point that perhaps who should be on this kind of commission be newspapermen for the simple reason that their business is writing things clearly.

Mr. Carter: Let me throw something else out at this point in the discussion. How about having the Chief Justice be on that commission?

Mr. Marsh: He'd of course have to disqualify himself if the case ever came to the court. He could find the language which the court would find acceptable, whether it would be getting away from the legalese which the voters could find confusing, I don't know.

Mr. Carter: No, I'm not sure that I'm in favor of it.

Mrs. Sowle: Yes, that would trouble me , that we'd just be getting back into legalese. The discussion at the last meeting turned to the selection process. Mr. Marsh; 'we would suppose that those three be the Secretary of State and the other two be designated in some way by act of the General Assembly," and then I said, "Why the General Assembly?" and then you said, "I think that if you make the other two appointments of the Governor, you might as well have one. I think you would have a less biased committee."

Mr. Marsh: Oh, yes, I think that if you just have the Governor appoint the other two, they would be his servants for sure.

Mrs. Sowle: Then, it was Mr. Bartunek who said, "What I fear more is the strong government who dominates the legislature and the Secretary of State may not be of the same party. There are several possible combinations." You don't like the idea of designating the majority and minority leaders of the house? You think its better just to leave this selection to the General Assembly?

Mr. Marsh: I don't think that our office has any strong feeling against designating if that's what you want to do.

Mrs. Sowle: Of course Linda's point is good on that. Are they really going to sit down and bother drafting language for the proposal?

Mr. Carter: Only in areas where it would be highly controversial. Of course that's what we're basically trying to get are those instances.

Mr. Wilson: I hesitate to designate the specific offices, because you might get back to the highly controlled, highly directed commissions which wouldn't be helping what we hope to accomplish.

Mr. Carter: We have a little bit of a parallel in the reapportionment commission. If you designate the specific people. its about the same sort of situation that you have there.

Mrs. Sowle: And really the kind of discussion we're engaged in now is a legislative kind of position, don't you think? Well, I personally have no objection at all to the composition of the commission as proposed by the Secretary of State. Linda do you have?

Mrs. Orfirer: I can't think of a viable alternative. I think you can write in, if you care to, that they should be representative of the two major parties, if you wantto be sure of a bi-partisan kind of thing.

Mrs. Sowle: In other words, the other two members should represent different parties.

Mrs. Orfirer: That's one possibility if that's important to you to guarantee.

Mr. Wilson: Most things that we go through here wind up being political in some ways. Take the right to work amendment. That was extremely political, the income tax - extremely political.

Mrs. Orfirer: It might even ward off some of the arguments that have come up about how things are placed on the ballot.

Mr. Carter: We could put in, "in a manner provided by law provided that all members are not of one political party." That would make sure that you have representation from the minority party, which would be heard, and if you did that then we could leave it up to the legislature from that point forward.

Mrs. Sowle: Does it really make any difference? You've got two out of three of one party, because the Secretary of State is going to be of one party or the other.

Mr. Carter: At least you've got one guy whose going to holler 'foul!'

Mrs. Sowle: Yes, that's true.

Mrs. Orfirer: He's down there listening to the discussion of why they're wording it that way. It helps keep them in line.

Mr. Carter: On the other hand, if they work like the reapportionment commission, its purely a political vote type thing of whose got the vote.

Mr. Marsh: I think it's a good idea to have at least a minority representation.

Mr. Carter: Well, why don't we try and get some language on it.

Mr. Wilson: Something on the order that they can't all come from the same political party.

Mr. Carter: That's about the best way that we can prevent the thing being railroaded through by a committee that's party dominated.

Mrs. Rosenfield: I think you brought up a good point when you said that somebody can cry 'foul'. There is a real difference between this and apportionment. If you've got one person on there who can cry 'foul', remember, this has to go to the voters, and with one man screaming that this wording is terrible, it will certainly alert the voters.

Mr. Carter: He will carry more power than on the reapportionment committee. Yes, I think that's a good point. This has to go to the voters, and the guy that feels that there are things being railroaded could really get some publicity.

Mrs. Sowle: Well, then to proceed to dissemination of information to the public, it concerns the pamphlets, the newspaper publicity and posting it in the polling place. I don't think any of us would feel that's going to be awfully important, though.

Mr. Carter: One question that comes up on these two matters, which again, is one that Jack raised is whether you want to get the commission involved in these two areas, of the actual publication and of the pamphlet.

Mr. Wilson: I think we ought to follow the comment that has been made here, that the person who wants to cry 'foul' should certainly have his chance to cry loudly often, which would include the preparation of language. You might put something in there that would further his cause. Whether it's right or wrong we can't decide here but if this commission is supposed to supply the explanation, then its just a further step in allowing him to express his disagreement with the majority. I think the commission itself should be responsible for the preparation, the explanation or arguments to go into the newspaper and pamphlets.

Mrs. Sowle: The explanation, the ballot language, the pros and cons, and what goes in the newspapers. The Secretary of State's is, "an explanation of the proposed amendments or arguments for or against the same be prepared in a manner provided by law." It leaves this to the General Assembly to decide how it ought to be done.

Mr. Wilson: If we're telling the General Assembly that there should be a ballot commission, I think we can, with all justifiable right, tell them what the ballot commission shall do, rather than just create the wordings of the ballot.

Mr. Carter: What Jack is suggesting is that you take the sentence that starts out, "The form of the ballot...", take that whole sentence and put it down below after you've got past the explanation of the proposed amendments, and so forth, and say the whole thing shall be done in a manner provided by law with the proviso that we talked about that this commission not be solely of one party.

I don't think that would be a problem for the Secretary of State's office, because what they would do is just prepare the whole package: the ballot, the arguments pro and con, the publication and have one meeting of the commission, hopefully to approve this, or if they can't do it at one meeting, to schedule further meetings. I don't think it would be more difficult than to just get the ballot approved.

Mr. Marsh: No, I don't think it would either.

Mrs. Sowle: This would give the commission, the ballot language, the newspapers language and the pamphlet language.

Mr. Carter: That's my toss-out. I kind of like that.

Mrs. Sowle: I do to. Because if you say... The way it would work anyway is that it would initially be prepared by the Secretary of State's office where there is the expertise and then any problems would be heard out by the commission.

Mrs. Orfirer: There are problems with some of this woridng.

Mrs. Sowle: Yes, I think that we would have to think through the wording pretty carefully to get what we want.

Mrs. Orfirer: I was thinking particularly of "an explanation of the proposed amendments or arguments for and against the same." I understand the intent but you don't have to have the arguments for and against the same. You have to have the explanation of the proposal. That can't be part of the 'or'.

Mrs. Sowle: Right. Now on the initiative petition, arguments for and against are mandated. Why would you mandate it under those conditions and not mandate it under this condition?

Mr. Carter: There may not be any arguments against it. I really can forsee a number of those, for example, the Supreme Court Commission, I doubt if anyone in the State would be against it.

Mrs. Sowle: But might this permit arguments for and not against, in a situation that is controversial?

Mr. Carter: You certainly wouldn't want to forclose that.

Mrs. Sowle: Would it be possible to talk about, I'm not sure how you would word this, but mandate the publication of arguments for and against, if anybody comes forward with them.

Mr. Carter: You obviously will have arguments for.

Mrs. Sowle: Or it wouldn't be on the ballot.

Mr. Carter: But the question is whether you are going to have any arguments against. In most cases you will. In some of the other states they had to come up within a certain period of time to make themselves known, to surface.

Mrs. Sowle: Did I read the possibility that you could mandate the publication of arguments if anybody in the General Assembly proposed one? If it were really controversial, somebody in the General Assembly would have arguments against it.

Mr. Carter: Of course, and any voter, all he would have to do is go to his representative. That would keep out the cranks. That's a good idea. Changing the subject just for a moment, in Georgia the duty of publicizing the proposed constitutional amendment resides in the Constitutional Amendments Revision Board. And maybe we ought to give a title to this darn commission, and call it a Constitutional Amendments Revision Board, it sounds better.

Mrs. Orfirer: Instead of a ballot commission. I think we have to be very careful of what we're doing with these arguments for and against. We have to give it a great deal of thought. I'm wondering if we think about the purpose of it, of giving arguments pro and con, I think we're back to what I raised originally which is what would the effect of the proposed amendment be. I wonder if we might not get around it that way. If there is some way of mandating that is impartially as possible, that the effects of the amendment be delineated, this, if done honestly, would bring out pros and cons if such existed. It might also open it up to a lot of judgement arguments.

Mrs. Sowle: Could you say, "an explanation of the proposed amendment, including its effects".

Mr. Marsh: I would think that any explanation which did not include the effects of the amendment, would not really be an explanation.

Mrs. Sowle: "An explanation of the purpose and effects" of the proposal?

Mrs. Orfirer: There are lots of explanations that do not tell you really what the effects of it are going to be.

Mr. Carter: I kind of like Katie's thoughts. "The purpose and effects."

Mrs. Rosenfield: May I ask a question as an example? How would you describe the effects of the Equal Rights Amendment, in a way that was fair and honest, that everybody agreed with?

Mrs. Sowle: You'd need a book.

Mr. Marsh: Maybe there should be some limitation on the number of words.

Mrs. Rosenfield: But that would seem to be the only way that you could do that would be a pro and con, and they might contradict each other.

Mrs. Sowle: So really, you need a body like the commission with discretion to review it, because it would be impossible to prescribe in advance, how each one ought to be done, so you need a fairly impartial commission to do this.

Mr. Carter: We're talking about legislatively sponsored amendments, essentially at this point, so the idea of having the legislature involved in this presentation to the voters does make sense. I notice that some states give the minority views of the legislature an opportunity to be heard. Perhaps, we should make sure that the minority views on the legislature have an opportunity to be rep-

resented ~~some way~~ or another, at least to be heard, on this commission.

Mr. Wilson: Maybe we ought to expand it from 3 to 5.

Mr. Carter: Nothing magic about 3.

Mr. Wilson: Mandate that 2 of those new ones be the minority leader and majority leader of the House, or the majority leader of the House and the minority leader of the Senate. I don't care how you work it, but you work it so that both parties from the legislature could be represented on the commission.

Mr. Carter: The problem is that both the majority leader and the minority leader might not agree.

Mrs. Orfirer: The other way, Dick, I think that you were getting at is to provide that the commission must provide a hearing from the proponents and the dissidents of the amendment.

Mr. Carter: That presumably should be done in the statutes, I would think. That's an interesting thought. We jumped to the conclusion that 3 was the right number. I think we ought to make it not less than 3. Give the legislature the opportunity to use their wisdom on how the thing should be settled. Give them the flexibility to decide how they want to do this.

Mr. Wilson: Well, I think you ought to put a top limit on it so you don't have a 75 man commission.

Mrs. Orfirer: Once it gets that big, it begins to become a political football game, where everyone says I'll try to put it on.

Mrs. Sowle: Now does that change, "provided that all members are not members of the same political party."?

Mr. Wilson: You have to have that protection.

Mrs. Sowle: Yes, but should we strengthen it?

Mrs. Orfirer: How would you word it? You can't say half and half because it's an uneven number.

Mrs. Sowle: Well, you can say half because the Secretary of State would be the additional one.

Mr. Wilson: You could say not less than 3 and not more than 5. Otherwise, it's conceivable that in order to highly confuse the issue, a legislature fully controlled by one party at some time might, by law, designate a 75 man commission, just to make sure that nothing gets through there.

Mr. Carter: Why did 3 come up then, in your mind?

Mr. Marsh: We though that the number should be small because it's hard to accumulate people who might agree on language, and it should be an odd number so that you could have a majority, but I think 5 is probably just as workable as 3.

Mr. Carter: If we did it with 5, we could also state that members of both parties would have to be represented on the commission, and that would screen out the possibility of having the President of the League of Women Voters who might not want to make her politics known. I think you'd have some political neutralists.

Mr. Wilson: You might also have more than two parties.

Mr. Carter: Yes, that's also possible. Not very likely however.

Mrs. Orfirer: If we're going to move into that area, I think we ought to spell out whether the two of those should be public members.

Mr. Carter: Or all five.

Mrs. Sowle: You know, that's not all that good a protection. I was very suprised to learn after I was appointed to the Commission that the public members are sort of informally classified by parties. Our Local League put my name in, so that it never occured to me that it became partisan, but I'm just mentioning that as a way of saying that our designating them as public members does not really mean that's a guarantee of impartiality.

Mr, Carter: I really like the word 'board', rather than commission. So many commissions...'board' gives it a little more status. To Mr. Marsh: You have no objections?

Mr. Marsh: No, not at all.

Mr. Wilson: I would like to suggest that we not have the redundancy that's apparent in Georgia's Constitutional Amendments Revision Board. Amendments are revisions. Constitutional Amendments Board or Constitutional Revision Board.

Mr. Carter: Constitutional Amendments Board.

Mrs. Sowle: In terms of arguments pro and con, although we give this to the Constitutional Amendments Board, the Illinois provision is, "the General Assembly prepares the argument in favor of the proposed amendment and the minority of the General Assembly may prepare the argument in opposition." Fine.

Mrs. Orfirer: So, let us turn it over to the board.

Mr. Marsh: But what do you do when the General Assembly is in ajournment?

Mr. Carter: Well, of course, you can do that through the officer of the General Assembly.

Mr. Marsh: That's the way we work it for the initiated proposal.

Mrs. Sowle: I like the idea of involving the General Assembly in the arguments.

Mr. Carter: Yes, I do to. This is a legislative sponsored amendment. Perhaps we could mandate that it be a person appointed by the House Majority leader and a person appointed by the House Minority leader. Then you've got both parties.

Mrs. Sowle: Well, what if the House Minority leader agreed with the House Major-

ity leader?

Mrs. Orfirer: Suppose the arguments are so ridiculous, that somebody has to have the discretion to say that it isn't valid.

Mr. Wilson: You probably should leave that to the wisdom of the legislature.

Mrs. Sowle: So we should leave the question, "Who prepares it?" to the legislature?

Mr. Wilson: And I think we ought to go to a mandated 5 man board, with the decision in the legislature.

Mrs. Sowle: This proposal does leave that to the General Assembly.

Mr. Wilson: Should there be another section to take care of initiated petitions?

Mrs. Sowle: There is now. I think after we have decided what we want to do with this, we ought to take a very good look at that initiative procedure and maybe make them the same.

Mr. Carter: We ought to put it in context with the other one.

Mr. Wilson: So far as this is possible, yes.

Mr. Carter: I think we can improve on the initiative petition if we get this written together. We have the same board, the same procedure, whether it came from the legislature or from initiative petition.

Mr. Marsh: Yes, I think that would be very acceptable as far as the legislature is concerned.

Mr. Carter: Well, Jack is arguing for 5. I'm inclined to agree with that. I think if each time, there is a reasonable compromise making sure there is adequate representation and yet, not getting the thing so big that it becomes a constitutional convention. And Jim feels that 5 was still a workable number to work on this.

Mrs. Sowle: But with some proviso about representation. Any idea of what the proviso should be?

Mr. Carter: I would just say that representation of both of the major political parties. Let the staff of the Secretary of State's office work out the legal language. I like the idea, if it can be done, if we're not tackling a monster, perhaps to take this initiative petition... Is this in the same article?

Mrs. Sowle: No. It's in article II.

Mr. Carter: Which is strictly initiative petition?

Mr. Marsh: It happens to be in Article II, section 1g I think. It has extremely complex procedures.

Mr. Carter: Well certainly, part of our charge is to simplify the constitution

and this might be an opportunity to combine the whole thing in Constitutional Amendments and include both initiative petition and legislative proposals.

Mr. Wilson: In Article XVI, if this Section 1 is put in, you're going to need a branch saying that the General Assembly can propose and another section saying that it can be proposed by initiative, and a third section where you write the numbers and everything else that comes up with this ballot or revision board, amendments board.

Mr. Carter: It's applicable to both.

Mr. Wilson: It makes it clear in the long run without having to skate around.

Mr. Carter: to Mr. Marsh: Does that make sense to you? Would you be willing to work with that?

Mr. Marsh: Yes, I think so.

Ms. Buchbinder: What if an initiative proposal is brought before this commission, I can't think of an example, but suppose it is not in the interests of either political party, and you don't have public members on this commission. What would happen then? Suppose someone wanted to put a freeze on your salaries. I'm sure this wouldn't be a case for constitutional petition. But something..

Mrs. Rosenfield: I can think of one. A proposal to repeal the income tax, which both parties would oppose.

Ms. Buchbinder: Right. What kind of representation could the citizen get there?

Mr. Carter: Well, of course, they would be charged with a mandate of representing the pros and cons; even though they didn't agree with them. They would have to respond to that.

Mrs. Sowle: Now, in the provision for the initiative petition, it permits the petitioners themselves to do that.

Mr. Marsh: To prepare the ballot title.

Mrs. Sowle: And the arguments in favor.

Mr. Carter: Well, that brings up another possibility, to add some ad hoc members to the board depending on the particular situation. In other words, if you have three permanent members of the Amendments Board, and then the provision for the addition of two members representing the majority of the proponents and the opponents if any, who would sit in on any particular amendments that they were directly concerned with...

Mrs. Sowle: That would be good. Of course, the General Assembly could do that.

Mr. Wilson: Here we go again, though, making this board bigger and bigger. Can we limit that to initiated petitions?

Mr. Carter: Well, maybe you could be smart enough to handle both. In other words, suppose you had a permanent three man board, however selected, and then

you had the additions on any particular issue of a person representing the pros and a person representing the cons, if any were available, to sit with the board, with the permanent members of the board to prepare this language.

Mr. Wilson: The pros and cons, in this particular section at least, have only been thrashed out in the legislature.

Mr. Carter: In this case.

Mr. Wilson: Yes, but not necessarily in the initiated petitions. We'd do well to leave this board just as small as we can, and only add to it in the case of initiative petitions.

Mr. Carter: You've got a point. We could make it flexible...

Mr. Wilson: Without necessarily giving it too much size.

Mrs. Sowle: I think we ought to keep in mind, too, that maybe what is appropriate for legislatively initiated proposals, might not be appropriate for the other, but, we can certainly look at the initiative petition procedure and see if there are some things that would be easier to combine.

Mr. Wilson: That was not covered in any of the proposed amendments of the Secretary of State.

Mrs. Orfirer: That has to be looked at before you reach any decision about this one.

Mr. Carter: I think we ought to take a look at this initiative amendment, and look at the subjects in context, one before the other.

Mr. Wilson: After a certain point, though, your constitutional amendments should be handled in the same way because of where they originate. I think it would be wise to see if we can't pull these together, to a point where we can handle them all alike.

Mrs. Sowle: This memorandum did summarize this procedure for initiative petitions.

Mrs. Rosenfield: What I wondered is, could you accomplish the same thing you're proposing, but, maybe it would be done by having people named in the law. The income tax immediately comes to my mind again, and if the leaders of both parties had appointed people to this, Mr. Netzley would never have been heard officially by the Board. And there were people who objected who would not have been heard by the leadership of either party.

Mr. Carter: The only question is whether that is constitutional material or statutory material?

Mrs. Orfirer: I think we're forgetting, too, that whatever we are doing is going to be a major advance over what now exists in terms of expanding the possibilities of discussion and review. It has already gone through the whole legislative process. It's already going to be open to the newspapers and the public as it is now. All you're really doing is saying that instead of one man

writing the ballot language, you're going to bring in a couple of other people to get a wider point of view represented. And I really don't think it's essential that we protect every interest, and have every group represented, because just by adding two people off the street you're already going to have expanded the points of view.

Mr. Carter: The other argument is, of Peg's, though, is that one of the prime functions of the Constitution is to serve as a check on the legislature. There are certain things that the Constitution reserves to the people. They don't trust the legislators, and this income tax is an example of that. I'm not taking a position pro or con, but I think it's a question as to whether or not it is constitutional material or not. And it's that old question of how much do you trust the legislature.

Mrs. Orfirer: Well, now, you're only talking about language, you're not talking about whether it is going to be on the ballot or not.

Mrs. Sowle: So far, we are talking about legislative proposals and we're letting the General Assembly decide how the explanation and arguments should be done, with its own proposals. And it seems to me, in that context, that that's all right. Now it might not be all right with initiative petitions.

Mr. Carter: Yes, that doesn't change the picture, when you're trying to vote.

Mrs. Orfirer: There's a whole other way of looking at this. By the time it has gone through the legislature, the opportunity has already taken place for all the proponents and the opponents to have said their piece, the vote has been taken, there's been a determination. Is there really an inherent right of the opposition to be heard on the ballot language, once it has already passed the legislature?

Mr. Carter: I think there is.

Mrs. Sowle: We're not just talking about ballot language. We're talking about the arguments for and against and the explanation that will appear in the newspapers and in the pamphlets, too.

Mr. Carter: That's a tremendous power.

Mrs. Sowle: And that part of it is far more powerful...than the ballot language.

Mrs. Orfirer: But the men who have passed it are obviously the ones who have the right to go out and sell it. Now do they have the responsibility to unsell it, to give the opposition point of view? Or is that the prerogative of the people who are against it, to go to the newspapers and say," Look, you ought to tell the public about this aspect of it." Think of it in terms of the Constitutional Commission. Once we've taken a vote on something and we've agreed to go ahead, do we feel that we must provide that a spokesman for any two or three members who might have voted differently should go to the legislature and say, "no, don't pass that"?

Mr. Carter: I think the difference is that we're talking here about using public funds to promote an issue, and I don't think that can be justified. I think that

it's the responsibility of the Board to see that this question is fairly presented to the voters, and I think if you don't do that, you're going to run into all kinds of court tests anyway. You know, if it's not fairly presented to the voters, it's not a valid question.

Mrs. Sowle: I think it has to be pro and con. I really do. It is State money. If the people are being asked to vote on it, they ought to know what the questions are, what the arguments are.

Mr. Carter: There's one thing I think we're striving for in all of this. The big problem that we've recognized is that the information is not getting to the voters on what they're voting on. And what we're trying to do is to say that it is a responsibility if you use public funds, to convey information to the voters. Now once you've said that you have to go along and say it has to be presented in a fair manner, so that it isn't distorted. And I'm willing to trust the voter's judgement if the pros and cons are fairly presented.

Mrs. Rosenfield: By presenting both sides very fairly, so that the voter really understands what he's voting on, the more likely he passes it. If he doesn't understand, he votes no.

Mr. Wilson: I agree that the Board is trying to present the issues pro and con as fairly as possible. We don't have to be 100% perfect. But there is no limitation to prevent any other group from anywhere in the world from going out and talking all the full page newspaper ads they want to advocate their side of it, but this should be the official... for both sides of the question.

Mrs. Sowle: I think, that we've covered most if the important questions there. We're going to have to work very hard. To go back and work on them. Should we talk about newspaper publicity and pamphlet distribution?

Mr. Carter: If we could have some broader language I would feel better about it. I do think we have a legal requirement on the ballot information being put in the newspaper so that its printed and that's probably the cheapest way of doing it.

Mr. Marsh: It probably is the least effective, because it's small print and nobody ever reads it.

Mrs. Sowle: Do you think it's worth putting in, then?

Mr. Marsh: It does provide a starting point I think for various people who have an interest, like the League of Women Voters, or anyone else who wanted to pick it up.

Mrs. Sowle: And at least the newspapers, supposedly, will have it available, for their own editorial policy formation.

Mr. Carter: Where my objection was was in the second part. (reading) "The Secretary of State may cause to be published and distributed pamphlets or other publications." I'd like to say, "or other information" because it's quite conceivable that information could be distributed in other than just publi-

cations. There's really nothing more important than constitutional amendments to spend a little money to make sure that the voters know what they're voting on. These are awfully important subjects or they wouldn't be in the Constitution.

Mr. Wilson: What is the effect of the newspaper? Newspapers, in theory, may not exist after another hundred years.

Mrs. Sowle: Then we could mandate that the Secretary of State put on a program on cable television.

Mr. Carter: Or to prepare a program.

Mr. Wilson: Put it in such language here that he would be free to do that without making another constitutional amendment at that time, because, "cause to be published" are not the right words.

Mr. Carter: Would you have any objection to using 'pamphlets or other information'?

Mrs. Sowle: In legal language, a broadcast is a publication. Mr. Marsh, would you agree with me? In libel law, it is a publication. But, maybe, just to get the idea across a better word could be found.

Mr. Wilson: When you say to be published and distributed, the pamphlets or anythings else...

Mrs. Orfirer: Couldn't you just say, 'disseminate information'?

Mrs. Sowle: Yes. 'May cause to be disseminated pamphlets'?

Mrs. Orfirer: They just may disseminate information.

Mrs. Sowle: Information. 'May cause to be disseminated information.'

Mr. Carter: I have no objection to the 'may'. Here's the reason for it. Some amendments may be so picayunish, clean-up, something that really there's not any reason to go to the expense to say 'shall', and I have no objections in leaving some discretion to the Secretary of State on that, but I'm open to counter-arguments.

Mrs. Sowle: I'm inclined to counter-argue on that a little bit. If an amendment is worth proposing, even to abolish a supreme court commission that hasn't been in existence, if it's worth going to the trouble of putting it on the ballot, some explanation ought to go out. Now the pamphlet can be one sheet of paper if it doesn't warrant more than that. Maybe there's a good argument against what I'm saying. But I've a feeling if it's worth going through all the heavy, tedious procedure to propose an amendment, some explanation ought to go out.

Mr. Carter: When getting back to the income tax, that's a valid point. The Secretary of State may be in cahoots with the powers that be and say, "Well, we're not going to assist at all. We're going to do nothing to assist the others."

Mr. Wilson: Are we going to substitute the Constitutional Amendments Board for the Secretary of State throughout?

Mr. Carter: Well, I think the Secretary of State is the one that has the money.

Mr. Marsh: The problem with any dissemination of information...Usually what happens is that the General Assembly is usually pushing the time deadline when they pass these things. You get the ballot prescribed, and then you go into a printing requirement for publications, and you get an additional lapse of time there.

Mrs. Sowle: Of course, you have to go through the newspaper procedure. Wouldn't it be possible to produce a pamphlet within the time that you distribute the newspaper information?

Mr. Marsh: Newspaper advertising may either go out in mimeograph form or in printed form, depending on the time requirement there. Lately, it's frequently gone out in mimeographed form because of lack of time to print the mass of material. It's far better to print it because when we print it they usually provide mats to the newspapers at cost and you end up with the same verbiage in all the newspapers, and you don't have one newspaper printing one thing and one newspaper printing another.

Mrs. Sowle: Is this any problem, Mr. Marsh? 'An explanation of the proposed amendments or arguments for and against the same shall be prepared in a manner provided by law. The proposed amendments together with such explanation or arguments shall be published once a week.'

Mr. Wilson: If we change that, 'in a manner provided by law so that it shall be prepared by the Constitutional Amendments Board', as Dick said, they're going to be working essentially on ballot language, the explanation or arguments and the pamphlets at the same time, we can make that a prerogative or a duty of the Board to prepare all of these, and they'll all be out at the same time.

Mrs. Sowle: That sure has a certain amount of appeal to me. So this would read, 'an explanation of the proposed amendments or arguments for and against the same shall be prepared by such Board.'

Mr. Wilson: Or any way you want to word it. To make the responsibility for the whole thing from the ballot language on, simultaneously the responsibility of this Board. That would hold the objection that you just raised of how to get the information out along with the actual amendment itself .

Mrs. Sowle: Did we come to any decision on the words 'or arguments for and against the same'? I have advanced an argument that it should be mandated. Is there any consensus?

Mr. Carter: I would like to have it say, 'an explanation of proposed amendments or arguments for and any against the same.' Again, there may not be any.

Mrs. Orfirer: I don't know if 'any' is a constitutional word.

Mrs. Sowle: It may require some modifying...'any against the same'...proposed

by any member of the General Assembly.' Something like that?

Mr. Wilson: Then you're mandating your Constitutional Amendments Board to accept as a part of this "explanation" the arguments advanced by any member of the legislature.

Mrs. Orfirer. You can't do that...'or any argument', because it could be a nonsensical argument, a very picayune kind of thing.

Mr. Wilson: I think that by having bi-partisan representation on this Board, I don't think any illogical arguments for aor against would be included.

Mrs. Sowle: I suppose that's right. I guess we're back, I didn't mean to take us away from it, but we still haven't really decided the question of whether the Secretary of State may or shall cause to be published pamphlets, and Mr. Marsh has suggested that this may cause problems in the timing.

Mr. Marsh: I think that we could go with either one, but if we get something very close to your time requirement for publication, you could have some problems there.

Mrs. Orfirer: Mr. Marsh, if instead of saying,'cause to be published and distributed pamphlets', we say 'shall disseminate information', then you don't have a time problem, right? You could go on T.V. and do it, you could do it any way that becomes logical.

Mrs. Sowle: Information for the purpose of further informing the electorate. Which doesn't bind them to anything, but expresses an intention.

Mrs. Orfirer: Well, I think then you could say 'shall'.

Mrs. Sowle: Yes. 'The Secretary of State shall disseminate information...'

Mrs. Orfirer: But it gives them the freedom of how to do it.

Mr. Wilson: Can language be put in there that 'the Secretary of State shall... if ordered by the Constitutional Amendments Board.' I think if we leave it 'shall', it doesn't say how much he has to disseminate or how well it has to be disseminated.

Mr. Carter: No, and the Secretary of State could use his judgment as to how much the public interest warranted an expense in this regard.

Mrs. Sowle: I wonder if we should use the language as to what he should disseminate, though. The material that is mandated to be published in the newspaper. Are we going to let him pick and choose, or should the Secretary of State have to disseminate the explanation and the arguments for and against that have already been described, for the newspaper publication?

Mrs. Orfirer: What does he do now?

Mr. Marsh: As of right now, we really don't do anything, except publish the full text, and we've been somewhat loathe to interpret because interpretation

does have with it a certain amount of power. I would think that any publication should include what the ballot looks like, and it should include the arguments and explanations which the Board adopts as the official statement of the amendments Board on those.

Mr. Carter: What we could do is say that the Secretary of State shall disseminate information approved by the Board.

Mr. Wilson: But I don't think that would accomplish it because you might run into this case where the Secretary of State was violently opposed to what the Board did, and he might disseminate only such information as he might choose as it would further his cause. This is what I was getting at in my original comment about getting some Board approval on what he does.

Mr. Carter: It carries some slight risk that the Board might veto, but it seems to me that that is minor, because if we're really saying here that the crux of this thing is that the public should be informed.

Mrs. Sowle: The Secretary of State, then, shall disseminate information as approved by such Board. Is that what you want?

Mr. Carter: That's what I'm suggesting.

Mrs. Sowle...for the purpose of further informing them on this matter. That does lodge the discretion at the point where we hopefully will have balance.

Mr. Wilson: And the Secretary of State might welcome that, too, because otherwise he could be accused of jumping either side of the fence.

Mr. Carter: Yes, at least this way we could give him some back-up on what he does.

Mrs. Sowle: Now, what if the Board does not approve the dissemination of information? Then our 'shall' becomes meaningless.

Mr. Wilson: Yes. Well, I think that's what we're after, if this board is supposed to be as fair minded as possible.

Mrs. Sowle: Right. So what we're really doing is leaving it to the Board.

Mr. Carter: We could say this, that 'the Board shall disseminate through the Secretary of State's office, information', something of that sort. In other words, to mandate the Board to act.

Mr. Wilson: To my mind, that's all right, you can name the Secretary of State on the Board.

Mr. Carter: Does the Board have any funds, though?

Mr. Marsh: No.

Mrs. Rosenfield: Do you really want to confine it? Chances are right now that they would use the Secretary of State's office with the administrative agencies, but 150 years from now they might want to use some completely different agency

of the government.

Mr. Carter: Or some non-governmental agency.

Mr. Wilson: However, getting back to this point, supposing we say that the Board shall disseminate, and the legislature does not approve any funds for such dissemination, then where are we?

Mr. Marsh: Usually we get 5 people together, and to really undertake the program of dissemination you almost have to have some administrative office in charge of it. You're going to either have to go through the Secretary of State or establish some administrative offices to carry out the Board's function.

Mr. Carter: Another way would be to contract with a public information agency.

Mr. Wilson: We are creating something here upon the concurrent committment of funds to allow them to do their work, but you have to find them some currently established office to do this.

Mr. Carter: Of course, if we do it through the Secretary of State's office, he could still contract for them. How about that? 'The Board shall cause to be disseminated information and then leave the Board...' There's still the hang-up of what does it do for finances.

Mrs. Sowle: I still like...'the Secretary of State shall disseminate information as approved by the Board." It just gives the Board enough control so that the Secretary of State isn't going to pick and choose arbitrarily what's to be disseminated, and I think the Board must be in a position to do that. Let's let it get cold and then see how we feel about it then. We'll have a whole new draft. At least one, probably more. If Mr. Marsh can struggle along with some of these things.

Mr. Marsh: I think I'm getting all these suggestions. I hope I am.

Mr. Carter: That's just fine. I think these have been good points that have been brought out. I really think this can make all the difference in the world as to whether we have successful constitutional reform. The basic question that is involved, is it appropriate to spend public money for the purpose of giving the voter information on what he's voting on? To me that's a very valid thing to do. Somebody has to do it and I think that's a responsibility of the State. If they're going to go to all the work of proposing an amendment, I think that carries with it the responsibility of informing the voters of what it's all about.

Mrs. Sowle: What about the newspaper publication? Does everybody feel that the kind of newspaper publication set forth here, that really is no change, is good?

Mr. Marsh: No, other than the arguments for and against, or explanations.

Mrs. Sowle: Once a week, for five consecutive weeks preceding such elections in at least one newspaper of general circulation in each county in the state. The staff memorandum had a whole bunch of alternatives. Different states do this in different ways. Do you see any reason to question this particular procedure?

Mr. Carter: The only thing I would suggest is that we use...when we leave it t he way it is now, 'arguments', it might be argued that somebody could write a book on this and it would have to be published. It would seem to me that to put some restraints on that it would be well to put the words, 'summary of arguments'.

Mrs. Sowle: Do you not think that this could be left to the discretion of the Board?

Mrs. Orfirer: Is this what you were referring to that goes back into that small print?

Mr. Carter: Yes, that's why we want to have the second part, because hardly anybody reads the newspaper publication.

Mrs. Orfirer: Why do you have to have that five times, why not only once?

Mr. Carter: Well, the theory of course is that someone could be gone and say I haven't seen it.

Mrs. Sowle: Then the theory is, too, and this might have some validity, although it does seem kind of silly, that this does give public notice. Nobody can say, "Look, it got on the ballot and nobody knew it was coming out."

Mrs. Orfirer: I think it's there primarily as a protection.

Mr. Marsh: This is borne as a regular county expense and you're adding to that expense by adding the arguments for and against. You may decide so that there won't be too much change, that you might want to cut the number of times down to 2 or 3.

Mr. Wilson: 5 isn't sacrosanct for any reason, is it? Of course, when the Constitution was written, newspapers were all they had, for communication and you had to allow adequate time, but now with radio, television and everything else, I think the times could be reduced. It could be cut in half.

Mr. Carter: That's a good point. That takes a lot of the pressure off the front-end of the timing. Why don't we try 3.

Mrs. Sowle: Let's try 3.

Ms. Buchbinder: What about specifying which 3 weeks or 5 weeks preceding the election. It was raised in the memorandum that it could be 5 weeks in the end of July and August, or it could be the 3 weeks immediately preceding the election. Don't you think that ought to be specified?

Mrs. Sowle: That language is a little ambiguous. Three consecutive weeks immediately preceding the election. Not any three weeks preceding.

Mr. Wilson: What's wrong with the way it is?

Ms. Buchbinder: It could be any 5 weeks. How relevant is it going to be in August?

Mrs. Sowle: Because it might be two months ahead of time. They might have forgotten about it by then.

Mr. Wilson: Nobody reads them anyhow.

Mr. Marsh: I don't have any feeling one way or the other. I think we would, as a practical matter, if we had our way, publish the three full weeks before the election. It would be easier for us.

Mr. Carter: The more time the better to get it ready.

Mrs. Sowle: If you have plenty of time, might you choose to start this three weeks 5 weeks ahead just in case? Doesn't it happen sometimes that there's a slip-up and it doesn't get in one county newspaper? And if you had the option of starting a little earlier, might you choose to do so in order to avoid one mistake preventing the election from taking place?

Mrs. Rosenfield: You have a court opinion now that substantial compliance is necessary.

Mrs. Orfirer: Has there ever been any problem with the way it is? With the ambiguity the way it is? Then why fuss with it? I'm all in favor of don't add any more changes than you need, to confuse people.

Mrs. Sowle: Well, I think we have enough to think about between now and our next meeting. We'll want to talk about a meeting in August.

Mr. Wilson: Can we ask the staff to send out between now and this proposed August meeting the article dealing with initiated amendments, so we can start to fit that in, and see whether it's able to be fit in.

Mrs. Sowle: We should start to think about that. And will you make a note then when we determine the date of our next meeting, we should notify Mr. Marsh.

The Committee later agreed to conduct its next meeting on August 14th at 10 a.m. in the Commission offices in the Neil House.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
August 14, 1973

Summary

Present at the meeting were the Chairman, Mrs. Sowle, Mr. Carter, Senator Ocasek, Mr. Marsh of the Secretary of State's office, Mrs. Eriksson, staff members Buchbinder and Hudak, Mrs. Rosenfield of the League of Women Voters, and Ms. Harper of the Ohio Council of Churches.

Mrs. Sowle opened the meeting by reviewing the proposal before the committee.

Mrs. Sowle: We have considered now several alternatives for proposals submitted by the Secretary of State's office concerning establishing some kind of board or commission to do several things: to have the responsibility for drafting ballot language for constitutional amendments, and having responsibility for drafting information to be disseminated to the voters. We are also studying how information is to be disseminated - through newspaper publication and other methods. The commission under the present proposals, would be appointed by the General Assembly and the General Assembly would govern the composition of it.

Mr. Carter: Basically, we're trying to accomplish two things as I see it; one is to get away from this legalistic treatment of ballot language which the Secretary of State is very much interested in and we all concur in, the second thing, and this is a sensitive area, is that our experience at the last election on Constitutional Amendments has shown that there's no way we presently have of conveying to the voters what they're voting on except by legalistic language. For example, with the Supreme Court commission. Most people thought we were trying to abolish the Supreme Court in some way or other. So that what we're trying to do with this language, and this is the controversial part of it, I think, is to empower this board to give out information to the electorate explaining the issue. This is a very significant departure from what we're now doing. The problem is that you always have the opportunity of having biases put forth on this publicity, so that the selection of this board which approves the information becomes a very important selection. My view is that this would be a great step forward in giving the voters meaningful information to vote on, but we must recognize also, the danger that's involved, as I see it, of giving this board the power to distort the issues.

Senator Ocasek indicated agreement with the idea, and noted the difficulties caused in the May election with the phrasing of an issue which appeared to provide that felons could serve in the General Assembly.

Senator Ocasek: There are some dangers, but I really think that the Secretary of State's office could explain issues, like Issue #2. Voters had to vote no in order to be yes. You've got to put it on the ballot the way the law reads, but they need explanation, and it seems to me that this proposal could really sell.

Mrs. Sowle: Let us discuss the name of the board or commission that would be designated. Dick had the suggestion of the name The Ohio Ballot Board. Dick, you might explain the reason for that choice.

Mr. Carter: I don't think the name is that important, but I don't like the word 'commission'. Commissions come and go. This would have a permanent status in

the constitution and it just seems to me I prefer the word 'board'. We had talked about using "Constitutional Amendments Board" but, as Mr. Marsh pointed out, that would not be appropriate under the initiative sections. "The Ohio Ballot Board" was agreed to.

Senator Ocasek: The Secretary of State would be a member of this and four others. That's good.

Mrs. Sowle: Let's read the proposal. 'Either branch of the general assembly may propose amendments to this constitution.' That's no change. 'And if the same shall be agreed to by three-fifths of the members of each house, such proposed amendment shall be entered on the journals with the yeas and nays.' Then the draft adds, 'and shall be filed with the Secretary of State at least 90 days before the date of the election.' The Secretary of State's language was, 'subsequent to 90 days after such filing the proposed amendment shall be submitted to the electors.'

Mrs. Eriksson: I was afraid that the Secretary of State's language would give the Secretary of State the option of submitting the amendment at a later election, if not filed 90 days before the election intended by the General Assembly. Did you intend that?

Mr. Marsh: No.

Mrs. Sowle: I think there is a consensus on that. (reading) 'at which they are to be submitted to the electors, for their approval or rejection. They shall be submitted on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe.' No change. The next issue for us is involved in the next sentence. 'The ballot for such proposed amendments need not contain the full text nor a condensed text of the proposal to be voted upon...' Now, if I may stop there for a moment, as I understand the reason for that language, it arises out of case law, am I right?

Mr. Marsh: Yes.

Mrs. Sowle: And it makes it clear that the law followed in the Minus case, for example, is not to be followed under this proposal.

Mrs. Eriksson: The expression 'condensed text' is actually what presently exists in the statutes, and I think the Secretary of State's intention is to make it very clear that it need not be a condensed text, nor the full text, on the ballot.

Mr. Marsh: We would like to follow-up and also get a modification of the statutes. Because that's the language which leads the courts to require such details on the ballot.

Mr. Carter: The courts have become more and more legalistic on what should be on the ballot. It seems to us, and to the Secretary of State's office that really what we want to do is to identify the issue on the ballot, and not try to educate the voter on the ballot. He should be at least interested enough to learn what's going on outside of the booth, without trying to do it there. In other words, identification, but not description. And there is a marvelous case, Thrailkill v. Smith, where the judges pointed out the responsibility of the voter to learn something about the issue before he gets to the ballot.

Senator Ocasek: Yes, and a lot of people don't.

Mr. Carter: But that's another problem that we ought to address our attention to.

Senator Ocasek: I agree with this, although I think it would be difficult to sell the legislature on not having a condensed text for the proposal. That gets you in trouble, because one judge will say that it really isn't a condensed text, because it's just too brief and it doesn't really do justice to the amendment.

Mr. Marsh: When you get a complicated issue and you condense and you leave something out that the courts think should be in, and they say that it's not a condensation of every material aspect, you're really in trouble.

Mrs. Eriksson: I would think that because the committee is combining this with the idea of providing more voter information than is presently provided, perhaps the Legislature would view this as not needing a condensed text on the ballot.

Mrs. Sowle: '... the ballot question shall properly identify the substance of the proposal.' That differs a bit from the Secretary of State's language which says, 'but shall properly describe the substance thereof.' So we go from describe to identifying. Again, leaving to voter education the full description of the issue involved. In the original draft, it said 'questions' at first and then on line 16, it said Secretary of State would draft ballot 'language.' The new draft calls it 'ballot question' both places. Are there any questions or objections to that sentence? I think that's one of the crucial parts of this provision.

Senator Ocasek: I think this is good.

Mr. Marsh: You've got a five member board that's well chosen. I think that they'll have the interest of the voters at heart, and this will give then the legal way to present something that the voters will understand. When they get a complicated issue, they can present it so that it can be understood. I think that's important.

Mrs. Sowle: Now, I wrote out a little language modifying the language in the Secretary of State's proposal, the comparable sentence, just for the purposes of discussion. Where that says 'shall properly describe the substance thereof', I wrote out, 'but shall briefly describe the sections thereof in terms understandable by the average voter.' The idea of the average voter has been discussed in the cases, has it not?

Mrs. Eriksson: Yes.

Senator Ocasek: I think that's editorializing though, and I don't think that belongs in the constitution.

Mrs. Sowle: That does sound more like legislative language, if anything, rather than court language.

Mr. Carter: I have a strong preference for the word 'identify' rather than 'describe' because I'm afraid you'll get court challenges on what a description is. 'Identify' is much more limited, and I think really what we're trying to say is

to identify the issues, not to describe them.

Mrs. Sowle: I would agree.

Senator Ocasek: It would be difficult to define what is average language of the average voter. I wouldn't want to do that.

Mrs. Sowle: 'The ballot question shall be prescribed by a majority vote of the Ohio Ballot Board, consisting of the Secretary of State and four other members, who shall be designated in a manner prescribed by law.' Let's stop there for the purposes of discussion.

Mrs. Eriksson: Dick raised a question about whether two or three should be members of the same political party, and I believe there is some misunderstanding. The Secretary of State meant, I believe, two of the four, and Dick, when you said you would change the two to three, weren't you thinking of three to five?

Mr. Carter: Yes.

Mrs. Eriksson: So then it should be two of the four.

Mrs. Sowle: Are we generally in agreement that we should have four other members, and that the constitution shouldn't say that they shall be the majority and minority leaders of the House or something like that, but rather leave that to the legislature?

Mr. Carter: We discussed this at great length at the last meeting. Originally, this was a three member board. We felt five would be better. And then we talked at great length about how they should be specified and said that's not a constitutional matter.

Mrs. Sowle: We decided to leave it to the General Assembly. And we did feel that there should be some political balance on the board, but, again, we didn't want to go into any great detail. There might be a majority and minority on an issue that has nothing to do with party, and it seems that this gives the General Assembly flexibility.

Mr. Carter: Many issues cross party lines.

Senator Ocasek: Yes, I don't think this board can go haywire anyway, with all the news media on their backs.

Mrs. Sowle: 'The Ohio Ballot Board shall certify the ballot question to the Secretary of State not more than 80 days before the election.' Now maybe we ought to go on and get this package arrangement of the timing before us. 'It shall be available for public inspection for ten days in the office of the Secretary of State.' The purpose of that obviously is to let the public know what the language is in case anyone wants to take the language to court. 'No case challenging the language of the ballot question shall be filed later than 69 days before the election.' So it forces court contests into a certain period of time. 'The Supreme Court shall have exclusive, original jurisdiction in all such cases.' The purpose of that is to prevent an appeal. We have just one court contest. 'and the ballot question language prescribed by the board shall not be held in-

valid unless it is such as to mislead, deceive or defraud the voters.' Let's just look at the time situation, before we look at the standard for court review.

Mr. Marsh: You're not forcing the court to act. You're saying that the case must be filed not later than 69 days before the election. The court would be free to act at any point.

Mrs. Eriksson: That's right. In the Secretary of State's draft, he left open completely the question of court review, and the reason I put it in was because I thought we ought to limit the time in which someone could bring a suit.

Mr. Carter: Oliver, the Secretary of State initially presented the idea of essentially preventing court review. None of us like that. So what we've come up with since then is to put some restriction around the scope of court review and limited the time in which actions may be filed.

Senator Ocasek: Well, at election times, I don't like the idea of getting a campaign going and somebody filing suit 20 days before the election.

Mrs. Eriksson: The Supreme Court does, in fact, have a rule governing the timing in election cases, and that's Section 11 of Rule 8, and it has to do with original actions in the Supreme Court. It's headed 'election matters', and it reads, 'Because of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the court adequate time for full consideration, if such action is filed within 90 days prior to the election, answer day shall be five days...' and so on. In effect the court has limited the filing of papers to 15 days, so I think that it's not even necessary for us to attempt to write anything about court action itself in here, as long as we've provided that the action must be filed in the Supreme Court. We're giving the Supreme Court exclusive jurisdiction.

Senator Ocasek: Within this 69 days, though, they could still be filing 20 or 30 days before.

Mrs. Eriksson: Right, and that's why I assumed that that was the essential thing to put in there. Give people ten days to look at the language, and then the deadline for filing would be the next day.

Mr. Carter: That sounds pretty reasonable.

Senator Ocasek: It's not fair whether you're for or against an issue to have it come right up to the wire and have somebody file a case.

Mrs. Sowle: What happens if the Supreme Court has not ruled on the question prior to the election?

Mrs. Eriksson: It would depend on the nature of the action, I think. If they issued a preliminary injunction to the Secretary of State to keep the matter off the ballot, it would not be on.

Mrs. Sowle: Do they ever let an election proceed and then determine later whether it was invalid?

Mr. Marsh: They have. I don't know whether our court has in amendment cases.

But this happened in other election cases, where they had an election, and then they proceeded to hand down a ruling that affected the election.

Mrs. Sowle: We can discuss how this will be written up for presentation to the full commission, but, on this point it might be very helpful to have a footnote to that provision, setting out the Supreme Court rule and making it clear to the commission members how that probably will work. I think this is important.

Mr. Carter: Jim, how do you feel about the language?

Mr. Marsh: I'm delighted with it.

Senator Ocasek: I think the last part of the paragraph is the most meaningful language of all. It limits the scope of court review.

Mr. Carter: We took this right out of the case.

Mrs. Sowle: Right out of the Thrailkill case, that was an older case that they've kind of departed from in recent cases. Well, there seems to be agreement from...

Mr. Carter: I have a question. Are those words at all redundant; 'mislead', 'deceive' or 'defraud'?

Mr. Marsh: They were the words of the Thrailkill case.

Senator Ocasek: It is redundant, but that's legalistic language.

Mrs. Sowle: You could mislead, perhaps, without the element of intent involved in defrauding.

Senator Ocasek: You could mislead without deceiving, and deceiving is deliberate, malicious.

Ms. Harper: What effect does this have on the court in terms of the other constitutional sections? The one I'm thinking of is that only one change may be embodied in any amendment.

Mrs. Eriksson: This is the same section. That language we are not changing.

Ms. Harper: So that, too, could be a subject for court challenge?

Mrs. Eriksson: Yes.

Mrs. Sowle: We're down to the sentence, 'An explanation of the purpose and effects of each proposed amendment, and arguments for and against the same, if any, shall be prepared by the board.' I think there are lots of little questions here. We talked about using the language 'purpose and effects' in the last committee meeting, without any firm decision. Some people wanted to be sure there was discussion of the impact, for example, of the Supreme Court commission repeal, what would be the effect of that proposal was considered important. And there was some discussion of financial effects. 'Purpose and effects' would give a little more direction to the actions of the board than just saying explanation of the amendments.

Mr. Marsh: It would allow you to say that the Supreme Court commission has not been used in 90 years.

Senator Ocasek: And my famous one about felons not serving in the legislature. They're already prevented from holding public office. I think if you just explain the amendment, you would say, felons can serve in the legislature, and we've got to talk about the effect of its deletion, that it's already covered someplace else. I'd argue that that's very important.

Mrs. Rosenfield: Does this open up another place for court challenge?

Mrs. Eriksson: Yes, that is a possible disadvantage to putting something like that into the constitution. Someone could come in and say that this explanation doesn't really explain because it doesn't completely explain the purpose. Purpose may be a difficult thing to explain.

Mr. Carter: How about saying, 'explanation of each proposed amendment' and then putting the 'purpose and effects' of the amendment in a discretionary situation? Leaving that up to the board. That would give us the benefit of both. In other words, that the board has clearly the right to do this, but that it's not obligated to.

Mr. Marsh: An explanation of the proposed amendment which may include the purpose and effects.

Mrs. Eriksson: Perhaps make arguments for and against discretionary also. Another way of doing it would be to use the words something like 'fair and truthful' which would also be subject to challenge but might be a little more difficult to challenge, because then you'd have to prove that it wasn't true. Not that someone hadn't explained the effects of it. So that's another possibility.

Mr. Carter: Some amendments are so routine and perfunctory that you wouldn't want to be obligated to go into a long explanation about the effects.

Mr. Marsh: I would think that if somebody filed a suit regarding the arguments or the purpose and effects of the amendment, the courts might say that it's not fairly stated and order you to discontinue the publication.

Mrs. Eriksson: But they might not take it off the ballot.

Mr. Marsh: I don't think that they would take it off the ballot. You might have a problem with your publication, but you wouldn't, I don't believe, have the issue ruled off the ballot or adjudged insufficient because of ballot language.

Mrs. Eriksson: You might have to re-publish or do something like that.

Mrs. Sowle: We did consider prohibiting judicial review of the ballot language. Would you want to consider the prohibition of judicial review of the other material prepared by the board?

Mr. Marsh: No.

Mr. Carter: No.

Ms. Buchbinder: What about the example mentioned at the last meeting about the equal rights amendment? Trying to get a fair and truthful explanation of what that contains might be a problem. Would anybody be able to say, if you eliminated judicial review,'that's not fair'? And how would you ever arbitrate between the thousands of groups that would come in with their differing opinions, to finally ascertain that an explanation is fair and truthful?

Mrs. Sowle: We can say 'An explanation of each proposed amendment shall be prepared which may include.the purpose and effects thereof and arguments for and against the same.' We want to permit them to do the kind of things that are appropriate to the circumstances. Now, would there be any reason to mandate arguments for and against?

Mr. Carter: I don't really think so. It seems to me we ought to have discretion in this area. I was a little concerned when we started on this that the board had too much power. You know, to distort the issue to the voter using state funds. This is a troublesome area. I was basically convinced by the point that someone on this board can really holler 'foul', and it's going to be in the public arena, and I see very little opportunity for steamrolling. So I'm satisfied with the way it is after thinking about it.

Mrs. Sowle: What about describing the explanation? That was mentioned. Do we have any consensus on that? Should it be 'fair and truthful'?

Mrs. Eriksson: I think that if you make the purpose and effects discretionary, it would be better not to put any other words in there.

Mrs. Sowle: Yes. The next sentence reads, 'Such proposed amendments, the ballot questions, the explanations, and the arguments ahall be published once a week for three consecutive weeks.' We discussed this at the last meeting; five weeks isn't necessary.

Senator Ocasek: I agree.

Mrs. Sowle: 'Three consecutive weeks preceding such election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published.' The minimum requirement of any state is a requirement in Florida for two publications. Florida specifies certain weeks; the tenth week and the sixth week, or something like that. If it's down to three, should it be any special three weeks?

Senator Ocasek: No, that causes problems, if someone inadvertently misses the specified date.

Mrs. Eriksson: I don't think the Secretary of State would start publication anyway, until after the period of time for somebody to file suit has passed.

Mrs. Rosenfield: And you need time for this board to get the explanation and everything written.

Ms. Buchbinder: We had discussed at the last meeting limiting the number of words of the explanation, because it could be a volume and then they would be required to print it. Is that constitutional material to have a set limit on the number of words?

Mr. Carter: In the initiative section, there is a 300 word limitation. I'm not sure it's constitutional language to begin with, and I'm not sure it's all that important.

Mr. Marsh: There the right is left to the petitioners to prepare the arguments for. I suppose that they should have some guidelines, and that is a good argument for including the limitation there.

Mr. Carter: That's a good point. The board has some built-in restraints.

Mr. Marsh: Right. I would think that the board would have the right to prepare the arguments against, in the initiative area.

Mr. Carter: I just hate to put so many words in the constitution.

Mrs. Sowle: It's a matter of whether we think the board can be trusted to exercise discretion in this area.

Mr. Carter: You can always deal with this in the statutes.

Mrs. Eriksson: It might be difficult to explain in 300 words a complicated amendment such as a bond issue.

Mrs. Sowle: The Secretary of State is going to have to pay for this, I assume.

Mr. Marsh: No, it would be paid for as a regular county expense on a county level.

Mrs. Eriksson: The way the publication is now.

Mrs. Rosenfield: I'm sure that would bother the county boards.

Mr. Marsh: That's one reason for reducing the number of publications from five to three.

Mrs. Sowle: Some of us certainly felt that one good way of doing pro and con arguments would be to let those arguments come out of the General Assembly because we are talking about legislative proposals. Now I don't think it's necessarily constitutional language to specify how that language should be written. For example, there are four alternatives listed in the legislation in California, and it's much too complex for a constitutional provision. I just wonder if it should be specified something like 'as provided by law', and to leave to the legislature to say how those arguments should be prepared. I think it's important how those arguments are prepared.

Mr. Marsh: One problem is that sometimes the legislature passes these things and then goes home. They are not available for preparation of arguments.

Mrs. Sowle: We could authorize the legislature to provide how the arguments should be prepared, not require them to prepare them.

Mr. Carter: Isn't it almost a matter by law that it's not spelled out? Doesn't the legislature have that authority?

Mrs. Sowle: As it stands, I think we're giving the preparation of the arguments

to the board. Now the way an initiative petition is drafted, it's very careful to give the people for, those actually propounding the amendment, the privilege of writing the argument. California, for example, spells out very carefully how legislative proposals should be presented. They have alternatives. (reading) 'When a measure is placed on the ballot by the legislature, the pro and con arguments come from the legislative proponents or opponents of the measure. Second, if none are submitted, a voter who requests permission from the presiding officer of the house in which the measure originated may write arguments. If more than one voter requests such permission, the presiding officer decides who should write the arguments. If no arguments are submitted for a legislative measure, the procedure is the same as that used for ballot measures submitted to the initiative referendum council.

Senator Ocasek: I think that belongs in the statutes.

Mrs. Sowle: I do too. But I'm suggesting that maybe we want to provide in the constitutional language, the opportunity for the legislature to do this kind of thing if the legislature wants to. I think the way this reads now, it gives the board the power to write the arguments pro and con, and there may be nobody on that board who is against it, or there may not be anybody on the board that's for it.

Mrs. Eriksson: If you want to do that, keep the sentence, 'an explanation of each proposed amendment may include the purposes and effects of such amendments shall be prepared by the board.' 'The General Assembly may provide by law for preparation of arguments for and against.'

All agreed.

Senator Ocasek: Preparation of the arguments is always a problem under the initiative because the legislature may be in recess, and there is a question of how the people are named. You shouldn't put it into the constitution but it's got to be in the statutes. It's got to be clear. I think the legislature will want to have some input to it or something like that.

Mr. Carter: But if they don't the board can still act.

Senator Ocasek: Yes, that's right. I'm doing a little bit of homework between meetings, and more and more what I'm learning is that constitutions should be short. We're making them entirely too long, and yet the legislature is guilty of this. When we put up those bond issues in the '60's we made them quite lengthy. I'm back to the point where the constitution has to be very clear, and it's got to be protection of people's basic rights, but don't go putting in 'no sales tax on food', blue laws, etc.

Senator Ocasek left for another meeting.

Mrs. Eriksson: So what you'd like to have is that the board shall prepare the ballot language and the explanation which may include purpose and effects. That the General Assembly may provide for arguments. But if the general assembly doesn't do that, you would still permit the board to prepare the arguments. Could I ask Jim a question about his newspaper "of general circulation"? If there's a newspaper of general circulation in the county, not published in the county, is it your intention that you would only advertise in that newspaper? Are there some

counties where there is no newspaper published?

Mr. Marsh: I'm not aware of any. There are some counties where there are only weeklies, and there are some that have only one weekly. So you could have the situation, I suppose, where weeklies could go out of business, and you could have counties with no newspaper at all.

Mrs. Eriksson: But your intentions would still be to publish in that weekly? Or do you intend to only be able to publish in the big newspapers which are, in fact, of general circulation.

Mr. Marsh: We would publish in the weekly, unless it is not of general circulation.

Mr. Marsh: I think if they did not have a daily and they had a weekly published, it would be circulated through most of the county. If not, the publication would be in a paper of general circulation even though published elsewhere. What we try to avoid is when you have no newspaper and three counties put the same legal ad in the same newspaper. I would think that if there is not a newspaper published in the county, that they would not be required to make a publication for this particular amendment.

Mrs. Sowle: "the Secretary of State shall cause", now that's a change from the Secretary of State's draft, where it said 'may cause'. 'The Secretary of State shall cause to be disseminated in the manner directed by the board . . .' now this is different too. 'the material prepared for publication . . .' Jim you drafted 'such informational material as may be approved by the board . . .'

Mr. Carter: This follows more or less what we advocated in our last meeting. For example we might want to have a CATV or a television program that was prepared to be disseminated throughout the state, if you look down the road at CATV. So we're more interested in broadening what the board can do far more than just publication.

Mr. Marsh: Well, the reason we made it permissive instead of mandatory for the Secretary of State was because we could have a budget problem. The board might decide to spend $500,000 and we may not have it to spend. If you make it mandatory, you could come up with a situation where the Secretary of State has a duty by the Constitution to do something and no funds to do it.

Mrs. Eriksson: Of course, this can always be true, can't it? For example, there's a duty to publish now, but the constitution doesn't give anybody the money to publish either.

Mr. Marsh: We pass that on to the counties. It's always been interpreted as a county expense, and the counties do the publication, we prescribe the form of the publication. They have the same problem in going to the county commissioner that we would have in getting a budget from the General Assembly. The statute there provides that if the funds are not available and the commissioners don't come up with the money, they can go to court and the court will fix the budget.

Mrs. Eriksson: But there are also statutes which require things to be done and which you have to budget for or go to the controlling board. I'm thinking of this special election in the odd-numbered year, and there the statute does require the state to pay some of those expenses, and of course, it's generally done in a supplemental appropriation. And wouldn't you think that that would be appropriate when the Constitution mandates something to be done? That you would have to go to the General Assembly for the money to do it.

Mr. Marsh: Or the controlling board. With the situation the county found themselves in in the last two primary elections, they spent about a million dollars of county money, and then they were on the books, so to speak, until the General Assembly provided moneys for reimbursement and they did with this budget. They provided a procedure for reimbursement through the controlling board, with the Secretary of State, when you have the immediate requirement that we expend money. If we don't have it, how are we going to expend it? That's the thing that I'm concerned about. And I'm nervous with a mandatory requirement that we expend whatever moneys or to whatever the board would require us to do.

Mrs. Sowle: That entails problems in two directions, it seems to me. I like the rest of it, but if you say 'may', the Secretary of State can veto what the board wants

to do in a sense. If you say 'shall' then it seems to me the sentence does a very interesting thing. It gives a huge amount of power to the board, in effect a kind of delegation of legislative authority, almost. I see all kinds of problems. I'm not sure how we get out of it. We want to give the board flexibility to use CATV, and not just to specify a pamphlet or something of that sort, but we've got to place this discussion in the proper location.

Mr. Marsh: I would think that if the language is discretionary, that the General Assembly could be educated to anticipate the needs and provide the funds in the Secretary of State's budget to take care of this. It would be up to the board that's created to assist in making their wants known. Once the money was allocated, the Secretary of State, being a political animal, would not be adverse to spending it as directed.

Mr. Carter: These are legislative proposals we're talking about and I wonder whether there is so much of a problem of getting money.

Mrs. Sowle: Might it work to insert some language in here that would mean to the extent that the legislature had funded the informational material? The Secretary of State shall cause to be disseminated to the extent authorized or financed by the legislature. Then it would put the discretion back in the General Assembly.

Mr. Marsh: And it would require the General Assembly to specifically budget for this particular item.

Mrs. Sowle: But it would not give the opportunity to the Secretary of State to say, 'no, I'm not going to disseminate the information even though the board has said it wants to and even though it has the money from the General Assembly. As you say, the chances of that happening would probably be small, but we want to put the discretion in the proper place.

Mr. Marsh: It would give the General Assembly more control over what the board does which should be more palatable for them.

Mrs. Sowle: Something like this: "The Secretary of State shall cause to be disseminated in the manner directed by the board, the material prepared for publication in order to further inform the electors concerning the proposed amendment . . . shall cause to be disseminated the materials to the extent funded by the General Assembly or to the extent provided by the General Assembly."

Mrs. Eriksson: I think there are so many things that are mandated in the Constitution that don't say anything about how they are funded, and it seems to me that the General Assembly has got to provide money for something that the Constitution says has to be done. I really don't see that as the problem. What I see as the problem, perhaps, is giving the discretion to the board to decide how it should be disseminated. Maybe it's better to simply say that the Secretary of State shall cause to be disseminated informational material prepared by the Board.

Mrs. Sowle: But that's what it says now.

Mrs. Eriksson: Maybe, simply let the Secretary of State disseminate informational material . . .

Mr. Marsh: I think you almost have to come back to getting the money out of the

General Assembly. And I would think that if you've got a four member commission who think that they should have materials published, and the Secretary of State stands opposed to that, that this four member commission, after all they've been appointed by the General Assembly, wield enough power there that they could on their own make a demand that this money be included in the Secretary of State's budget to provide for that.

Mrs. Eriksson: Going back again to the way the initiative provision read before it was changed, that did say that the Secretary of State shall mail or otherwise distribute a copy of the . . .

Mr. Carter: The difference here is of course that we're opening it up a great deal.

Mrs. Eriksson: And therefore perhaps it's better to go back to mandating the Secretary of State to mail a copy to every voter.

Mr. Carter: I would hope we could do better than that.

Mr. Marsh: I would too. Who reads junk mail? That's the problem.

Mrs. Eriksson: Well, I think if you have an opportunity to look at any of these publications from other states, and especially if you read that Oregon pamphlet, you find that some people would pay attention to it.

Mr. Marsh: "The Secretary of State would say,'well, I don't have the money. I have to get it from the controlling board' which is what we would have done in the event we were required to make the mailing on the initiated issue.

Mrs. Eriksson: There may be better ways than mailing something to every voter, but I do think that there ought to be something that's mandatory that information is disseminated other than publishing in newspapers, because if people don't read junk mail, they surely don't read publications in newspapers.

Mrs. Sowle: That's true. I like the idea of wide dissemination. Some of these pamphlets are excellent. But I do think that ought to be provided by the legislature, not by the Constitution--that we ought to leave it open. I like this idea that we have to think 25 years hence or even 10 years hence where the best way to reach people may not be by pamphlet. It may be by television or some other means. But I think the sentence as it reads now gives the Board complete power to make the decision about the dissemination of materials. Now, true, the power may be meaningless if there's no money, but I think that the General Assembly ought to have the final power here. And maybe as we talked about before, on how you write pro and con arguments, maybe the General Assembly would like to write a five-page statute talking about distribution of a pamphlet. Maybe 15 years from now the General Assembly would like to write a 20 page statute about how the board ought to use television.

Mrs. Eriksson: Or maybe they want to give the Secretary of State that discretion.

Mr. Marsh: You may end up with the Board an entity that could be budgeted and the Secretary of State function as the Board's agent.

Mr. Carter: Let's suppose we were to leave the language shall in, 'the board shall'. The problem is that that gives the Board a great deal of authority by this language. Now the question in my mind is to what restraints are going to be imposed by the governmental system other than this particular language? If it says to the Secretary

of State, 'Here's a program, we want you to go ahead. It costs $50 million to educate the voters. You know we're going to have a smash throughout the State.' And the Secretary of State says,'Now, wait a minute. I haven't got $50 million.' What happens?

Mr. Marsh: Well, the Secretary of State would either have to say no and refuse to even go to the controlling board or he would go to the controlling board and the controlling board would say no.

Mr. Carter: That's what I'm getting at. What would happen for an unreasonable abuse of that power?

Mr. Marsh: The thing that makes me nervous is if we've got a million dollars in our budget and you decide to spend $500,000 of it. That's the thing that makes me nervous. And you say,'Well, why don't you go to the controlling board and get what you need and spend this and then you can recoup your losses later. And we say,'No, we need it for these other things which are important too.' These are the things that we budgeted for and we're suddenly not complying with a provision of the Constitution which we could comply with but at the expense of other programs.

Mrs. Eriksson: Perhaps it's best to say that the General Assembly shall by law provide for the dissemination of information to voters, something like that. Make it a mandatory duty on the General Assembly.

Mrs. Sowle: To provide for dissemination of information. I like that.

Mrs. Eriksson: And the General Assembly can either tell the Secretary of State to do it, or the board to do it. And the General Assembly then is going to have to provide the money whichever way it does it.

Mr. Carter: That gets back to your point. The General Assembly has a responsibility when they put the thing on the ballot to take care of the dissemination of information. As I understand it, what we're suggesting at this point is that the question of dissemination of material shall be mandatory--a wide dissemination--but we're leaving that to the General Assembly to provide for that by legislation. That solves the problem of money, that solves the problem of the Secretary of State being arbitrary, and I'm inclined to think that's the way it should be handled.

Mrs. Sowle: We could still pin it to the materials prepared by this board.

Mrs. Eriksson: The General Assembly could be required to provide by law for dissemination of information to the voters, including material prepared by the board for publication, or something like that.

Mr. Carter: I think Katie wants a little stronger than that. If I understand your objective, as you said, "at least let's get this stuff out before the voters and then leave it discretionary as to what other programs be carried on." Is that the thought?

Mrs. Sowle: Yes, it is.

Mr. Marsh: Is the Board going to be able to direct a TV campaign or a radio campaign?

Mrs. Eriksson: I think this would be up to the General Assembly to provide.

Mr. Marsh: In other words, the Board is going to provide the verbiage.

Mrs. Eriksson: The General Assembly could either say to the Board, 'Disseminate this as you will, here is $500,000. Do it however you think best.' or 'We're going to have this provided by law. We're going to have three television programs two weeks before the election, or . . ."

Mrs. Rosenfield: You're really leaving the flexibility in there that they could direct the board to do certain things.

Mrs. Eriksson: That's right.

Mrs. Rosenfield: Like hiring an advertising agency. You prepare the work and hire an advertising agency to get it out.

Mrs. Sowle: Dick brought that out at the last committee meeting that they might want the Secretary of State or they might want a private agency to do it.

Mr. Carter: Well then really what we're saying is we want to make sure that the Constitution mandates that at least a minimum amount of information be disseminated, and that then the General Assembly shall have discretion over and above that. And also how. And control of the purse strings.

Mr. Marsh: I think that would be much more acceptable to the legislature too.

Mrs. Eriksson: And it won't mandate a duty on the Secretary of State that you're concerned you won't have money to take care of.

Mr. Carter: I think what we're talking about here is very significant, because this is a major departure in the State of Ohio. This is the use of state funds for education of the voters. And again I say I think that's highly desirable, but it can be abused and we have to be very careful as to constitutional safeguards. I think this is one of the most important things that this Commission has done.

Mrs. Rosenfield: What you're really talking about in here in the credability of government, the whole government, and that is somewhat in question at the moment, and you really can see people voting no on amendments because they just don't quite believe anyone. And the only way that you can possibly overcome that is with information.

After some discussion about Article II, Section 1g, the committee decided to postpone consideration of that section until further study in connection with the entire initiative and referendum provisions.

Mrs. Sowle: My suggestion is that we give the committee further time on the initiative and not report it to the Commission in September. We will make the point then that we are working on making the initiative part as parallel as possible to this, but it isn't important to get it out immediately. I don't see that we're in a rush on the initiative portion.

Mr. Carter: These initiative things have a lot of ripple effects throughout, and it would be better to take a look at the whole thing.

Mrs. Sowle: The needs of the Commission will be served in the short run by going ahead with Article XVI.

Mr. Carter: You're talking about through the legislature. And also, depending on the outcome of this in the Commission, there are going to be a lot of ideas on this

in the Commission, there always are, that may give us some insight which will enable us to tackle the other a little better.

There was agreement that the proposal for Section 1 of Article XVI be redrafted in accordance with the discussion, circulated immediately to members of the committee and, if approved, submitted to the Commission at its September 7 meeting.

The meeting was adjourned.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
October 15, 1973

Summary

Attending the committee meeting were Chairman Katie Sowle, Richard Carter, Staff member Brenda Avey, Peg Rosenfield from the League of Women Voters, Assistant Secretary of State James Marsh, and Roy Nichols, also from the Secretary of State's office.

Mrs. Sowle suggested that the committee consider how to proceed with the study of Article V of the Constitution.

Mrs. Avey: Mrs. Eriksson has suggested that we begin with the basic questions of who may vote dealt with in Article V, Sections 1 and 5 - age and residence.

Mr. Carter: We have a memorandum on these questions and suggestions from the Secretary of State.

Mrs. Sowle: I suggest the staff draft some specific proposals for Sections 1 and 5 for us to consider- age and residence and military. These are clean-up provisions.

Mrs. Rosenfield: Another problem is permanent overseas residents who are at this point totally disenfranchised. American citizens living overseas have a very difficult time establishing residency, and Ohio is evidently one of the worst offenders.

Mrs. Sowle: Then there are others that it seemed to me might not be controversial but might require taking a look at. Section 2, the one that says that all elections shall be by ballot. Should that language be changed to make it clear that machines are included? I know there's case law to that effect, and maybe we should leave it alone.

Others present agreed that there is no need to amend the section.

Mrs. Sowle: Then I think we ought to just go through the sections, taking up the research studies that have already been done. Are there any priority items?

Mr. Carter: No. The priority item we took care of today.

Mr. Marsh: You've got a research study on ballot rotation and that's what we're very much interested in. That's in Section 2a.

Mr. Carter: What research studies do we have? We have 2a. We have one on Section 3 - Voters, when privileged from arrest, which is an interesting one to me, although I'm not sure how important it is.

Mrs. Rosenfield: I can imagine...in Greece, I'll bet it's important.

Mrs. Sowle: And we have 4, 5 will be revised, and we have 6...

Mr. Carter: I'd like to cross-reference these if I may.

Mrs. Avey: Research study No. 23 was concerned with Federal and Ohio provisions

concerning elections and law, and cases affecting voting rights under such provisions. 24 relates to voter registration.

Mr. Carter: Does it relate to any particular sections of the constitution?

Mrs. Sowle: No. On my outline, I kind of have voter registration at the end, simply because there is some question as to whether voter registration must be dealt with in the constitution, or whether it is purely a legislative problem.

Mr. Carter: Research study 25 deals with Section 4 then, 26 deals with Section 6.

Mrs. Avey: And one on ballot rotation. There is one introductory study on initiative and referendum. We are presently putting together a more intensive study.

Mrs. Sowle: We should do a series of things, and then go back to the commission with a comprehensive report.

Mr. Marsh: I think our office intends to make a push to get some kind of an amendment to Article V, Section 2a on the ballot next year.

Mr. Carter: Well, why don't we tackle that one then, if that's a high priority? That's kind of an interesting one, anyway.

Mrs. Sowle: I think it would make good sense for us to do something on that. There wouldn't be any conflict, Dick, with the position the commission has taken, from time to time, that it does not take a position on other amendments?

Mr. Carter: No, not as long as we had the opportunity of it going through the regular committee structure. It would seem to me that it would be appropriate for us to work on this question, since we know you will bring it before the legislature next year.

Mr. Nichols: We have sent Ann two alternatives on the ballot rotation proposal.

Mr. Marsh: Proposal 3 that we submitted initially containing variation a and variation b. We said leave it up to the General Assembly, or rotate by precinct, instead of rotating by individual ballot.

Mr. Carter: If you leave it up to the legislature, do you have problems with other constitutional provisions?

Mr. Marsh: I don't think you do. The proposal that we made to leave it up to the legislature says that the General Assembly may provide by law for rotation. It says that the names of all candidates for an office at any general election shall be arranged in a group under the title of that office, which retains your office ballot concept, and shall be alternated within the group that such name belongs. The General Assembly may provide by law for such rotation.

Mrs. Rosenfield: That wouldn't prevent the legislature from doing what is done in California, would it? Putting the incumbent first and then rotating the others under him.

Mr. Marsh: It wouldn't. I would think that the League of Women Voters would never let us get by with that. I think that the alternative, which from our standpoint is very desirable, is to require rotation by precincts, and we'd like to see that for paper ballots as well as voting machines.

Mr. Carter: What do you do when you run into odd numbers? I was very impressed with the problems you run into when you get 5 candidates for here, 4 for here, and 3 for something else, you're up to 60 rotations. I don't know if they make sense. If you have 18 precincts for example...

Mr. Marsh: Obviously, one person is never going to see the top of the ballot.

Mr. Carter: But how do you determine who that person is?

Mr. Marsh: You start alphabetically...

Mrs. Rosenfield: Zwindle will never win an election.

Mrs. Avey: Couldn't a computer solve the problem?

Mr. Marsh: Usually the burden falls upon the printer under the present statutes, and where they err, and where the Board doesn't catch the error, as has ocurred in the Turner-Slagle thing, we've got improper rotation, essentially a bad election.

Mrs. Rosenfield: The GAO report dealt with Los Angeles County, but the same thing would apply to Cuyahoga, where you have literally thousands of rotations, and this looks to me like it is impossible.

Mr. Marsh: We thought the easiest thing to sell would be the provision which would permit the General Assembly to do it by statute. That way we don't have to fight the problem of changing the statutes for paper ballots, which some people might find objectionable. The rotation by precinct for paper ballots as well as voting machines was the other alternative which I, personally, would like to see adopted, but I think that it would be easier to fight that in a change in the statute rather than a change in the constitution.

Mrs. Sowle: Let us, instead of really getting into the substance of rotation right now, prepare an agenda for the next meeting and discuss it then. What about the bedsheet ballot? We have not had anything on that - the direct vote for delegates to national party conventions.

Mr. Marsh: We've got an amendment in the General Assembly now which has been adopted by the Senate. The House State Government committee has held hearings and they're waiting to see what the National Democratic Party comes up with as far as their quota arrangement.

Mrs. Sowle: That could be included in a memo on Section 7.

Mr. Marsh: We hope that that will be resolved in the January session, and will get on the ballot in '74.

Mr. Carter: Is this the only primary section in the constitution?

Mr. Marsh: Yes, I think that is the only section dealing with primary elections.

Mr. Carter: Well, that's certainly a major subject. And it would seem to me that it would be well if we were to have a paper on the primary question, and incorporated in that then, could be where the legislature stands on the current proposal. As we have decided on some occasions to go actively before the legislature, and we are just an arm of the legislature, there's no point in pursuing the matter, until we see what's happened.

Mrs. Sowle: That would be another research study that the committee would certainly be able to use. Also, in Section 2a is the difference between the office type or Massachusetts ballot. Now we have the office type ballot, preventing a vote of a straight party ticket.

Mrs. Rosenfield: That's one thing where we have a specific stand, and we'll object if anyone tries to get rid of the office type ballot, in spite of the fact that it is evidently one of many things that is a deterrent to a good turnout at elections.

Mr. Marsh: We support the League on that.

Mr. Nichols: Ohio used to have the Massachusetts type ballot and abandoned it in the late '40's.

Mrs. Sowle: Yes, I think this was adopted in 1949. I'm not sure that there would be anyone coming forward to support a change in the office type ballot.

Mr. Marsh: I don't think either party would be in favor of changing the system.

Mr. Carter: I think we ought to leave that one alone.

Mrs. Sowle: Yes, I don't think it requires any change.

Mrs. Rosenfield: I don't know if this has anything to do with the constitution, but is it "legal" either in the constitution or statutes, to set up your office type ballot so that as you rotate names, all the Democrats are in one line, and all the Republicans are in another line, and you just rotate them this way as a group?

Mr. Marsh: How can you do that with independent candidates? When they fall alphabetically, it's a fairer way of dealing with it...

Mrs. Rosenfield: Well, it's done in one or two counties. There's a line of Democrats and there's a line of Republicans, and the independents are down below and they rotate the whole thing around.

Mr. Marsh: Which counties?

Mrs. Rosenfield: I'll try and find out.

Mr. Marsh: We'll appreciate the information. I don't see how that could be done under the current law.

Mrs. Sowle: The only other topic that I have listed in a summary of the topics

was should the constitution say anything about registration, and we do have a s tudy on registration.

Mr. Carter: Which is now handled by statute. Research Study No. 24 is devoted to that.

Mrs. Sowle: You raised a question a while ago, Peg, on the people serving overseas...

Mrs. Rosenfield: No, not serving overseas, civilians living abroad who have great difficulties establiahing residency.

Mrs. Sowle: Now, is that a constitutional problem?

Mr. Marsh: It's a tremendous problem, and it surfaces every four years, more in presidential years than at any other time. There are people that go overseas, that go with Firestone or one of the oil companies or something like that, or civilians attached to a particular embassy, and they haven't lived in Summit County for 15 years, and they haven't voted in Summit County for 15 years, and suddenly they'd like to register and they'd like to register where they used to live, and there's no way under current law for these people to qualify. They can vote absentee if they have a residence from which to register, but when they have no residence from which they can claim even temporary absence, they are precluded under current law from voting anywhere.

Mr. Carter: But that would be under statute.

Mr. Marsh: I think that it could be corrected by statute. I wouldn't see any need to get into the constitution. I suspect that Congress is going to take it up. They attempted to do this with the Federal Voting Rights Act, I believe, and didn't really succeed.

Mrs. Sowle: I read something the other day about Nixon opposing the inclusion of so many of these overseas votes.

Mrs. Rosenfield: There's a really tremendous problem. I can well imagine people having no residence. You could have a teen-ager who turns 18 living in India, who literally has no residence.

Mr. Marsh: It happens all the time.

Mrs. Rosenfield: But why can't they vote? They're citizens...

Mr. Marsh: Where do they vote from? That's the next question. It could be corrected in the statutes just as easily as in the constitution.

Mrs. Rosenfield: There's nothing in here that would prevent writing a statute.

Mr. Carter: Not after the Federal government has taken out the residency requirement.

Mr. Nichols: Congressional action would possibly deal only with congressional elections. Presidential for sure, but it wouldn't touch below the congressional level.

Mr. Marsh: Which is really where the problem is. They really want to vote for president.

Mrs. Rosenfield: They don't really want to vote for mayor.

Mr. Carter: There is really some logic that they shouldn't vote on local matters, but should vote for president.

Mrs. Rosenfield: And wasn't it in the last election that they had some 20,000 Americans resident in Paris?

Mr. Marsh: And I think they all corresponded with the Secretary of State's office.

Mrs. Rosenfield: Well, the New York Times said that Ohio is one of the worst offenders in the country for denying any kind of way of establishing residence.

Mr. Marsh: We have an absentee registration procedure which is new which most states don't have for all offices...they just have for limited federal elections. So we can register them if they can qualify for a residence, and that's the nub of the problem right there.

Mrs. Sowle: We'll take up rotation next and the order of the remaining research papers isn't all that crucial to decide right now. After Article V, we'll get back to the initiative and referendum. I think Section 7 is the only thing that we don't have any research on, that we do want the committee to cover.

Mr. Marsh: You might want to take a look at SJR 5 which is our proposal on the bedsheet ballot.

Mrs. Sowle: Well, we won't get to that at the next meeting. Let's take it in the order of the research paper numbers. In the communication with the committee members list specifically what sections the research papers deal with.

November 1st was agreed to as the date for the next committee meeting at 10 a.m.

The meeting adjourned.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
November 1, 1973

Summary

The meeting was attended by Committee members Jack Wilson, and Katie Sowle, Chairman, by James Marsh, Assistant Secretary of State, Peg Rosenfield of the League of Women Voters. Present from the staff were Ann Eriksson, Director, and Brenda Avey.

Mrs. Sowle began the meeting with a discussion of the question of ballot rotation, Section 2a of Article V. She invited Jim Marsh, Assistant Secretary of State, to comment.

Mr. Marsh: We've had a challenge to voting machines based on improper ballot rotation which is pending in the Supreme Court. The Court of Appeals ruled that voting machines or marking devices which rotate by precinct are constitutional, and we expect the Supreme Court to uphold that ruling. But the Court of Appeals, in issuing that kind of ruling, said that even though the rotation by precincts conforms to the requirements of Article V, if the precincts aren't nearly equal in size, the application by the Board of Elections in a particular case could be unconstitutional, which means that the boards have the job, insofar as may be reasonably possible, of getting their precincts of equal size, if they're going to rotate by precincts. And if they don't, they place any election which they possibly have, or the ballots before any election, in jeopardy. So, it's almost a hopeless task, because the Board, in aligning precincts, attempts to get all the voters voting on the same thing in the same precincts. They've got to take into consideration school boundaries, representative districts, ward lines, township lines, municipal lines, and it's extremely difficult to get precincts equal. Plus the fact that in some communities, the communities are transitional in character, such as college towns. They can go from precincts of 300 and some to 3000 in a short span of time, and they can't possibly adjust their precinct boundaries to accommodate this kind of change, which means that if they're going to use voting machines as Portage County does, or marking devices as Athens County does, that these precincts may be very unequal, and thus possibly not in compliance with the mandate of the constitution, as interpreted by the Court of Appeals. So we would like to see either the General Assembly given the authority to set the rotational procedure by statute or have the constitution amended to permit rotations by precinct, instead of requiring perfect rotation insofar as reasonably possible.

Mrs. Sowle: How long has rotation been required in the constitution?

Mrs. Eriksson: Since 1949.

Mr. Marsh: We think the concept of rotation is good, and we think it's really the fair way to present a ballot, because the guy on top does have an advantage.

Mrs. Sowle: Well, under the imperfect rotation, certain people, by accident, will be favored, and some will be at a disadvantage, but you can't have both - machine voting and perfect rotation.

Mr. Marsh: Even with paper ballots. In the Turner-Slagle election, that was a paper ballot problem. The rotation was not perfect. When you let a contract to print ballots, the printer has to print the ballots in series. The rotational

pattern is figured out. And then he merges the ballots so that each voter will get a different one, and packages them, sends them to the Board of Elections. The packages are marked so that the board can tell which precincts they go to, and they're transmitted to the precincts. And if they're not properly merged, or the rotational pattern is improper in some way, you get an unconstitutional ballot. And there is no question but what the ballots, in that case, did not comply with the constitution.

Mrs. Sowle: And was that a printer's error?

Mr. Marsh: The printer and the Board. The printer is not a public official, and the Board, I suppose, is the responsible party. The Board has to make sure that the printer does his job.

Mrs. Eriksson: I suppose that some printers might print them in batches and then mix them up later, and that would lend itself to improper rotation.

Mr. Wilson: It would have to be a printer's error such that they would not be put on the pad in rotation form.

Mr. Marsh: But even for paper ballots, it's a very complicated and a very expensive way to proceed. You can always have problems with it.

Mrs. Sowle: Perhaps rotation is the kind of thing that should be left to the legislature, anyway. As voting patterns, voting methods, machines, change, our present concepts about ballots will change. I've had a different way of voting every place I've lived.

Mr. Marsh: Electronic voting is growing. The use of either automatic equipment or electronic voting has increased rather dramatically, and we would expect that the trend would continue in that direction.

Mr. Wilson: It's hard for us to forsee what might develop. I can see a situation where we might vote from home via CATV.

Mr. Marsh: They've tried voting by telephone in Florida, with a reading of voice prints. It was determined that it's not really very satisfactory because it's not as exact as fingerprints. It was touted to be, but the pattern varied.

Mr. Wilson: The whole thing of what you said really hinges on the two words "nearly equal". That's subject to interpretation.

Mr. Marsh: Frankly, we don't know. We're sitting here waiting for the next lawsuit, and it's terribly expensive to hold elections over again, if the court insists on it. You don't get the same turnout frequently that you had at the time of the regular election day, so it's most unsatisfactory from that standpoint. Plus the fact that it breeds uncertainty among the public and the voters, and that shouldn't be.

Mrs. Rosenfield: You could put in the constitution that the legislature shall provide for some type of rotation, and then leave it up to them.

Mrs. Sowle: That's what the second of Jim's proposals does.

The members looked at the Secretary of State's Variation "B" for Section 2a

and, after discussion, decided that "rotate" was a better word than "alternate".

Mrs. Sowle: This Variation "B" says "shall be rotated within the group in which such name belongs." It doesn't say it shall be alternated to achieve any kind of a result.

Mr. Marsh: Yes, I think that it's up to the General Assembly to provide for that.

Mrs. Sowle: And this just indicates a policy for rotation.

Mrs. Eriksson: In our variation on this, which is on the next page, we suggested a standard that you might want to talk about.

Mr. Wilson: I think the word "may" should be "shall", to mandate the General Assembly to provide for rotation. "May" is permissive, "shall" is directive, and they would be directed to do it.

Mrs. Sowle: If the General Assembly did not provide by law for rotation, what would happen?

Mr. Marsh: I would think that probably if they didn't provide, that the Secretary of State would have some duty to issue a directive to fill the void. The current statutes have been repealed, although they probably shouldn't have been. The Supreme Court has ruled that the constitution, anyway, is self-executing on this point.

Mrs. Sowle: But would this proposal be self-executing?

Mr. Marsh: This proposal would not be self-executing. It would require legislative direction.

Mrs. Sowle: Should the constitution say anything about rotation?

Mr. Marsh: I think that it should direct the legislature to provide for rotation, or else to provide for it on a precinct by precinct basis.

Mrs. Sowle: The standard you were talking about, Ann, is that no candidate shall have an unfair advantage in an election by virtue of ballot position.

Mrs. Eriksson: This was suggested by the California study. The incumbent is always first on the ballot, and there was a study which showed that, in fact, that does give an advantage. Now this kind of standard in the constitution would be something that the General Assembly would have to decide what it means and how it would be executed.

Mrs. Sowle: Wherever you did not have perfect rotation, though, wouldn't somebody have an unfair advantage, to some small degree at least? I was wondering about the word "approximately". It sort of appealed to me. Not necessarily as applied to equal population, because of such drastic problems as the ones you've mentioned, Jim, where the precinct size can go up and down dramatically, but maybe if approximately modified something else.

Mrs. Eriksson: Instead of an absolute standard like "unfair advantage" you might try unusually unfair advantage, unreasonably...

Mr. Marsh: If you make it unconstitutional for an unfair advantage, you've mandated equal rotation again.

Mrs. Eriksson: That's a possibility and yet if you don't put any kind of a standard in there, you might end up with all the incumbents on top and everybody else rotated.

Mr. Wilson: Perfection is unattainable in everything including voting, but I don't know how close we can get.

Mr. Marsh: In some villages, for example, there is only one precinct, and nobody is rotated. Rotation is not feasible if they use automatic equipment in that kind of a situation.

Mrs. Sowle: Well, what do you do in a precinct like that?

Mr. Marsh: You don't have rotation, unless it's paper ballots.

Mrs. Sowle: So it would violate any of the things that we're talking about.

Mrs. Eriksson: For the election of local officials, yes.

Mrs. Rosenfield: You know it's not really a problem. It may be a legal problem, but everybody in those towns certainly knows who's running for office.

Mr. Marsh: I don't think you can ever achieve perfection...in this area.

Mr. Wilson: There is an electronic capability of rotating ballots in the voting machines, where the pull of the handle rolls the offices, that can be done, but it would be horribly expensive.

Mrs. Avey: In the case of villages, where ballot rotation is impossible, a way to keep that from being a violation of this is to use the words "insofar as may be reasonably possible." In this case in Hamilton County, where the number of voting machines in precincts prevented proper rotation, the court held that since the article said "insofar as may be reasonably possible", that this didn't count as a violation.

Mr. Wilson: I think "insofar as may be reasonably possible" should be retained.

Mr. Marsh: I would like the standard not to be an absolute that would permit voiding the election or that would cause the Board of Elections, at the eleventh hour just before the election, to have to do something that they could not possibly do, such as have all ballots reprinted or realign the precincts.

Mrs. Sowle: You would really like Variation "B" and would agree to the change of the word "alternated" to "rotated"?

Mr. Marsh: That would be acceptable. Or if you wanted to combine the two, to put the standard in and permit also the flexibility by permitting the Boards of Election to permit rotation by precincts, so that you get the requirement for rotation insofar as may be reasonably possible, or rotation by precincts. And add some language that would not cause the court to change the ballot or void the election because of non-compliance.

Mrs. Sowle: It's going to be very hard to find a standard, and I am wondering whether perhaps we shouldn't trust the General Assembly to try to achieve that goal. And then if we lock the standard into it, we may have problems. How would members of the legislature react to doing away with the requirement of rotation altogether? If I were running for office, and the printer made a mistake and I thought it made the difference in my election, am I going to be willing to say I shouldn't have another crack at that vote?

Mr. Wilson: As long as this provision in the constitution requires rotation, if my name was at the bottom all the time, I would be unhappy about it.

Mrs. Eriksson: And if it weren't in the constitution, how would you feel about it? Would you feel that it was a fundamental enough thing that you could challenge it anyway?

Mr. Wilson: I think that it's a fundamental enough thing in the first place or it wouldn't be in the constitution. Somebody had a firm belief that this should have been done.

Mrs. Eriksson: Of course, if the constitution just says "shall be rotated", that certainly is a standard. If you're at the bottom all the time, you still have a constitutional issue, because you weren't rotated.

Mr. Marsh: Perhaps keep the requirement in the constitution, but provide the flexibility that it won't completely disrupt the election or void the election.

Mrs. Rosenfield: What other recourse does a candidate have besides having the election thrown out? Does he sue the Board of Elections?

Mr. Marsh: The thing that we worry about the most is the suit before the election. Suddenly 2 days before the election, you've got an unconstitutional ballot that you have to do something about. They did that up in Cleveland in the mayor's race. Just a few short days before the election, they ruled that there had to be a substitution on the ballot. You either have to print the ballots over again and there isn't sufficient time, or use a sticker and count them by hand or something like that.

Mrs. Rosenfield: How do you have time to get them out and back in time? We are disfranchising absentee voters.

Mrs. Sowle: There is a kind of intent indicated just by the word "rotation". I gather that there is some developing law under the 14th amendment. The California study's purpose was to provide a factual basis for legal action. Has that been brought? Maybe the 14th amendment would be helpful to a candidate objecting to an improper procedure such as this.

Mr. Marsh: If you're going to specify some rotational pattern in the constitution, mandate the same kind of rotational pattern that we have now, by precinct. I don't think that would be too objectionable to any member of the General Assembly, and I think by inclusion of the word "precinct" in the constitution, it legitimatizes that way of doing it. And stick in some verbiage that insofar as may be reasonably possible won't be interpreted that you have to have the precincts all equal in size.

Mrs. Sowle: Do you like approximately equal, as in variation A_1?

Mr. Marsh: I don't see much difference between "insofar as may be reasonably possible" and "approximately".

Mrs. Rosenfield: There is. "Approximately" means that it doesn't have to be exactly equal, the other means it has to be as exact as you can get it.

Mrs. Sowle: Variation A_1 says "precincts shall be of approximately equal population insofar as may be reasonably possible." As I read that, if it isn't reasonably possible to be approximately equal, you don't have to be approximately equal.

Mr. Marsh: But what is "insofar as may be reasonably possible"?

Mrs. Rosenfield: One refers to the end result and the other refers to how practical the means are.

Mrs. Eriksson: How much do precincts vary?

Mr. Marsh: It depends on where you are and what the circumstances are. In Portage County, about 30 days before the last presidential election, they had registered about 3000 students in one precinct. You can't divide them geographically, you have to divide alphabetically. No one will know where they're supposed to vote. You've got your polling places people all lined up. About all you can do is hire more officials.

Mrs. Rosenfield: I can understand that when they first had this ruling there was a huge influx in college student precincts, but does it go back?

Mr. Marsh: About half of the 3000 will end up cancelled in two years.

Mrs. Rosenfield: But will the total numbers change now drastically?

Mr. Wilson: I wonder about the advisability of including the word "precinct". The only thing that's decided on precincts is the election of precinct committeemen, and we're moving away from that concept.

Mrs. Avey: There's another problem with precincts. I'm not familiar with the mechanics of cable t.v. but in the event that that's accepted as a way of voting, there's no assurance that cable t.v. stations will coincide with precincts.

Mrs. Eriksson: I think if you're going to do it by precincts, it would really be better to let the General Assembly do it than to write it into the constitution. And under Variation "B", that's very likely what the General Assembly would do. It doesn't matter what we put in here, if someone's going to come in and make a challenge under the 14th amendment, that kind of challenge will be available anyway.

Mrs. Sowle: If we have that "unfair advantage" standard, anything but perfect rotation is going to be unfair to somebody, to a small degree perhaps, but still unfair.

Mr. Wilson: You can add the words "insofar as is reasonably possible".

Mrs. Avey: I think in this instance, "unfair" is not self-explanatory. It would be up to the General Assembly to define what's unfair. Perhaps somebody

always appearing in the same position on the ballot, or his name being barely legible. There are several things where you would want to say that the election really was unfair. But the General Assembly would be able to define that and change its definition in the event that new voting procedures come into play.

Mr. Wilson: Leave out the word "unfair".

Mrs. Avey: But there is a reason for having rotation, and clearly that reason is so that nobody has an unfair advantage because of ballot position.

Mrs. Sowle: But we're back to a matter of degree and once you have a standard the legislation is going to be measured against the standard, and it can be thrown out. How about, "No candidate shall have an unfair advantage in an election by virtue of position on the ballot insofar as reasonably possible..."

Mrs. Eriksson: I think we're going to have to reword the sentence if you want to put a reasonable standard there, because you have to be careful about what you're modifying.

Mrs. Sowle: But it's true that this kind of a standard would allow for wide variation in voting methods, getting to Brenda's point about cable voting and others. We might abandon precincts in many situations, for national voting or for state-wide voting.

Mr. Marsh: In some counties now, we have a rather serious problem with printers, because frankly they don't want the job. They have to post bond at the time the bid is let, and frankly it's a pain in the neck. They frequently have to reprint - either the wording isn't right or the candidate's name is misspelled. We've placed a considerable burden on the printer, because that's where the work with rotation really has to be done.

Mrs. Sowle: Let us work on that sentence and come back to this at the committee meeting next week, and see if we can think of standards in the meantime that will be helpful.

Mrs. Eriksson: In a way, "reasonableness" and "unfairness" pretty much mean the same thing, and we don't want to talk about someone having a reasonably unfair advantage.

Mr. Wilson: Perhaps the word "undue" would be better. Or perhaps just talk of "advantage".

Mrs. Eriksson: An absolute standard as "advantage" might get you back to the exact population thing, but we might use "reasonableness" instead of "unfairness".

Mr. Marsh: You might want to have some of the same language that you uaed in the other amendment, in so far as limiting when the ballot can be challenged. Say that a suit against a ballot has to be brought within a certain time before an election. It's the eleventh hour change that we'd like to avoid, and the voiding of an election after it has occurred.

Mr. Wilson: That would require inspection of all the ballots by all of the candidates before the election.

Mr. Marsh: But if we have to realign precincts, we'd like not to have to do it...

we'd like to have time to do it. We think that the ballot should be rotated and rotated fairly, but you can't expect the Board of Elections to suddenly do its precincts even 60 days before an election, because that's a job they're undertaking during the summer. And it's really a tough job.

Mrs. Sowle: Is rotation normally a constitutional provision in the states that have it? I still have a very basic question as to whether rotation should be in the constitution at all. I think it's a policy matter that's going to vary. I think ten years from now, they're going to be asking different questions about it than we're asking today. And I wonder if there is any reason why we can't, as citizens, assume that the General Assembly would want to have that provision for rotation.

Mrs. Eriksson: I suppose, like many election reforms, that it was written into the constitution because there was a need for it. But it might be that it's not needed any more.

Mr. Marsh: Politically, it would be very difficult to eliminate it from the constitution. I would think we'd have a tough time even selling it to the General Assembly if we attempted to eliminate it. I wouldn't object to the constitution giving the General Assembly directions on how they're to do the job, as long as the language could be interpreted to be strictly directive to the General Assembly.

Mrs. Eriksson: What you really want to avoid is getting hung up at the last minute with the possibility of election confusion or voiding.

Mr. Wilson: You could just put in the constitution that ballot positions shall be rotated.

Mr. Marsh: The General Assembly could pick it up, and enact statutes, and that if they didn't, we would have to do it by directive.

Mrs. Sowle: Is there the kind of political motivation that would mean somebody could get a particular kind of advantage out of a specific kind of rotation law?

Mr. Marsh: There is right now advantage out of the rotational law. Even when you're rotating by precincts, it's advantageous to have certain precincts where you're on top as opposed to being on the bottom. There's just no way that I see to make a perfect system.

Mrs. Eriksson: We'll work on some wording for the provision, we'll check on some other state constitutions and see if we can find other things on rotation, and we'll also consider specifically viewing it from the point of view of not so much what is in the constitution about rotation, but avoiding the last minute law suit and voiding an election. This is looking at it from the timing point of view.

Mr. Marsh: Because you will have some errors. This is one thing that we're pretty sure of. That in every election that comes up there's going to be at least some errors.

Mrs. Sowle: Shall we turn then, to the memorandum Research Study No. 23. This is what provisions of the Ohio Constitution are invalid under the federal constitution and require repeal. On page 10, the memo starts the consideration of

specific parts of the constitution. It's a general study, which is most applicable to Sections 1 and 5, although it reviews generally some of the other provisions. It's pretty clear, that Section 1 of Article V has to be reworded. On the age, the 26th amendment allows 18 year-olds to vote in all elections, so is there any point in having an age requirement in a state constitution?

Mr. Marsh: I think it should be repealed.

Mrs. Eriksson: Is it your preference to repeal rather than reducing to 18? You had suggested two variations on that section also.

Mrs. Rosenfield: You can either make it conform or just take out the whole section.

Mr. Marsh: Most if this is provided by statute anyway. The citizenship of the United States is a protection, the durational residency requirement has been ruled unconstitutional, and the requirement for residency in county, township, or ward, such time as may be provided by law, requires a statute anyway.

Mrs. Sowle: Yes, and the legislature can provide that whether it says that in the constitution or not.

Mr. Marsh: Durational residency is out, except for any length of time to provide for registration.

Mrs. Eriksson: Perhaps 30 days.

Mrs. Rosenfield: But that's not durational, it's administrative.

Mr. Marsh: After you become registered, you do have to continue to reside in the precinct to be eligible to vote there, or if you've moved to vote in another precinct, if you've moved within the county in a 30-day period.

Mrs. Eriksson: Another section in the constitution prescribes that in order to hold public office you must have the qualifications of an elector. And that is also a standard for determining jury service. If you repeal this section altogether and leave the standard for being an elector completely up to the General Assembly, you would be losing any constitutional meaning for that term.

Mrs. Sowle: In the state constitution. Would the federal constitution apply in all states?

Mrs. Eriksson: The 18 year-old voting amendment just says that no state can deny a person the right to vote if he's 18. "Every citizen of the United States", you would be losing that as a state constitutional standard, and there is no federal constitutional standard that says that you have to be a citizen of the United States to vote.

Mr. Wilson: Even though it may be repititious to amend this to conform to the federal law, I think we would be better off amending it than repealing it, because when you start taking out of the constitution something that lets the people vote, it's going to be hard to sell to the general public.

Mr. Marsh: You might decide, instead of trying to conform our age requirement to the federal constitution, just eliminating an age requirement completely because that's taken care of under the federal constitution.

Mr. Wilson: If you don't make any reference to age in here, then the 17 year-olds will want to know why they can't vote.

Mrs. Sowle: And the amendment to the federal constitution doesn't mean that the Ohio constitution couldn't say of the age of 16.

Mr. Wilson: I don't think we'll have too much trouble amending this in view of the national legislation. And if they ever lower it to 17, I think we could sell a new amendment.

Mrs. Rosenfield: I think it would really be easy to sell bringing our constitution into line with the federal court cases or the constitution, but I think it would be very difficult to sell anything other than that.

Mrs. Sowle: Perhaps Variation "A" is the best.

Mrs. Eriksson: We didn't suggest eliminating the age requirement entirely as another variation partly because of this elector problem of public office holding.

Mrs. Sowle: I can't imagine the issue of going under 18 to vote coming up within the foreseeable future because 18 is pretty much the lowest limit of the age of majority for contracts, and for so many other things.

Mrs. Rosenfield: Except that there is a case now to allow 17 year-olds to vote in the primary if they will be 18 by the general election, because the primary is a part of the election.

Mr. Marsh: That could be done in the statutes. We had the same thing in the statutes for 20 and 21.

Mrs. Sowle: Since there are only two of us here, why don't we take to the committee our conclusions of today. We might as well wrap up all the things we have to do and present them to the commission in one package. We'll have them all completed, I trust, within a couple of months.

Mrs. Eriksson: The other thing that's easy to dispose of is Section 5.

Mr. Marsh: We have a federal decision now that Section 5 is unconstitutional, and the Supreme Court has settled something very similar, in Maryland. The district court used that case as precedent, so I think it's probably a tight case unless the Supreme Court reverses.

Mrs. Sowle reiterated the opinion at the last meeting that after the discussions had been finished, all interested persons who wanted to would be invited to speak on the issues.

Mrs. Sowle: We might invite the political parties, and let them know the decisions the committee has come to, because I would hate for the parties to raise a fundamental question on anything we are doing in the committee, and have them raise it at the commission level where it would just delay things.

Mrs. Eriksson: Particularly when we get into Section 7, both parties might very well have some comments. Section 7 is the primary section, and that concerns the delegate problem.

Mrs. Sowle: We might dispose of the voter registration problem today. My first impression is that voter registration should not be in the constitution. The problem of whether there should be state-wide registration - all of the mechanics of registration and the procedures are not a constitutional question. There are some very important questions for the legislature, certainly, but I question whether they would be a constitutional concern.

Mr. Marsh: I think that state-wide registration could be just as easily taken care of by statute.

Mrs. Rosenfield: And I can imagine that there will come a time when you don't need state-wide registration in anything like the context that we think of it today.

Mrs. Sowle: In this memorandum, for example, there is a fairly long discussion of the arguments in favor of eliminating registration. (In North Dakota).

Mr. Wilson: I don't think registration belongs in the constitution.

Mrs. Sowle: We're going to have to trust the General Assembly with this. The memorandum points out, upon looking at the newer state constitutions, all provide for registration laws. Alaska says the legislature may provide... That seems to me unnecessary. They may do it whether the constitution says so or not.

Mrs. Eriksson: There has been some question raised about the constitutionality of registration laws as an impediment to voting, but that's been settled in Ohio.

Mr. Wilson: I have no strong feeling either way. You might cover the subject by saying the legislature may pass registration laws. As long as we specify who may vote, as far as I'm concerned they may vote, period. Registration or no registration. We have to know who may vote and have a record of it somewhere, otherwise all the tombstones in the cemetery will be voting. We have to have some way to do it, but the best way is not necessarily in the constitution.

Mrs. Sowle: What is the feeling of the League?

Mrs. Rosenfield: We favor registration, but not in the constitution. We favor state-wide registration.

Mr. Wilson: As long as we have a two-party system, I think that they will see to it that people get registered. But I don't think the mechanics, whether door-to-door or by mail, are a concern of the constitution.

Mr. Marsh: The memo mentions a residency requirement for members of the General Assembly. We've had two cases recently affecting municipal charters, and they ruled two-year residence requirements unconstitutional, as a restriction of the constitutional right to travel. And I would think that there is a certain possibility at least that the provisions of our constitution regarding residency requirements for members of the General Assembly could be unconstitutional.

Mrs. Eriksson: I think there is a very strong possibility. However, the legislative committee made a recommendation on that question and it was discussed extensively at a commission meeting and the commission members were just unable to agree. It's a year's prior residency, and then there is an exception made

for apportionment. Even a year creates problems. The committee talked about making a residency requirement which would be durational during the term of office, so that once a member was elected he would have to stay there as long as he was representing those people, but there was quite a bit of disagreement about that.

Mrs. Sowle: Another problem is forfeiture of franchise resulting from conviction of infamous crime. If we're going to propose the elimination of that, we're going to have to have some good reasons and very carefully thought out ones. A lot of the points of the memo make really good sense to me, but I think it would be difficult to sell a repeal of that provision.

Mrs. Rosenfield: I discussed this with some poeple on the League's Justice study and two of their ideas were that you should automatically be restored your civil rights after you finish serving your term. The other was that one person felt you should not lose your vote when you go to prison because one of the major problems in rehabilitating prisoners is to try to get them to be part of society again, and that being involved in the voting and elective process is an important part in being involved in society.

Mrs. Sowle: The memo mentions a possible 14th amendment Equal Protection challenge to this. Has there been any real challenge under that?

Mr. Marsh: The Supreme Court upheld the constitutionality of excluding felons from the franchise. I frankly thought that they wouldn't because I thought that it contravened the Federal Voting Rights Act and that it was a moral test of whether or not you should be eligible to vote. They permitted those laws to stand. I would think that that issue has probably been settled.

Mrs. Rosenfield: Could you reword it so it would spell out specifically what infamous crimes you lose your franchise for, and if you're not guilty of one of those specified infamous crimes, you don't lose it? I really think you should lose it for public fraud kinds of things. You should lose it for treason, but not for things like stealing a car.

Mrs. Sowle: The constitution only says that the General Assembly has the power to exclude certain people from the privilege of voting. It does leave the decision to the General Assembly so that changing attitutes toward rehabilitation of criminals, for example, can be reflected through the legislative process. The question would be, should the commission recommend prohibiting the General Assembly from making this type of restriction?

Mr. Wilson: Perhpas we could include a better definition where it says other "infamous" crimes. It's a little broad.

Mrs. Eriksson: It's any felony, which can be pretty broad. So I suppose one thing you might consider is changing that expression in such a fashion that it would limit the General Assembly more. You'd have to decide what crimes you wanted to include and then try to find some term that covered them.

Mrs. Sowle: The statutes also restore the prisoner's right to vote when granted final release by the adult parole authority.

Mrs. Rosenfield: Only on application. It isn't automatically restored.

Mrs. Sowle: But all of that does seem to be very much legislative kind of problems. And this doesn't seem very restrictive to me unless we want to say the General Assembly cannot exclude from voting unless it's a certain kind of crime, less than all felonies. I'm not sure that it's that important as long as the constitution doesn't mandate anything. My feeling would be to approach the committee with "let's leave this alone."

Mr. Wilson: I'd agree, and that we attempt to clarify infamous crimes.

The committee agreed to present the day's agreed-on items in a subcommittee report to the committee, and to move onto more detailed discussion of the two memoranda dealing with voting rights of the idiots and insane, and privilege from arrest.

The next meeting of the committee will be at 1:30 p.m. on November 8th in the Commission office in the Neil House.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
November 8, 1973

Summary

Attending the meeting from the committee were Katie Sowle, Chairman, Richard Carter, Craig Aalyson and Jack Wilson. Assistant Secretary of State Jim Marsh and Peg Rosenfield from the League of Women Voters were also present. Brenda Avey was present from the staff.

Mrs. Sowle opened the meeting by reviewing the topics discussed at the last meeting, beginning with section 2a (ballot rotation) of Article V. She noted that a tight requirement for a certain kind of rotation was an impossible standard, since it didn't permit for the use of voting machines, and it was very difficult when you had a sudden change in the size of a precinct, if you went to the precinct alternative.

Mr. Carter asked Mr. Marsh to explain how the rotation is determined now.

Mr. Marsh: The board starts with the names in alphabetical order. Then they rotate the names.

Mr. Carter: There's no way that the board of elections can control whose name will be at the top the most times.

Mr. Marsh: No, except maybe in the way that they align their precincts, or arrange their precincts, but I don't think a board would do that.

Mrs. Rosenfield: You could start at Ward 1 Precinct A which could either be a small one or a large one.

Mrs. Sowle: You couldn't vary it with the candidate or with the slate in a given election? Mr. Marsh thought not.

Mr. Carter: The one who might end up with the advantage then would be accidental rather than planned. To me, that's an important issue. Is there any way it could be planned?

Mr. Wilson: The board wouldn't necessarily have to start with Ward A Precinct 1. If you want to make your man have the advantage, you might put him first in the biggest precinct.

Mr. Aalyson: I have a very basic question. When you talk about rotating by precinct, do you mean that in a given precinct, the name of a certain individual be listed first on each voting machine in that precinct?

Mr. Wilson: That's right.

Mr. Aalyson: But on paper ballots you could rotate this. Now, who does this, the printer?

Mr. Marsh: The printer does it, yes.

Mr. Carter: Under the supervision of the board of elections. Most precincts have at least two machines in them. There are, of course, exceptions.

Mr. Marsh: They are now, yes.

Mr. Carter: Again, I think this should be a matter of statute. It would be possible, though, to have two machines, and that the Republicans are on top on one and the Democrats are on the top on the other one in the same precinct?

Mr. Marsh: It's possible. We instructed Hardin County this time to rotate by machine so that each machine was different because they felt that even with the effort that they made they might not have complied with the Court of Appeals ruling and therefore they were afraid that their ballot might be held unconstitutional. They were given permission to rotate by machine for that reason.

Mr. Carter: So that would solve the size of the precinct problem?

Mr. Wilson: No. You don't have a guarantee of both machines being used equally. Unless you can direct people to this machine or that, some people take the machine nearest them.

It was noted that sometimes the voter has a choice among machines and sometimes is directed to a particular machine, which amounts to rotation of the voters.

Mr. Wilson: We're not so much concerned about the parties being rotated as much as we're concerned about the candidates in a party being rotated. What we were grappling with last time was the question of how you can assure perfect rotation. If we're going to allow something away from perfect, how far away do you want to get and still be within reason? The language to decide that is a little bit hard to come by.

Mrs. Sowle pointed out that, according to the Index to State Constitutions, Ohio is the only state which provides for ballot rotation in its constitution.

Mrs. Avey summarized various drafts before the committee on ballot rotation: Variation "A" conforms to the suggestion made at the last meeting that rotation be provided for, but no standard be provided, because if you have a standard then you have a chance of rotation not meeting that standard and the election being held up at the last minute. Variation "A" provides for rotation, and the legislature may provide for rotation by law, but would not be mandated to do so by the constitution. The Secretary of State, if the legislature didn't act, would presumably be able to give direction to the board of elections, and if he failed to do so, it would be up to each board to provide for rotation of its precincts. Now, regarding challenges, if a candidate didn't like the rotation he received, the constitutional provision itself would not offer him a basis for the challenge, but if the legislature provided for rotation by statute, he could challenge his treatment under the statute. And then there is the "equal protection" clause of the 14th amendment, which according to a California law review article has been thought useful in cases where rotation is unfair. Regarding Jim's desire for a time limitation, in this variation, a time limit for bringing a suit would not be effective if a challenge under the 14th amendment should arise.

Variation "B" again provides for rotation in the constitution, but it also includes a standard, that no candidate shall have the same ballot position an unreasonably large number of times. Presumably, this would preclude the same man being on the bottom or top most of the time. This variation would require the General Assembly to provide a rotation statute which would assure uniformity throughout the state in places using the same type of ballot. If the General Assembly did not enact a statute, the constitution, still requiring a statute, would permit the

Secretary of State or the board of elections to assume responsibility. The advantage of having a standard in there is as a replacement for perfect rotation. It replaces the need for perfect rotation with some type of rotation that's reasonable according to some standard, and this standard happens to be an unreasonably large number of times.

Variation "C" leaves out rotation completely from the constitution and requires the General Assembly to pass laws, and you might call this a standard - "The General Assembly shall provide by law that ballots shall give each candidate reasonably equal treatment." The purpose of this, of course, if you leave out rotation from the constitution, you still don't want to get into that California situation where the incumbent is always on top. Their situation is that they don't provide for ballot rotation in the constitution, and statute requires the incumbent be on top. By requiring the General Assembly to enact statutes precluding this kind of situation, you can solve the problem that way. The word "unfair" or any other qualitative term such as "unreasonably", "undue" were omitted because it appeared that reasonably equal treatment implied fair treatment and unreasonably unequal treatment implied unfair treatment.

Mrs. Sowle: The selection of words seems to be very difficult. Well, what does the committee think? Is there a possible variation "D" which would be like, apparently, the other 49 states?

Mr. Carter: I see that this was adopted in 1949, and so I would assume from that that this section was put in in response to some abuses. I think from a political standpoint and possibly from an equity standpoint, to try and get repeal might not be possible. And I'm not sure it's even acceptable.

Mr. Wilson: You can't completely repeal it. There has to be some type of protection other than what we've got now.

Mr. Carter: So, it's one of these things where you can argue that maybe this kind of material shouldn't be in the constitution if you were starting from scratch, but from starting from where you are, I don't think you can say we should go the route of the other 49 states.

Mrs. Rosenfield: Because of that provision, we don't have to worry about having the California situation.

Mr. Carter: Which is bad. Well, that would be my observation on that.

Mr. Aalyson: I note that the final variation provides for reasonably equal treatment. Has someone suggested a method of giving equal treatment that would not involve rotation, and if there has been none, what's the difference between "B" and "C"?

Mrs. Avey: We had observed, at the last meeting, that new types of voting may come into play at some future time. And it's possible that the new method of voting that came into play may not cohere with variation "B", and variation "C" was as close as we could come to taking it out of the constitution and yet precluding the California situation.

Mrs. Sowle: Cable TV might be one situation. But rotation would be important in cable, too. It could come in some kind of order.

Mr. Wilson: One of the absolute blocks to perfect rotation is the village which is one precinct. How can you rotate?

Mrs. Rosenfield: Variation "C" says reasonably equal treatment.

Mrs. Avey: "Reasonably" has been included to cover those kinds of cases where in a small village the population or scarcity of voting machines would prevent rotation which is as exact as it could be. And "reasonable" could also relate to contested elections where the candidate loses by a sizeable number of votes, and wants to throw out the election because he claims that his name was not properly rotated twice.

Mr. Marsh: Any candidate that loses is going to feel that it's unreasonable.

Mr. Wilson: And they can do that under the present constitutional provision. We're trying to find some other way of wording it where we won't have that claim, or where the courts can easily dispose of such claims. This proposal talks about the General Assembly by law giving each candidate reasonably equal treatment, and right now it says in so far as may be reasonably possible. You're using the word "reasonably" which is already in there.

Mrs. Rosenfield: Would that mean that courts would interpret"reasonably"the same way they've interpreted it now, or does that change the whole ball game?

Mr. Marsh: I don't know. They might decide that the General Assembly has the duty to decide what is reasonably equal and in the absence of any decision on the General Assembly's part, the court might supply a better interpretation then we have now.

Mr. Wilson: Personally, I can live comfortably with what's in the constitution now.

Mr. Marsh noted that the Supreme Court has not yet ruled in the pending case.

Mr. Marsh: We would expect the Court to uphold the constitutionality of voting machines which is really what's being challenged. Anything that requires precinct rotation, they may or may not deal with the finding of the Court of Appeals on precinct size as a basis for declaring the ballot constitutional or unconstitutional. I think that they may not do that. I think that the thrust of the case was strictly the constitutionality of the use of voting machines per se. Which we expect will leave you with the Court of Appeals decision on equality of size. What the Court of Appeals said is that voting machines are constitutional, but you can align the precincts in such a way that they're not constitutional because of inequality of size, and this doesn't give rotation in so far as may be reasonably possible.

Mr. Wilson: A lot of it hinges on the definition of reasonableness. Suppose you have five precincts of equal size and six candidates running. Whose name is going to appear twice at the top of the ballot in two of the precincts?

Mr. Carter: I like variation "C". We're getting away from the idea of alternation and rotation specifically. I think we're going to have new voting processes within the next 50 years. And I like the idea, in so far as may be reasonably possible, I find reasonably equal treatment to be somewhat stronger in my mind. I think there is a shade of difference there which is really substantive. I don't

know how substantive, but I think it is. The third thing, is I would like to make a suggestion on variation "C" if we're to take a look at that seriously. The General Assembly may provide by law that ballots...now, again, we may not have ballots in the future. Would it make some sense to think in terms of the balloting process, rather than the ballots themselves. I'm suggesting language that the General Assembly shall provide by law that the balloting process shall give each candidate reasonably equal treatment.

Mrs. Sowle: Section 2 provides that all elections shall be by ballot. "Ballot" has been interpreted to permit machine voting.

Mr. Carter: I don't think there's any conflict from saying in Section 2 that all elections shall be by ballot, and then to talk in terms of the process giving reasonably equal treatment. I think that's a different kind of a subject, but I'm not sure. Might that not help us? The problem that we're faced with is to talk in terms of the process of voting rather than the ballots themselves giving reasonably equal treatment.

Mr. Marsh: We could live very well with either way of putting it.

Mr. Wilson: I think that variation "C" stops too soon. Reasonably equal treatment with regard to what?

Mrs. Avey: With regard to everything.

Mrs. Rosenfield: It covers that you can't put one guy's name in red.

Mrs. Avey: Or make his name barely legible.

Mr. Marsh: You're leaving it up to the General Assembly.

Mr. Carter: Which I think is what it should be.

Mrs. Sowle: And it obviously refers to the arrangement of names because of the preceding sentence.

Mr. Wilson: It just talks about arrangement under a title. It doesn't say anything about arrangement within a group. The terminology of equal treatment is subject to definition. That is why I think the present constitutional provision is not too far out of line, given what it means.

Mr. Marsh: We don't mind the present provision either, if we can still use voting machines, and not have to have precincts of nearly equal size. If you want to take the present provision and expand it to permit voting machines or automatic equipment to be rotated by precinct without regard to keeping those precincts equal, I have no objection to that kind of an approach either.

Mr. Carter: Well we certainly do that with this variation "C".

Mrs. Sowle: Yes

Mr. Carter: And we gain a few other advantages. If we're going to make a change, I would much prefer generalizations like this than the specifics. For example, the precincts themselves may not be the way to vote in the future. This language in "C" doesn't tie us down. Especially if the General Assembly shall provide by

law for, instead of the ballot, the balloting process, you get away from this concept that you're confined to a paper ballot. The voting machine isn't a ballot, technically.

Mrs. Sowle: It has been construed to do this. I think this provision about ballots has been interpreted to embody the idea of the secret vote as opposed to the voice vote and I think in that sense it doesn't have to be a piece of paper with a list of names on it, because the voting machine isn't that, but a voting machine has been held to be within this. But that doesn't tie us down to using the word just because it's in Section 2.

Mr. Wilson: If you go along with that line of thinking, then you ought to change the part where it says printed. It says in the present constitution that the name of the candidate's party shall be printed under the candidate's name...maybe you should say shall appear.

Mr. Carter: I couldn't agree more.

Mrs. Avey: Jim, when they voted in Florida using the voiceprints, did they read off the names over the phone, or were ballots sent out prior to the phone call?

Mr. Marsh: I think they probably had some ballot sent out prior to the election, and telephoned in.

Mrs. Rosenfield: My husband and I developed a new way of voting. We realized that people psychologically preferred to mark a paper ballot. The problem is counting, and also fraud, so all you have to do is find a fast and honest way of counting them. You have a small paper ballot that can be marked with a special pen or pencil. You mark it yourself in a little booth, and then you take it over to a reading machine, and you slip it into the machine, face down, and it reads it if it's marked correctly, and stacks it right at the same time. And then a light lights up saying counted, or it kicks it out and says reject and why it was rejected, and it get's put in the reject pile. The person hands you another ballot and you get three chances just like you do now. Wouldn't that be marvelous?

Mr. Marsh: We've had suggestions for several systems that used a marked ballot.

Mr. Aalyson: How would that solve the rotation problem?

Mrs. Rosenfield: That's a separate problem but you could print them in perfect rotation.

Mr. Carter: Getting back to Jack's point, I have some language to suggest. Instead of "be printed under and after each candidate's name in lighter and smaller face type" you can simply say, "shall be identified in less prominent manner than the candidate's name."

Mr. Marsh: How about "accompany"...?

Mrs. Rosenfield: How about "be in" and you're simply avoiding placement.

Mr. Carter: I kind of like the idea. If we're going to make any change at all, we try to do as good a job as we can.

Mrs. Sowle: I suspect that both the first sentence and the second sentence were in response to a specific problem, and there were some historical causes for it. But that's material that really ought to go in a statute. I'm talking about the size print for the party designation after the candidate's name.

Mr. Carter: The emphasis should be placed on the individual. First of all, to make it impossible to vote the straight party ticket, and second, so they don't have Republican in great big letters and then little letters for the candidates' names.

Mrs. Sowle: We may be making progress toward a solution today. Was it your wish that we change "ballot" to "voting procedure"?

Mrs. Avey: Variation "C" was originally worded to say ballot and other voting method, and Mrs. Eriksson felt that the reference to ballot in Section 2 prevented talking about other voting methods in the variation.

Mrs. Sowle: Well, assuming that voting procedure would be agreeable, is the rest of variation "C" agreeable with the problem of voting machines and rotation? Does the committee feel that variation "C" with that change is the answer?

Mr. Wilson: Personally, no. I still like the idea of rotation because we're going to have to guarantee fairness of position, and there's nothing in here that says that they're going to be rotated in a fair manner, all it says is reasonably equal treatment. That's subject to too broad an interpretation.

Mrs. Sowle: You really want to pin it to rotation.

Mr. Wilson: If we've seen fit to do so in the past, I see no reason to change it now.

Mr. Aalyson: What was the motivation for selecting the word "rotated" as opposed to "alternated"?

Mr. Wilson: If you have four candidates, you can alternate 1 and 2 on top and 3 and 4 on the bottom, and then 3 and 4 on top and 1 and 2 on the bottom. 2 and 4 would never have to be on top.

Mr. Carter: Would you be happy if we were to say give each candidate reasonably equal treatment by rotation or otherwise.

Mr. Wilson: Now you've made it even worse. I'm afraid of what the otherwise might be. I'm not opposed to change, but I find no fault with the present wording of 2a but you might want to clean up this printing bit if you want to go that far. It says nothing about precincts or voting machines. I think it's reasonably accurate at the present time.

Mr. Carter: Except for the court interpretations which are giving Jim's people great grief.

Mr. Wilson: Not if it's decided in his favor.

Mr. Marsh: Not all of it. I think we're still going to have to live with some problems. The thing that bothers us is that any county that uses automatic equipment may be subject to a suit maybe thirty days before the election, if the

court would say that the precincts are malaligned, they're not equal, the ballot therefore is unconstitutional, and that in order to proceed, the board's going to have to realign precincts.

Mrs. Sowle: I agree in theory that rotation is the best of all possible ways to vote. Perfect rotation is the very best. But, I gather, we're not having perfect rotation because we can't have it and have machine voting. And if you have a small place, like Athens, even if the court will permit one precinct to set its machines one way and so forth, you're not going to satisfy the constitutional requirement, if, as it's happening, precincts vary dramatically in size, and they will vary from one election to another. There's no way you can say, now we've got it all ironed out, because the next time it may be all different again. So, it does bother me, that we do have a constitutional requirement that we're not living up to.

Mr. Wilson: We are in so far as may be reasonably possible.

Mr. Marsh: If the court interpreted it that way, we would be just as happy as could be to leave it the way it is.

Mr. Wilson: And what makes you think they're going to interpret this "reasonably" in our proposal differently from this "reasonably" now in the constitution?

Mr. Marsh: The burden here (in the variation) is in the General Assembly.

Mrs. Rosenfield: Isn't there a difference between substantially an equal number of times and reasonably equal treatment?

Mrs. Sowle: This is another problem that I have with rotation. I so far as may be reasonably possible and all the rest of what's there now...the court could very well say under any of these machine voting conditions or cable, that might pose a problem for rotation, it is always reasonably possible to have a good breakdown on rotation, because you don't have to use machines. It's always reasonably possible to rotate on a paper ballot, so I'm wondering if our constitutional provision in the long run might require the paper ballot.

Mr. Marsh: Even with the paper ballot, you have the Turner-Slagle situation, where the paper ballots were not rotated properly, and where do you draw the line? We would not like to see the elections invalidated once they're held, except for gross unfairness.

Mrs. Sowle: How about using the word "accommodate" and mention rotation if you like, or a standard like variation "C". Or let's take the example where we require rotation in so far as may be reasonably possible to accommodate the use of efficient methods of voting. So that written right into the provision is some provision for the future. And the legislature can, by statute, make that election valid, with changing methods, and so forth, will make that accommodation. But then the standard would recognize the problem we're trying to deal with and that is new methods of voting, new methods that provide efficiency. It seems to me that new methods of voting would provide greater efficiency and an honest, efficient count of the vote.

Mr. Marsh: I like that, too. I think it would answer Mr. Wilson's objections.

Mrs. Sowle: We could still stay with the rotation, and I would agree with that,

if we could provide for the other things in the provision.

Mr. Wilson: Instead of perfect rotation being the goal, you can make your standard the goal.

Mrs. Sowle: We could pretty much stay with this language if we could build that in.

Mr. Carter: Is the legislature able to pass statutes to permit the use of voting machines?

Mr. Marsh: They have statutes which set up standards for qualification of any kind of voting system, be it machines or marking devices. Those statutes have just recently been amended to provide a test of whether the system will work, as to whether it can safely and adequately count the votes. They've removed most of the specifications they had previously, but those specifications were usually slanted toward existing equipment, so that anything new couldn't qualify because it wasn't the same as what you had in use, and it wouldn't carry the same specifications.

Mrs. Rosenfield: The specification now is that it has to be approved by the Secretary of State and the board of elections.

Mr. Marsh: It has to be examined by examiners, and they have to make sure that it can be adequately and faithfully used to count the votes.

Mr. Carter: It's really a statutory problem. Let me suggest some language. "The General Assembly shall provide by law that the voting method shall give each candidate reasonably equal treatment by rotation or other comparable techniques appropriate to the voting method used." That gets to your idea that rotation is one method, and if you drop rotation, you've got to have some other method to replace it with that is comparable. In this way the constitution recognizes that changes are forthcoming, and it addresses itself to these changes.

Mrs. Avey: The Louisiana constitution contains language that provides for a method of voting by ballot, and then goes on to say that in the event that voting machines or other methods are adopted to which some of these provisions are not applicable, that the inapplicable provisions just won't apply.

Mr. Marsh: It's not applicable because they use voting machines down there.

Mr. Carter: Well, I'm not sure I like that.

Mrs. Rosenfield: You could make a lot of things not applicable. The reason you want things in the constitution is that these are things nobody can tinker with.

Mrs. Sowle: Why don't we work on this and think about it because I think we need more time on it. But this builds on variation "C" and incorporates Jack's ideas on the principle of rotation. And we'll work on the change in sentence 2 dealing with printing and size of type and party designation.

Mr. Carter: Perhaps "shall be identified in a less prominent manner than the candidate's name."

Mrs. Sowle: We'll go on to the second topic on the agenda. The Secretary of State's proposed redraft of Section 1 substitutes age 18 for 21 and eliminates

a constitutional residency requirement. This is a change that is in effect mandated, and is just cleaning up the language to conform with the Supreme Court decision.

Mr. Carter: I think you came up with the right answer. At this point, we can't repeal it so we might as well make those changes and go on.

Mrs. Sowle: Then the next topic was Article V, Section 5 dealing with military persons' voting rights and it was our feeling that that should be repealed because those provisions have been declared unconstitutional.
Mrs. Sowle noted that Section 4 of Article V provides that the General Assembly shall have power to exclude from the privilege of voting or from being eligible to office any person convicted of perjury, bribery, or other infamous crimes. Whether one thought that people convicted of these crimes ought not to vote, the fault didn't lie with this provision. It permits the legislature to make changes as thinking may change about voting as a part of rehabilitation and so forth. It doesn't require anything. It just gives the General Assembly power that under plenary powers it would probably have anyway.

Mrs. Sowle: Is there any feeling against leaving this section alone? Then we talked about voter registration, and it was our feeling that while there are many difficult questions about registration, it isn't a constitutional problem. The constitution doesn't cover registration now so we ought to stay away from it. With your permission and the staff's help we can put this into form for proposal to the commission whenever the committee is ready to make proposals. The next logical topic to take up was Section 6.

Mr. Carter: "No idiot or insane person shall be entitled to the privileges of an elector."

Mrs. Sowle: That's research study no. 27. It's a very interesting piece of research.

Mr. Carter: You have to be a psychologist almost to follow it.

Mrs. Sowle: Yet it was very essential to lay down the fundamentals of the Draft Act in order to show why we've backed ourselves into the wall on the voting thing, in a sense. I think the principle of it was, first, the language is really very bad. To summarize, this results in two unfortunate things. First of all, there are people that most of us would probably agree would be mentally incompetent to the extent that they shouldn't vote. There probably are people in that category who are not prohibited from voting under present circumstances. The second result is that there are insufficient procedures to follow if a voter is challenged, as unqualified, under Section 6, at the polls. The procedures that have been followed leave a lot to be desired. There's no requirement of any medical testimony, and the judges in the very few cases that have been handed down, have been making the decisions on bases that have little relationship to modern medical approaches.

Mr. Carter: The cases are so very old, from the middle ages of understanding of medical problems.

Mrs. Sowle: Brenda, am I right that the research paper was suggesting that the standards that were used to decide these cases bear no relation to the requirements of the United States Supreme Court in judging whether somebody can be denied the vote under the 14th amendment? The standard the Supreme Court applies is a

compelling state interest.

Mrs. Avey: The standard, compelling state interest in a knowledgable electorate, as applied to mentally ill people is applied restrictively because there may be other people that are just as ignorant about issues that they would be voting on as are mentally ill people. The point was that the courts are really without any standards at all, unless a mentally ill person was being committed involuntarily.

Mrs. Sowle: Let me make a suggestion and maybe this will be a focus for discussion. One way of removing the undesirable language, namely idiot and insane, and putting in some flexibility, and this could be said in two different ways, but the way I'd like to see it is to recommend the repeal of Section 6 and recommend the addition to Section 4. It says the General Assembly shall have the power to exclude from the privilege of voting or of being eligible to office any person convicted of bribery, perjury, or other infamous crimes, and I was suggesting, or any mentally incompetent person. It would take idiot and insane out of the constitution, and it would give the power to the General Assembly to say what the voting rights shall be and how a challenge should be dealt with.

Mrs. Rosenfield: You need to say something about declared mentally incompetent.

Mrs. Sowle: Well, that's one of our problems now. There are mentally incompetent people who are institutionalized, who nobody's trying to get out, who can still vote. So the present arrangement doesn't make sense either in including or excluding. For example, you could challenge me at the poll, and the case would go to court. And the question the court would be asking would be am I an idiot or an insane person. I think the General Assembly could work this out better by prescribing certain things...

Mr. Carter: In the light of the knowledge at that time.

Mrs. Rosenfield: You could rewrite it every few years if you need to as medical knowledge changes. Mentally competent covers both ability and insanity.

Mr. Marsh: As long as there is an adjudication procedure and we election officials don't have to determine who's mentally competent.

Mr. Wilson: I agree that the wording ought to be changed, but somehow I have doubts about being able to repeal it. The average person out there is not going to be concerned with the degree of mental health awareness that many of us are, and when they see we want to repeal the provision, they'll think we plan to let them vote.

Mrs. Sowle: The alternative to repealing Section 6 and amending Section 4 would be to amend Section 6 to read "The General Assembly shall have the power to exclude from the privilege of voting or from being eligible to office any mentally incompetent person.

Mr. Aalyson: Do you mean any person adjudicated mentally incompetent?

Mrs. Sowle: I don't know. There are other statutes that do that.

Mr. Aalyson: Aside from the obstacle presented by trying to repeal a constitutional provision, I have found myself in reading the research study, wondering what the real motivation is for excluding the vote from the mentally incompetent. There

are mental incompetents who are incompetent in a certain area who might be perfectly capable of exercising elective power.

Mrs. Sowle: The standard we use for judging the mentally incompetent is whether they're dangerous to themselves or others. They could be dangerous in some sense and still be able to vote.

Mrs. Rosenfield: There's another thing. In many places, being an elector is the only qualification for running for office. By denying somebody being an elector, you've also denied him the right to run for city council or something. So maybe in an indirect way, you don't really care if this guy votes, but you don't want him to run for office.

Mrs. Sowle: The definition of mentally incompetent person would be left to the General Assembly under the proposed alternative and they would also have to build some procedures either for the challenge when somebody is challenged at the polls, or otherwise.

Mr. Aalyson: The main problem I have, and this arises from personal experience, is how you determine when one is incompetent. Even if you say that you must use medical determination, I personally have been involved in cases where the competence was not in question, but where the ability to testify as an expert witness was in question where a court held that a physician without other than a year's training is not expert enough to testify on a psychiatric question. On the other hand, I've had a situation where the so-called medical expert was an expert because he had been saying people were insane for a number of years. He was the only physician available to the court, and if he said they were insane, they were insane. So, how can you determine what is an incompetent in this situation? How can the legislature even do this? You're disenfranchising someone just by saying he's incompetent. If he's incompetent to vote he should be disenfranchised but if he's just incompetent, maybe he shouldn't be disenfranchised.

Mr. Marsh: I think, probably, from the way that you're coming out, that the General Assembly would have the authority to permit the judge to make a decision under which registration should be cancelled because of commitment for incompetency, which should not be. Right now the court makes a commitment and they forward the notice to the board of elections and the board of elections cancels the registration. Apparently your suggestion would give the courts authority to be selective.

Mr. Aalyson: I wonder if it might not better be solved by forgetting about incompetency because in how many situations is the vote of an incompetent going to change the outcome?

Mrs. Rosenfield: At what used to be called the County Old Folks Home, I think it's called Alumcrest now, the social worker decides who is mentally incompetent to vote.

Mrs. Sowle: Well that's what is brought out in the research paper, that very often it's the director of the mental institution who decides who should vote.

Mr. Carter: Craig, in view of what you're saying, what would be the approach?

Mr. Aalyson: I don't envision any gut reaction to simple repeal of Section 6 and forgetting about restricting the qualification of persons who are mentally ill.

Mrs. Sowle: I think that's what the research paper recommended.

Mrs. Avey: I think that the state could make a case for excluding certain people from voting. I don't think it should be on the basis of simple mental incompetence either. There's a study in the memo which shows that people in a mental institution vote just like the people outside do.

Mr. Aalyson: I don't know how this thing got in here. I don't think it's deserving of constitutional treatment.

Mrs. Avey: I think that people had a very basic dislike of mentally ill people and distrusted their ability to participate in society in any way. Perhaps prejudice should not be locked into the constitution, but it has been done.

Mrs. Sowle: I think that study is very interesting. I don't think the study means that there aren't some people in mental institutions that shouldn't be able to vote, and I think there is a possibility for political abuse.

Mr. Carter: Craig, what you're saying is that the danger of putting restrictions on the voting right is more troublesome to you than leaving them unrestricted.

Mr. Aalyson: That's about it. The inherent danger in permitting an insane or incompetent person to vote, the impact that that's going to make upon the electoral process or any given election, is so minimal as to be undeserving of constitutional treatment. It's difficult enough to get the so-called competent persons out to vote, who is going to worry about a few incompetents going to vote?

Mrs. Rosenfield: And this kind of restriction could lead to serious abuse.

Mr. Aalyson: In other words, I think we ought to repeal the thing and not say anything about it.

Mr. Wilson: I think it would be tough to sell to the pbulic.

Mr. Aalyson: Maybe I'm naive, but who has to be sold? If it should be done at all I think we ought to repeal this section, as Katie suggested, and treat it in Section 4.

Mrs. Rosenfield: If you say that the General Assembly has the power to deal with it, then the General Assembly could just not deal with it.

Mrs. Avey: Even if the General Assembly elected to use that power, there is a precedent to prevent them from using it unfairly to eliminate the whole of one political party.

Mr. Aalyson: I think that the courts are going to keep the General Assembly fair about that. I agree with your original suggestion, Katie. Short of outright repeal, that's the way we ought to go. As I say, I may be naive, but I don't understand this idea of having to sell something. I don't think anyone would oppose it, so it would sell itself.

Mr. Carter: I'm comforted, if the amendment that we've already recommended through this committee is passed, it would be very helpful in solving these kinds of problems, so maybe we shouldn't be so sensitive as we were some time ago, when we had no opportunity to educate the voter.

Mrs. Sowle: As a matter of fact, if we were to go the whole distance and not worry about selling, the logical thing to do would be to repeal both 4 and 6. Because it just says what the General Assembly could do anyway, getting back to the plenary powers issue.

Mr. Carter: I think you'd have a lot of static on that, because you could have Jimmy Hoffa running for office while he's in prison.

Mr. Aalyson: Maybe we should say in Section 4, 'or other infamous crime or any person mentally incompetent for the purpose of voting'.

It was generally agreed to. It was also noted that the suggestion also solves the problem of absolute language.

Mrs. Sowle: This might dangerously slip into the area of things like literacy tests, however there is a United States constitutional solution to that, is there not? Hasn't the United States Supreme Court thrown out literacy tests?

Mr. Marsh: The Federal Voting Rights Act restricts the use of literacy tests.

Mrs. Avey: I just wonder how the General Assembly is going to devise a test to determine mental incompetence for the purpose of voting. You might get into discrimination.

Mrs. Sowle: This doesn't exclude anybody from voting. It only empowers the General Assembly to act in this regard. And if we did nothing but repeal Section 6 we'd have the same result.

Mr. Marsh: I think that there are some statutes now that say that the registration is cancelled if the court declares you incompetent.

Mrs. Sowle: The only other logical way to do it that occured to me was a provision that talked not about commitment but about guardianship, but I'm sure there are plenty of people under guardianship that could vote just as intelligently as other people. Well, let's consider the proposal we have now. Why don't we move onto the next topic, which concerns when voters are privileged from arrest.

Mrs. Avey: Before we move on, just for the record are you proposing, finally, to add new language to Section 4?

Mrs. Sowle: Yes, add to Section 4 and repeal Section 6.

Mr. Carter: Looking at Section 3, voters privileged from arrest, how did these things ever get into the concept of voting? I assume that somewhere along the line, when people rode on their horses to a voting place, the idea was to keep the sheriff from waylaying them.

Mrs. Rosenfield: Doesn't this go back to English Common Law? I think it goes way back to the king's officers preventing Parliament from meeting.

Mr. Carter: That's exactly what I'm talking about. It seems very archaic to me, today.

Mrs. Rosenfield: Except that if you ever needed it, you'd sure want it there, the

fact that they cannot prevent the legislature from meeting, and they cannot keep you from voting. And it's only there in case it ever is needed.

Mrs. Sowle: The interesting thing to me about this was that it has such limited application. Apparently, it only applies to civil arrest, and civil arrest only when a judgment debtor may be arrested because of fraudulent action or a person being guilty of civil contempt. So it has almost no application whatsoever, as I gather from the research paper. So if we did recommend repeal of this, it would be a matter of convincing people that it had application only in these two areas.

Mrs. Rosenfield: I'd really like it strengthened for that reason. I think you should be privileged from arrest or being detained. Now how do you put it, that you can't take a guy to jail for speeding on election day?

Mr. Marsh: How do you keep him from stopping off and robbing a bank on his way to the polls?

Mrs. Rosenfield: Maybe the simple fact is that you can't write a constitution that would take care of the complete breakdown of government today. You're really at the point of revolution at that point, and no constitution's going to protect you then.

Mrs. Sowle: We could leave it alone. It's not hurting anybody.

Mr. Carter: Jim, what is your opinion?

Mr. Marsh: I don't have that much experience, but I think that it would be well to leave it alone.

Mr. Aalyson: It's brief, and it doesn't do too much cluttering.

Mrs. Rosenfield: To people like me, who never understood how narrow it is it gives a false sense of protection.

Mr. Marsh: If it helps any, we haven't had a single complaint for at least 5 years that I'm aware of.

Mr. Carter: That's why I think it's archaic. I don't feel strongly one way or the other.

Mrs. Sowle: I don't either. In the interest of neatness, I would like to see it out.

Mr. Carter: Why don't we just throw it to the commission, without recommendations, and see what they want to do. Let them know it is archaic and it ought to go for neatness, but we don't feel strongly.

Mrs. Rosenfield: If breach of peace covers all criminal offenses, why did they spell out treason and felony?

Mrs. Sowle: That's a good question. These words have been interpreted over such a long period of time.

Mrs. Rosenfield: But this is why it seemed to me that the original intent was quite a bit broader than it is now.

Mrs. Sowle: In the old days, civil arrest was a big offense. In England, there were debtors prisons, and so arrest for debt was something for which somebody might lie in wait because they knew a member of parliament would be going to parliament and they could find him there and get him. Well, are we tentatively agreed that we throw it to the commission and let them do as they wish?

Mr. Carter: I think we could say to them that it does appear to be archaic and it might raise some questions if it were to be removed and the committee has no strong feelings either way but we lean toward repeal and make the mild recommendation to repeal. Why don't we hold this open until the next committee meeting and see if we can get some background information? As for now, the tendency is to recommend a mild recommendation for repeal unless we learn something else.

Mrs. Sowle: Now, we have gotten through most of this. We will return to rotation. What we have left as a committee are rotation, initiative and referendum, and aside from that are a miscellaneous group of provisions not in Article V. Shall we try to meet in 3 weeks and talk about rotation, and whatever else the staff may have ready for us to talk about?

The committee agreed to meet on November 27, Tuesday, at 1:30 p.m. at the Commission office in the Neil House.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
November 27, 1973

Summary

The meeting was attended by Katie Sowle, Chairman, Richard Carter, Senator Douglas Applegate, Craig Aalyson, Jim Marsh, Assistant Secretary of State and Peg Rosenfield from the League of Women Voters. Brenda Avey was present from the staff.

Mrs. Sowle noted that the committee had spent a great deal of time at the last few meetings discussing ballot rotation. She expressed the view that the committee was getting close to a solution as a result of its consideration of several alternatives proposing language to improve the problematic wording of Section 2a of Article V.

Mrs. Sowle: What our problem has been is to try to reconcile the desirable aspects of rotation with the problems that are presented by machine voting or differences in the size of precincts. We decided to try to build in the objective of rotation, which nobody wanted to give up in the constitution, but make it more flexible. The proposal sent out by the staff, dated November 19, looked very good to me.

Senator Applegate: What does this do? Take it out of the constitutional aspect of it and gives the authority to the legislature to prescribe the authority?

Mr. Carter: This mandates the legislature to prescribe the details to fulfil the constitutional requirement.

Mr. Marsh: It would place the duty on the General Assembly to provide by statutes for reasonably equal treatment.

Senator Applegate: This is a problem in the courts right now having to do with that Slagle case.

Mrs. Sowle: The provision says, "The General Assembly shall provide by law the means by which ballots shall give each candidate reasonably equal treatment" and so forth. There's only one situation that I can see that this does not provide for, and that is the single voting machine use in a small village. There is no way to have a voting machine and rotation. And I would suggest inserting something like the words "wherever possible". I hate to see a constitutional requirement where something is impossible.

Mrs. Rosenfield: It could possibly force them to throw out voting machines, and to go to paper ballots in order to have rotation.

Senator Applegate: That would certainly give flexibility to the legislature to be able to deal with the problems.

Mr. Carter: And it recognizes that in some cases it just can't be done.

Senator Applegate and Mr. Marsh concurred.

Mr. Carter: Two possibilities about the language. One gets back to my question at the last meeting about "ballots" and I see that there's an alternative in the

staff's proposals, Variation "B", and I'm wondering if we might say, instead of "ballots". "balloting". As I understand it, Ann had some concerns about eliminating the word "ballot". Also "wherever possible" - another place it might fit is after "equal treatment", because if "wherever possible" refers to balloting, that isn't quite what you mean.

Mrs. Rosenfield: Could it read, "give each candidate, wherever possible...."?

Mrs. Sowle: If it's set off by commas, then I think it has to modify both rotation and other comparable techniques.

Mr. Marsh: It would mean in those small villages, that where they use voting machines there just is no way that the ballot can be rotated. If you have one machine, you are going to have one procedure for presenting the candidates' names.

Mrs. Rosenfield: Of course you still have the problem of getting the machines set up right in those little villages.

Mr. Carter: The legislature could provide that the location could be decided by lot, or something of that sort. So at least no one would be intentionally favored. With respect to "ballots" or "balloting", how would you characterize some of the wire voting techniques that are being used? For example, phone or CATV. That's the question - is that a ballot?

Committee members expressed their views on what a ballot is, and deferred to the dictionary definition - "the action or system of voting". They agreed to "ballot". It was noted that there are several places where the words "wherever possible" might be placed, and the committee decided to submit the problem to Ann Eriksson in view of her expertise in drafting.

Mrs. Sowle: There's one other provision in here we ought to look at. The sentence, "At any election in which a candidate's party designation appears on the ballot, the name or designation of each candidate's party, if any, shall be identified in less prominent manner than the candidate's name." Now as I understand it, there are several reasons for this proposal. "Identified" is used instead of the word "printed" to allow for other voting methods. The other change is to make it clear that this applies to a primary as well as a regular election. Is that right, Jim?

Mr. Marsh: Well, at the primary, party designation would not be on the ballot, because you have a Republican Party ballot and a Democratic Party ballot.

Senator Applegate: How about the incumbent?

Mr. Marsh: He's just in with the others.

Mrs. Sowle: The comments say that the sentence, "except at a party primary or in a non-partisan election" is poorly worded in that one interpretation sounds as though in a party primary or non-partisan election the party designation could appear in larger and darker letters than the candidate's name.

Mr. Marsh: It wouldn't appear at all in either a primary or a non-partisan election.

Senator Applegate: There's no party designation, and the party is designated already at the top of the ballot in a primary, anyway.

Mr. Marsh: So, it's not really a substantive change.

Mr. Carter: Do you have any objection to it?

Mr. Marsh: No.

Mrs. Rosenfield: I have a question on the way that sentence reads. "The name or designation of a party be identified" sounds to me very awkward. Either a party is identified, or the name or designation of a party is in. You don't identify a name, you identify a party. The name is the identification.

The committee agreed to change the sentence to read "shall be less prominent than the candidate's name."

Mrs. Sowle reviewed the committee discussion and conclusions this far for Mr. Aalyson, who agreed to them.

Mrs. Sowle: I think this is ready for recommendation to the commission. The other piece of old business was the matter of civil arrest, Section 3. The committee had agreed that it was an archaic provision that really had no effect. As was discussed on the last page of the November 8th minutes, we felt that it ought to be removed, but had no strong feeling that removal was required, if it would get us into a hassle of trying to explain a rather complicated matter. The section reads "Electors, in their attendance at elections, and in going to and returning therefrom, shall be privileged from arrest, in all cases except treason, felony, and breach of the peace." The memorandum indicated that the provision applied only to two limited kinds of arrest: arrest of a judgment debtor and civil contempt. We agreed that it was archaic, but we didn't know whether it would present problems in presenting its deletion to the public.

Senator Applegate: I'm not sure what that language means. I don't think anybody's been able to interpret it to explain to legislators what it means in connection with another section with the same language applying to us.

Mr. Carter: At the discussion the last time, I learned, that it really doesn't add up to anything, practically. The question is to whether trying to remove it might present problems out of proportion to taking it out of the constitution. It's kind of a political problem.

Senator Applegate: What would speeding be considered?

Mrs. Sowle: According to the interpretation of the staff memorandum, that would be criminal and the provision has been interpreted to apply only to two forms of civil arrest, one is if you are in debt and you have a civil judgment against you, and the other is civil contempt.

The committee noted that they could find no historical information on why the provision, which might have originated in England having to do with members of Parliament, was ever extended to voters.

Mrs. Sowle: Should we propose its repeal as archaic, although it's not doing any harm, just to get it off the books?

Mr. Aalyson: If we left it in there, and somebody tried to invoke it,what effect would there be, if it were determined that he was improperly arrested? Would that

invalidate an election?

Mr. Marsh: He would be released from jail on the basis of it, but I don't think it would upset the election.

Mr. Aalyson: I think not only is it archaic, it's probably ineffective, too.

Mr. Carter: Why don't we recommend that it be removed as being archaic and not effective? It was so agreed.

Mrs. Sowle: Does that complete our old business?

Mr. Carter: On this question of the insane, what was our recommendatinn?

Mrs. Sowle: We agreed to repeal Section 6 and add to Section 4 language that the General Assembly could exclude from voting or office any person mentally incompetent for the purpose of voting. We have two new memos from the staff. The conclusion of the memorandum dealing with Sections 3 and 4 of Article III and Section 21 of Article II, was that the constitution's executive article seems to be outdated, since the Secretary of State has been designated by statute as the chief elections officer. Therefore the declaration of results of elections of executive officers by the General Assembly may no longer be necessary. Section 3 provides that the results of elections for officers of the executive branch should be transmitted to the President of the Senate and read by him in the January session of the General Assembly. And in the case of a tie-vote, the General Assembly would decide by joint vote of both houses. When this provision was written into the constitution there was no secretary of state, and there was no state elections officer. So in order to find continuity, the General Assembly was the only body to give this duty to. And now, there doesn't seem to be any reason to leave that to the General Assembly. Jim, do you have any comment on this?

Mr. Marsh: I think this is another area where it has presented no problem. As far as we're concerned, we have no particular position on it either way. I'm inclined to agree that it's archaic and really does not perform any useful function.

Mr. Aalyson: Is the Secretary of State required, as a part of his duties, to declare the results under statute?

Mr. Marsh: Yes.

Mr. Aalyson: How does the Secretary of State perform his function of declaring the result?

Mr. Marsh: The results are canvassed in an official canvass. They are viewed by the governor, lieutenant governor, auditor, attorney general, the officers of the political parties, and the news media, and we officially declare the results of the election by the official canvass. The official declaration is in writing filed in our office and dispensed to the news media. And I think the lieutenant governor transmits the results to the senate.

Mrs. Sowle: This could be treated the same way that we treated the civil arrest problem in Section 3. And that is a recommendation that we consider that part archaic, but it's not doing anybody any harm. We could recommend its deletion.

Mrs. Rosenfield: You don't want to put something in to effect that the Secretary

of State shall declare the results?

Mr. Aalyson: Is the Secretary of State required by law now to do that which Section 3 does in effect, that is declare the results of the election and make it public? And have that official?

Mrs. Sowle: Would section 3505.35 have to be changed? It says that the results declared by the Secretary of State in so far as it pertains to the offices of the executive branch covered by Section 3 is only for the purpose of fixing the commencement of time for filing for recounts. Does this reflect the idea that Section 3 of the constitution gives the official declaration to the President of the Senate and the General Assembly?

Mr. Marsh: Yes, that would have to be changed to provide for an official declaration.

Mrs. Avey: Section 3505.35 says that all other declarations made by the Secretary of State are binding, except those that are out of the realm of the Secretary of State, namely the ones covered by Section 3. So all you would need to do is expand the powers of the Secretary of State to cover the officers of the executive branch because he already has the procedure set out for the house of representatives, members or U.S. congress, judges of the Supreme Court and so on.

Mrs. Sowle: Then it would require a legislative change.

Mr. Marsh: I think they took due notice of the constitutional provision when they drafted this statute.

Mrs. Sowle: So, a simple repeal would not be the answer. It would have to be provided for by the General Assembly. Is there any suggestion that the constitution would have to provide that?

Mr. Carter: Would it be appropriate to say in the constitution that it shall be provided by law, instead of spelling it out in detail? On the other hand, if you leave it out, you have this plenary powers thing which would seem to cover it.

Mrs. Sowle: The constitution does not specify the declaration of the results of elections for other offices. Before coming to anything final, let's look at the next part of it which would be a substantive change. The second sentence reads "The person having the highest number of votes shall be declared duly elected. But if any two or more shall be the highest and equal in votes for the same office, one of them shall be selected by a joint vote in both houses." The conclusion of the staff memorandum points out that tie votes for other offices are determined in the statute by the Secretary of State.

Mr. Marsh: Or the board of elections.

Mrs. Sowle: The memo says that if the General Assembly is the proper authority to settle a tie vote by joint vote of both houses, perhaps the section could be amended to require the Secretary of State to notify the President of the Senate of such tie votes and the General Assembly make the final decision. But also, in such case, the law might provide that the Secretary of State be accompanied by a designated official when he is canvassing the votes for governor and the rest of the executive branch, to preclude any wrong doing on the part of the Secretary of State. I didn't understand this.

Mrs. Avey: The Secretary of State, right now, can decide the tie votes for all the other offices except those for the executive branch. If you allow the Secretary of State to decide the tie votes for those executive offices, you might want somebody observing his count of the votes, especially if he's an incumbent and he's running again.

Mrs. Rosenfield: Isn't it unlikely that you could have a tie?

Mrs. Sowle: Do you think the General Assembly should resolve this, or do you think the Secretary of State should resolve the tie votes?

Mr. Aalyson: I think the Secretary of State should.

Mr. Marsh: A flip of the coin is not uncommon.

Mr. Carter: I'm in favor of simplifying the constitution as much as we can in this area, but I just don't have any strong feelings on how it should be done.

Senator Applegate: I'd like to discuss it with my leadership to see how they feel, but my personal feelings are that we ought to take it out of the constitution.

Mr. Aalyson: Actually, the next section seems to point to that situation anyway. If the General Assembly were not in session, then it went to the Secretary of State.

Mrs. Sowle: For the declaration of results, not for the tie vote.

Mr. Carter: Maybe we could combine the two sections, following Craig's thought. Just say the returns of such elections shall be made to the Secretary of State and eliminate the words, "should there be no session of the General Assembly..." Then go on and say in case of a tie vote, the result shall be determined by...

Mrs. Sowle: My question is whether repeal would be the answer or to replace it with a provision like that.

Mr. Aalyson: If we repeal this, do we presently have legislation which would fill the vacuum? If we don't have, repeal might not be the answer.

Mr. Marsh: Probably the declaration of the results of an election is merely a formality anyway, and could be provided for by law.

Mr. Aalyson: I suppose that it could be a pretty important formality if someone chooses to say, Well how do we know you're the elected official? You have to have somewhere an official statement that this person is elected.

Mrs. Sowle: But the constitution, as I understand it, does not provide for that official result for any but the executive officers. In other words, for senators, members of the house of representatives, there is no such constitutional provision.

Mr. Aalyson: I'm not arguing that there should be. I'm just saying that if we repeal it in this case, that there is not anything right now that fills the vacuum.

Mrs. Sowle: Envisioning the process that would take place, if the commission recommended this repeal, the commission could recommend to the General Assembly re-

peal of the provision along with necessary changes in the statutes.

Mr. Carter: That's done all the time.

Mr. Aalyson: What if the Secretary of State's election is the one that's being contested? Should he be left to resolve that?

Mr. Marsh: It really requires a joint effort right now, because anyone who is elected has to receive a commission, and the commission has to be signed by the Governor, and countersigned by the Secretary of State. The Governor would have to be in agreement at least that the solution had been proper.

Mr. Aalyson: Would the Secretary of State continue to serve if the Governor refused to sign the commission until the matter had been settled?

Mr. Marsh: I suppose if the Secretary of State took the office under the Governor's commission after having filed a bond with the auditor as required that it could always be done in the court by contesting the election as to whether he were properly in the office. There is specific statute on election contest.

Mr. Aalyson: If the court determines he is improperly in office, who determines who is properly in office?

Mr. Marsh: The decision of the court would determine who is properly in office. The statute says specifically what the court will determine, and that is who is properly in the office. I'm not taking a position against repeal of the section, by any means, I just want to make this clear. In 3515.15, "The court shall pronounce judgment as to which candidate was nominated or elected or whether the issue was approved or rejected by the voters..."

Mr. Aalyson: Then maybe we have no problem. If the Secretary of State determines it and his opponent considers his decision improper, then the resolution comes from the courts. I'd say, then, we could probably repeal it.

Mr. Carter: I would think so.

Mrs. Sowle: And leave to the General Assembly, then, the problem of whether the Secretary of State should have the final decision as to his own election.

Mr. Marsh: I would think right now that he would not have that authority.

Mr. Aalyson: I feel the same way. Since they've specified for other than the executive members if you take them out, that doesn't leave the residual power with you, I think the General Assembly would have to do something. But our recommendation for repeal would be conditioned on their doing something.

Mrs. Sowle: Jim, if we conclude to make that recommendation, I wonder if the committee could request you to request the Secretary of State to suggest change in the language of the statutes. To suggest to us what proposed legislative changes we might propose as an accompaniment to the proposed repeal of this provision.

Mr. Marsh: We'd be happy to assist in any statutory change. They probably should come after the adoption of the amendment.

Mr. Carter: Yes, that would be part of our recommendation to the legislature.

Mrs. Sowle: That would involve 3505.34 and 3505.35, I assume. Are the committee members ready to agree on a recommendation for its repeal or would you like to think about it more?

Senator Applegate: If I could have the opportunity to discuss it with my colleagues...

Mr. Carter: Actually, as I see it, it's no substantive change whatsoever.

Mr. Marsh: The only real substantive change would be in the area where you let the General Assembly decide in case of tie votes. That could be a real change if one party has the balance of power. I would say right now that the Democratic party wouldn't want to change because they've got the votes, in the House and in the Senate.

Mrs. Rosenfield: But it's never been done since 1802, has it?

Mr. Marsh: I think a tie would be most improbable, but I suppose it could occur.

Mr Carter: Why don't we tentatively make a recommendation to repeal, subject to further consideration if anyone feels differently.

Mrs. Sowle: That would mean recommendation of repeal by the committee to the commission of both Sections 3 and 4 of Article III. The next provision in the memorandum is Section 21 of Article II, and that is set forth on page 2 of the memo. "The General Assembly shall determine by law before what authority, and in what manner, the trial of contested elections shall be conducted." The memorandum says that the provision does not give the General Assembly any power that it would not have by virtue of Section 1 of the article, "The Legislative power of the state shall be vested in a General Assembly." In other words, the provisions that give the General Assembly plenary powers. "Therefore the repeal of Section 21 of Article II would not diminish the power of the General Assembly in this regard. However, the section could be retained, if its repeal were considered to be problematic, since its provisions are merely a repetition of the powers inherent in the General Assembly."

Mr. Aalyson: While the General Assembly may have this power, it seems to me that this section is concerned with whether they exercise it..."shall determine", and sometimes an admonition that you shall is an order, although I'm not saying that it is in this case. I'm sure that the General Assembly would not sit idly by if there were no provision for settling contested elections. I don't know why they did this, but I'm pretty sure that they wanted to make sure that the General Assembly did act. And that there would be no absence of controlling legislation until after a contest came up.

Mrs. Sowle: Right. To provide in advance. I see less reason for eliminating this than any of the others that we've considered. Jim, do you have any comment on this?

Mr. Marsh: There is statutory implementation, but I don't see where the constitutional provision does any harm. Maybe it would be better to leave it alone.

Mr. Aalyson: If it were repealed, I suppose the statute would still be there. And

therefore, would accomplish what this might have been designed to accomplish. Perhaps what was a vital concern when this was written is not so great a concern now. In the interest of cleaning up the constitution, maybe this ought to go. What I'm saying is that it's unlikely that the legislature would repeal the existing provisions regarding contested elections and not adopt anything else.

Mrs. Sowle: As I read the provision, the General Assembly could determine by law that an authority other than the courts of the State of Ohio could determine an election contest. Now this looks different than the kind of archaic provisions we've been talking about because this has to do with the structure of government, where certain decisions ought to be made. If this were repealed because of the normal nature of our government having three branches, would a contested election have to go to the courts?

Mr. Aalyson: With the present statutes, yes.

Mrs. Rosenfield: But without this provision, could the General Assembly provide for anything other than the courts?

Mr. Marsh: They probably could. It would be for the courts to decide whether they do or not.

Mrs. Sowle: But might the courts decide on the basis of other Ohio constitutional provisions that there are three branches of government, and that this is in the nature of a judicial responsibility, so it would have to go to the courts.

The committee agreed to make no recommendation on the section.

Mrs. Sowle: Well, we're down to the bedsheet ballot, Section 7 of Article V. Turning to the conclusion of the memo, it points out the recent history in which all kinds of problems were caused by the requirements of Section 7 of Article V, and the proposal of the memorandum is simply to permit the elimination of individual names on the ballots in which delegates to a national political convention are elected.

Mrs. Rosenfield: Isn't this analogous to the idea of voting for presidential electors who would sit down, and in their wisdom, pick a president for us?

Mrs. Sowle: Yes, it is.

Mr. Marsh: That's about what the delegates do.

Mrs. Sowle: It seems to me that this (solution) doesn't get that far away from the reform that the bedsheet ballot was proposed to do because what you could still be voting for would be pledged candidates. I think the evil of the past was electing bosses to the state conventions, and then the voter himself had no say in what happened in that convention. Whereas this could be changed to still require the voter to indicate his preference to those delegates who are going on to the convention. They're pledged to stay with the voters' choice for a certain length of time.

Mr. Carter: What is the thrust of S.J.R. 5?

Mr. Marsh: What S.J.R. 5 is trying to do is to eliminate the voters' option to

pick and choose between delegates. He's got to select the whole slate pledged to a first choice for president, under the theory that he goes to the polls and doesn't want to vote for delegate candidates anyway. If you've got a legitimate contest, he wants to send people to the convention to support his choice for president. It requires only the name of the first choice for president on the ballot. I believe that's the way it's worded. "A vote for the first choice for president shall be a vote for each corresponding delegate or alternate." And it eliminates the possibility that a candidate for president can have more delegates or alternates, if he's given authority, than would be eligible for election.

Mrs. Sowle: Yes, this is in line with the spirit of reform, because you're still involved in the direct presidential primary, as advocated by Teddy Roosevelt. You're still expressing your preference for the nominee to come out of the convention.

Mr. Marsh: Now this would not cover delegate activity when the delegate gets to the convention, he could go in what ever direction he wants to go.

Mrs. Rosenfield: Some states have legally binding pledges, such that they must vote on the first ballot for the nominee they're pledged to.

Mr. Marsh: That could be statutory. What we're trying to do with this one is just to get rid of the bedsheet ballot.

Mrs. Rosenfield: Does this provide for any proportional selection? If you get 42% of the votes for candidate 'a' and 37% for candidate 'b', is there any kind of proportion, or is it winner take all?

Mr. Marsh: It is winner take all.

Mrs. Rosenfield: Isn't that going to present a little problem with the new Democratic Party rules? Didn't they say that winner take all primaries are no-no's?

Mr. Aalyson: Is S.J.R. 5 to amend the constitution?

Mr. Marsh: Yes. And also, it could be a problem with the Democratic Party rules.

Mrs. Sowle: One thing we ought to do is get copies of this proposal, to consider whether the committee wants to recommend to the Commission on that bill.

Mr. Carter: Where is the bill now?

Mr. Marsh: It has passed the Senate, and it's pending in the State Government Committee of the House, and the reason it's still there is because there was some uncertainty as to what the Democratic Party was going to do in regard to their rules, and it appears that if they do have this particular requirement, that there be some proportional division of the delegates, then I think that could be provided for in an amendment to S.J.R. 5 by simply making a statement that if the party rules provide for a proportional division of the delegates in proportion to the votes that such first choice for president received, that the delegates will be elected accordingly.

Mrs. Rosenfield: Isn't there any way that you could write it loose enough so that

any kind of changes in party rules aren't going to affect or be affected by the constitution? You need some way to get rid of the bedsheet ballot but have it still broad enough to allow for party changes like that.

Mrs. Sowle: We wouldn't want to freeze in the constitution a system that may change 10 years from now.

Mr. Marsh: I think that the trend on the part of the parties is to involve people in the convention process. The Democratic Party, for example, is electing a great deal more delegates and alternates to their convention than they ever did before, which means that you've got more candidates on the ballot. As this becomes an open process, which it now has, to retain what we have now is unthinkable. The voter can't possibly sort through this mass of candidates and come up with any sort of intelligent choices. This doesn't freeze you in, we take the rules of the parties and apply those rules for the selection. For example, in some congressional districts they elected 6 and in some 5, so we just follow their rules and don't have any problems.

Mrs. Rosenfield: I have conceived of the possibility of getting down to the point where you have single member districts to national conventions, where in fact you want to vote for a person, you might want to vote for John Jones.

Mr. Marsh: Then John Jones would be a candidate in that district but on the ballot would be his first choice for president, and a vote for the first choice would be a vote for Jones.

Mrs. Sowle: Perhaps there is a way to provide for both. To permit the names of the delegates to be on with or without name of presidential candidate, but to also permit the other.

Mr. Marsh: No, it requires the names of all the delegates to be on, with their first choice for president. Before we amended the statute, we used to have to rotate, now we just list them alphabetically. Many election officials complained that they wouldn't go through another election unless this was amended. So we may not have anyone at the polls in '76.

Mrs. Sowle: I would be interested in looking over S.J.R. 5, so perhaps the commttee should be sent copies of it.

Mr. Marsh: I don't think that the Democrats have ' come to any firm conclusion as to what their rules will be.

Mrs. Sowle: Doug, this is another area where we would appreciate any feedback from your colleagues.

Mr. Carter: Would it be unwise to leave this matter to the legislature? To repeal it and leave it up to the legislature to deal with this question?

Mr. Marsh: We have no objections to that if we can get it through the General Assembly to repeal as opposed to passing the amendment. We have no objections.

Mrs. Sowle: The only conceivable objection would have to relate to the original reform purpose of the provision. But, historically we are so far away from some kind of bossism within a national party convention, perhaps it is no longer necessary.

Mr. Carter: The communications process has changed that whole situation, but it would seem to me that there is an argument, for saying that this could be a legislative matter. Now, let's follow through. Let's suppose you have the problem of a heavily oriented legislature of one party or the other. Could abuses come up by the legislature doing certain things that would louse up the primary of the other party?

Mrs. Rosenfield: If it really did, then could the other party go to court? They're not going to have any constitutional provision to work to get those laws declared unconstitutional.

Mr. Carter: I would like to think about this. I'm not prepared to deal with this right now. I can certainly see it is a mess. Something's got to be done, and your problem is that the constitutional mandate causes the legislature problems in dealing with it.

Mrs. Sowle: We'll return to this at the next meeting.

The committee agreed to meet on January 9, 1974 in the afternoon (1:30 p.m.) after the Commission meeting was ended. To be discussed was the remaining problem of the bedsheet ballot, and the staff's memoranda on Article XVII and the Initiative and Referendum.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
January 9, 1974

Summary

Present at the meeting were Mrs. Sowle, Chairman, Mr. Carter, Mr. Aalyson, Mr. Wilson, James Marsh of the Secretary of State's office, and Peg Rosenfield from the League of Women Voters. Clara Hudak and Brenda Avey were in attendance from the staff.

Mrs. Sowle: On the ballot rotation question, which I think we have finally resolved, we left the placement of the term "wherever possible" to the draftsman and you all received another version of that section. Unless there is objection or comment about ballot rotation, I think we can regard that as completed with the last draft mailed to us adopted by the committee. Another thing we agreed to at the last meeting was to use "shall be less prominent than the candidate's name" as incorporated in this draft. We discussed Article III, sections 3 and 4 - election returns for state offices. We tentatively recommended to repeal sections 3 and 4, in the memorandum from November 13, subject to further consideration if anyone had any further thoughts about it. The idea was that if we recommended repeal of sections 3 amd 4, we would need to accompany that recommendation with some proposal or legislation to cover the declaration of election results for executive offices. The Secretary of State's office was going to make recommendations to us. This involved the requirement that returns be delivered to the President of the Senate who should open and publish them and declare the results. It really is a provision that we no longer need. When it was originally put into the constitution there was no Secretary of State, as I understand the memorandum. So it's just a clean-up kind of operation because it isn't necessary. It had been all of our assumption, I think, in the discussion, that we would need to recommend legislation, but I wonder whether the repeal would make any legislation necessary. As I read this memorandum, those statutory provisions make a complete procedure now following the present constitutional requirements. They will remain on the books even if sections 3 and 4 were repealed until changed by the legislature.

Mrs. Avey: Would that apply to breaking ties? The Secretary of State is empowered to make the decision concerning ties except for the people whose tie votes are determined by joint vote of both houses. If you repeal sections 3 and 4, the legislative provisions concerning the tie vote would have to be provided for these officers of the executive branch. Otherwise, you would have nobody deciding ties, because the statute does not cover them.

Mr. Carter: I think it would be a mistake for us to go too far with matters of legislation whether it's there or not. That's not really our role.

Mr. Wilson: This is true of many of the decisions that we make as far as constitutional changes. There may be statutory changes that are necessary.

Mr. Marsh: I think Doug Applegate said that he wanted to get the sentiments of his party about the tie breaking.

Mr. Carter: But there is still no reason why we simply couldn't make the recommendation deleting these two sections of the constitution as matters that could be properly handled by statute. And I don't think we need concern ourselves with what the statutes would be. As I see it, the question that we ought

to face, is whether it's important enough to leave in the constitution, or whether it is statutory matter.

Mr. Wilson moved that it is the recommendation of this committee that Article III, sections 3 and 4, be repealed. Mr. Carter seconded the motion.

Mrs. Sowle: Any further discussion? (The vote was all in favor, none opposed). Then it is concluded that we will recommend its repeal. The next thing to look at is Article II, section 21 - "The General Assembly shall determine by law before what authority and in what manner the trial of contested elections shall be conducted." Now, I think we reached a tentative conclusion last time that we would leave it alone, but I don't think we took final action on it.

Mr. Wilson: I'm in favor of that, even though I think it is covered by section 1. I think section 21 is more definitive and makes an absolute statement and if somebody wanted it in there, I see no reason to remove it.

Mrs. Sowle: It doesn't seem to be causing anybody any difficulty. Does anyone have any comments about Article II, section 21, in favor of its remaining or going?

Mr. Carter: I have no recommendation for changing it.

Mrs. Sowle: This places, very clearly, the determination in the hands of the General Assembly. If you had a question of the separation of powers, this might be something that the courts would resolve and not the General Assembly. So, without knowing a lot more about that end of it, what the consequences of repeal might be, I think since there has been no complaint that its causing anyone any trouble, I think we might as well leave it as it is.

Mr. Wilson: It might be redundant, but then again, it might be necessary at some time.

Mrs. Sowle: The next thing on our agenda is the bedsheet ballot, and I believe you all received a copy of Senate Joint Resolution 5 - the Secretary of State's proposal.

Mr. Carter: The big problem in this issue is, of course, the presidential primary, that horrible problem that you ran into at the last election.

Mr. Marsh: We are very likely to face something similar in 1976.

Mrs. Sowle: So you are very eager to have something done on this as soon as possible.

Mr. Marsh: We think that if we delay too long, some people see political advantage in leaving things the way they are.

Mrs. Sowle: The basic change would be the difference between requiring the names of the delegates to be on the ballot as opposed to the names of the presidential candidates.

Mr. Marsh: We had approximately two hundred and some candidates for delegates

and alternates the last time, and we were faced with the dilemma of grouping these by first choice for president and rotating the groupings, but even so, you had such a mass of candidates that voting machines couldn't handle it. We had to go to paper ballots in voting machine counties which presented a real problem. The polling place officials said if we do this one more time, 'don't call us, you find some other way to run the election.' Plus the fact that for the voters it's most undesirable, because they get this huge ballot and they have to vote one way on the machine and then they have to go to a voting booth. Automatic equipment counties don't have voting booths and they have to find some way to mark the ballot. Which meant that the boards were preparing make-shift cardboard booths to go to and mark their ballots, and it's just a real mess.

Mr. Aalyson: I don't have any recollection as to why this was originally put into the constitution.

Mrs. Avey: I think it had to do, in part, with the desire for a direct primary. Peg brought up the historical fact of people sending the wise men off to pick their president for them, and I think the concern was with guaranteeing some more participation in the selection of candidates.

Mr. Marsh: There's a difference in the thrust of the two proposals. One elects delegates and the other establishes the preference for president and you've got to go either one way or the other, I think. We sort of went a combination of both ways the last time which was terrible.

Mrs. Sowle: The original reason for putting the provision in the constitution as I understand the memorandum, was a change from the state convention to elect state delegates to the national convention. So the proposed change would not go back on that reform. We would still have preferential primaries. Apparently, there was no history at the time of that change as to any reason particularly for voting for delegates instead of candidates. The basic form away from the state convention, would still, of course, be retained.

Mr. Aalyson: Is the suggestion of the Secretary of State's office that the voters should be offered a preference for their presidential candidate and the delegates would follow automatically?

Mr. Marsh: Right. What we're doing is proposing that you handle it the same way that you handle the vote for president. We used to put the presidential electors on the ballot, and they coincidently were pledged, when they convened, to vote for certain candidates for president. Where we eliminated the electors, I think that was all to the betterment of the system. Likewise, the elimination of the delegates and alternates would be a betterment to the system, I think.

Mr. Wilson: Actually, until they revise the national electoral college system, we cannot vote directly for the president.

Mr. Marsh: No. A vote for president is a vote for the electors.

Mr. Wilson: And that's what you're trying to get into now.

Mrs. Sowle: And that's what your proposal does. A vote for the president is a vote for the delegate that he has stated will represent him.

Mr. Marsh: I don't know whether it would be advantageous to have some input from the Democratic Party, because they've got their national rules to consider and I think they are waiting to see what their party does nationally before they take any action on SJR 5. It might be that they would want something besides a winner take all system. It's kind of hard to finalize things unless they are in agreement.

Mrs. Sowle: How would this work? Let's assume that there was an amendment whereby the voter voted directly for the presidential candidate. Then, might it be possible for that to still be consistent with whatever the Democratic Party comes up with in this way: this leaves to the presidential candidate the specific choice of delegates, so it would be up to the Democratic candidate then to choose delegates that would be within the terms of the requirements of the Democratic Party Rules.

Mr. Marsh: You could have something like that.

Mr. Wilson: It would lead you to some trouble if the national party rules stated that they had to be pro-rated and not winner take all. If he's going to name people that in theory will go there and support another candidate pro-rata to him, he's going to have to try and find someone to go and vote for himself.

Mrs. Rosenfield: Couldn't you have something like what you're talking about where you vote for the presidential candidate, but you take the results and pro-rate them. You still give proportional if you start at the top of each man's list, and if he got 40% of the vote, he gets 40% of his delegates. And the next guy gets 15% of his, and other guy gets 5% of his delegates.

Mr. Wilson: In other words, we are sitting here predicating this on the theory that that may be the way the national Democratic Party will set their rules. We don't know. We wouldn't want to tie that up in our constitution.

Mrs. Sowle: Right. And the Secretary of State's office, Jim, has had no feedback, as yet, from the Democratic Party?

Mrs. Rosenfield: I think that's one of the things that they're supposed to vote on at their convention.

Mr. Marsh: I would think that the committee, on this particular thing, might want to approach Rep. Delbane, the Governor, or some of the leading Democrats to get their views on what kind of changes should be made. It might be, that in order to accomplish anything, we'll have to write it in such a way that the party can determine by its own rules how to do it, with the provision that the voters have a choice as to who they're going to send to the convention and who they're going to vote for when they get there. And I think we have to eliminate the names of all those candidates on the ballot. Those are our two main objectives in submitting the amendment, and if we can do it some other way, we're not wed to any particular way of doing it.

Mr. Carter: That's my point. What you're saying can be done, as I read this. All this really says is that instead of voting for an individual, you're going to vote for the presidential candidate - that's what's going to be on the ballot. And then you can structure the thing thereafter any way that you want to.

Mrs. Sowle: I don't think there would be a problem inherent in SJR 5.

Mr. Marsh: We don't really think it is either, but we have encountered difficulty in getting it moved. Maybe in the minds of some of the Democratic leaders there is a reservation as to whether passage of this will end up with the party in violation of their own rules.

Mrs. Sowle: Perhaps some of us can do some inquiring on this. Bill Lavelle lives in Athens and he is the head of the Democratic Party in Ohio and also on the executive committee of the National Party. I'd be glad to try to talk with him about this, and any feedback that you can get, Jim, would be great. Perhaps Senator Applegate can help us. Assuming that the Democratic Party proposals won't be inconsistent with SJR 5, I think we ought to continue to see whether we want it. Is there a general feeling in the committee about the desirability of the change?

Mr. Carter: It seems to me, from the discussion that we've had, that we are agreed that voting for individuals has become unmanageable and causes problems. What we want to do is have the primary vote be for the candidate and not for some individual. Now, I think that that's what we're agreed on but there still remains the question of how we implement that. The constitution says, "All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors." and then it goes on to say, "which preferences shall be printed upon the primary ballot below the name of such candidate.." In other words, the whole emphasis of the present constitutional provision is that you vote for a person who indicates who his preference is. All we have to do is get rid of that.

Mrs. Sowle: Get rid of the names.

Mr. Carter: Yes. And it would seem to me that it might not be necessary to go through such a long harangue. I can see where someone looking at this might say, "we Democrats are in the midst of a big to-do on talking about setting up delegates to a national convention, let's not bother with it." But I don't think that's the question that we're talking about.

Mrs. Rosenfield: I recognize the technical problems, but I can imagine wanting to vote for specific delegates because I can see sending somebody off to a convention and saying, "Look, this is my first choice, but if I can't get my first choice for presidential candidate, I would rather send this guy because I think he's got better judgment." Furthermore, it gives more opportunity for young "turks" to do something, which I am really in favor of.

Mr. Carter: I think that really is a theoretical argument. It's just not a practical thing.

Mr. Marsh: It's like trying to have a town meeting to resolve state business. You can't function that way any more.

Mrs. Sowle: Might an answer lie in participation in the party activity? That you can have an influence in the choice of individuals by participating in party activities.

Mrs. Rosenfield: That looks more than a little challenging, but in theory, you're right.

Mrs. Sowle: And especially if the parties try to get broader representation. I think our first problem is whether the committee agrees that the primary vote should indeed be for the candidate and not the delegate. Craig, do you feel that way?

Mr. Aalyson: Yes.

Mrs. Sowle: That's the basic issue to resolve. I'd like to present a question on the language and then get back to what you were talking about, Dick, because I think the way it's presented is going to have a great deal to do with the success of it. SJR 5 says, in line 18, as follows: Each candidate for such delegates shall state his first and second choices for the presidency. As the section reads now, the words "shall state" have a very clear meaning because that is stated right on the ballot. With the proposed changes in lines 20 and 21, "which preferences shall be printed upon the primary ballot" the words "shall state" seem to me to be left hanging. To whom shall the candidate so state? And I wonder whether that's a very clear way to write it. In order to get around that, it would really require a complete rewording of the provision, I believe. That would have to be weighed against the simpler problem for the voter of looking at this and being able to tell right away what's taken out and what's not. Maybe the problem I'm raising is more of an academic problem but I don't like the language.

Mr. Marsh: Yes, you're right. But we're not wed to the language. We are concerned about the idea and if there is a way we can change the language to move the amendment, I'm quite sure that our office has no objections at all.

Mrs. Sowle: Perhaps we can all work on it and start out with two or three different approaches to it.

Mr. Carter: We did bring up the question that it may be possible to simply say that all delegates from the state to the national convention of a political party shall be chosen as provided by law. I think that deserves a little discussion.

Mr. Wilson: The other thing I want to say which is germane at this point is that there are many people in this country who would like to see the so-called national political conventions eliminated and have direct preferential primaries in all states determine the final representative of that party. If that should come about, and we are moving in that direction, we certainly shouldn't put any language in the constitution to prevent that or oppose it.

Mrs. Sowle: I don't think this would stand in the way of that kind of primary. This only says that if there is a primary, this is how the delegates to conventions shall be chosen. Is that right?

Mr. Wilson: But if there is a true preferential primary without conventions, to determine the candidates of each party, then this wouldn't apply. So what I'm saying is that when we consider our final language for our constitution, we should be pretty sure that we don't put anything in there that's tied up with the situation that exists today. It should be flexible enough to cover whatever comes.

Mrs. Sowle: And, of course, what Dick mentioned would give the greatest flexibility of all.

Mr. Carter: Well there is a danger that we identified at our last meeting that you might get into some partisan kind of problems that whoever is in control of the legislature might torpedo the other party, and that would cause some embarassment. So I'm not sure that it is the thing to do, but I also think that we should give it some thought. It really is the kind of thing that should be done by statute rather than by the constitution.

Mrs. Rosenfield: Do you want it done by statute, or do you want it done by the party? Because, as long as they don't do something horrible, you want to leave it up to each party to make their own rules.

Mr. Marsh: You would like to leave it up to each party but they don't run the election. Polling place officials are counting the votes and we do have some administrative problems. The Democratic Party was discussing, for example, the feasibility of electing on the state representative district as opposed to congressional districts, giving more delegate to certain congressional districts than to others, and there is nothing constitutional or even statutory about that. We filled a lot of gaps just by going out and doing it.

Mr. Carter: And the only problem you are really having in this whole area is because the constitution says that the delegates shall be chosen by the direct vote of the electors.

Mr. Marsh: We've got some statutes also which we have to deal with and the statutes provide for the procedure for preparing the ballots. We are faced initially with the prospect of listing all the delegates alphabetically and listing under each candidate his first choice for president and permitting a vote for each candidate and this was eliminated by grouping them by first choice and permitting bloc voting.

Mr. Carter: I agree that that is a problem, but in so far as the constitution is concerned, the only problem you have is this one particular sentence. Now, I am not advocating, but I'm raising the question, how about just repealing it?

Mr. Aalyson: This is why I asked originally why was it put in. Who lobbied for this thing and why?

Mrs. Sowle: The problem was electing delegates to the national convention at state conventions, and it was that procedure that led to this amendment, the abuses and the bossism. I don't think that today we really have that kind of a political problem.

Mr. Carter: Craig is right of course. We want to try and identify the kind of problems which gave rise to this provision. We don't want to solve one problem by getting us back into the kind of problems we had to start with.

Mrs. Sowle: I think repeal might be a good idea.

Mr. Wilson: Repeal might leave the Secretary of State's office more or less at the mercy of the statutes which may or may not be bad.

Mr. Marsh: It wouldn't solve our problem, though, because we'd still have to get the statutes amended.

Mr. Carter: This was a reaction against the state convention, because they put in direct vote not realizing in essence what they were doing by direct vote. The way that we could preserve the thrust of that amendment is by saying that delegates to the national convention shall be done by vote instead of by state convention, and leaving how the vote is to be done up in the air. Maybe you could put in "by nominee or direct".

Mr. Aalyson: But we get back to that question that we discussed last week, I think, which we were worried about abuse of a party in power. Somehow we ought to be able to come up with a constitutional provision which would regulate that as well as simplify Jim's problem.

Mr. Carter: Yet, as he points out, so much of the election procedures are not even covered by statute or by the constitution. There's kind of an informal understanding that the parties, within broad limits, tell us what we're going to do.

Mr. Marsh: It's not really a public office that we're dealing with when we elect delegates and alternates. They have peculiarly a party function, and we are really holding elections for the political parties, and coincidently for the public because they have an interest. There are some states which charge the candidates for their primaries and elections.

Mr. Aalyson: Is there anyone in this room who has met serious opposition to the idea of electing the president just by popular vote?

Mr. Wilson: I see no opposition, and the direct opposite of that was the reason for my comment of a moment ago, the end of the political convention.

Mr. Aalyson: We should head in that direction, it seems.

Mrs. Rosenfield: There is some real opposition to that. We discussed it in the League about 3 years ago, and within the League we definitely came to a strong consensus for direct election but it wasn't unanimous to eliminate the electoral college. There is still some feeling for preserving it and having a proportional vote.

Mr. Marsh: I think if you are going to eliminate national conventions, it would have to be done federally. I don't see how it could be otherwise if Ohio has to have the same Democratic and Republican nominee that we run in Pennsylvania and other states. If we can settle it with a constitutional amendment, I think we would prefer that, since this thing has come so far. If it's a matter that we can't settle by constitutional amendment because of the disagreements then maybe it would be better to consider the repeal of certain provisions like Dick suggested and rely on statutory change.

Mrs. Sowle: I will ask Mr. Lavelle about several of these matters including things like repeal or leaving it to the legislature, or SJR 5.

Mr. Aalyson: If we provided for election of the delegates by permitting the public to cast a vote for the candidate of their choice, and then provide that the apportionment of the delegates should be according to the rules of the party involved, haven't we come fairly close to achieving utopia as nearly as it can be achieved in these matters?

Mr. Carter: SJR 5 mandates the opposite. You would have to vote for the candidate rather than the delegate. Ten or twenty years from now, it may be just the opposite of what it should be, so I like that approach. Instead of worrying about reversing it, simply say that we get away from the state convention business and bossism by requiring the delegates to a national convention be selected by vote, and make sure that it can be either by voting for the president that they represent, or directly, so that we don't take a position on that. And then to follow through with your second thought, which is to say that it shall be up to the party to determine how these delegates are selected, then you've done a darn good job. You've said it must be by vote of the people, and how they are to be apportioned, and then it seems to me that you've done something that we can take to the Democrats and say, "We recognize your problem and what we've done is this, so we ought to get this thing passed." What it doesn't do for you, Jim, it means that the legislature then has got to take some action to convert this into something that's workable for you. But that's a lot easier than a constitutional amendment.

Mr. Marsh: I can see some candidates not wanting to leave it up to the parties as to who to select as delegates. Maybe the party organization is really for one candidate more strongly than another.

Mr. Carter: So we reserve the right of the people to vote.

Mrs. Rosenfield: Have you left it open with this kind of wording that the party will say that you will vote for individual delegates? Wouldn't that be right back where we are now?

Mr. Carter: Yes, as far as the constitution is concerned, but that then leaves the legislature free to control and this is where I think it should be.

Mrs. Rosenfield: And you leave it, as we do most things, to the good sense of the legislature.

Mr. Carter: And as times and circumstances change, they will have flexibility.

Mr. Aalyson: If you let the people vote for presidential candidates, and the delegates shall be apportioned among the candidates according to the apportionment of the votes cast, does that eliminate the problem that one candidate might not be permitted to have his delegates support him at a convention?

Mr. Marsh: I'm not sure whether it would or not. I'm not sure whether that is a legitimate objection for the Democratic Party or Democratic leaders. It might be that there would be other people who would want to see winner take all.

Mr. Carter: Leave it to the party.

Mr. Aalyson: Well, if we leave it to the party, and they decide what they're going to do...

Mrs. Rosenfield: The other possibility I thought of was what if a party decided that what they would like to do is have the delegates chosen, not statewide, but by congressional district, and you could handle that on individual machines. A voter could say I want Joe Jones or John Smith as my delegate. Because you're not voting on a state-wide slate. You're only voting on one or

two people for this district. Would this be allowed under any of the things we're talking about?

Mr. Carter: It would under mine.

Mrs. Rosenfield: And this way, if you wanted to vote for delegates rather than for presidential preference you could do it if you did it in a small enough geographical area.

Mr. Carter: Again, that's a statutory matter. What I'm proposing is rather than mandating in the constitution that the vote shall be for the candidate or the delegate is to leave it open.

Mrs. Rosenfield: The only thing you're mandating is that it must be by vote, not by state convention.

Mr. Carter: And the rest will be determined according to the laws and the wishes of the party.

Mr. Marsh: Which really places the burden on the parties for elimination of the bedsheet ballot because they, I suppose, can decide to have that kind of an election.

Mrs. Rosenfield: Maybe you could get legislation passed for billing the parties. That would take care of the bedsheet ballot more quickly than anything.

Mr. Marsh: I think it would be helpful to get some opinion from the Democratic party as to what way they would like to see this, and then possibly we could resolve our problems.

Mr. Carter: I think the basic thing to do to preserve the original intent is to assure that it's done by a vote of the people.

Mrs. Sowle: I still have a question about whether outright repeal might be worth our consideration as well. I'm wondering whether the particular abuse that gave rise to this particular provision is a matter now of historical interest, and if it is, then I think repeal might be worth considering. On the other hand, if there is some danger that repeal might open up a can of worms, then it wouldn't be a good idea. I have one other question. On page 5 of the memo, a problem is raised that isn't really a constitutional problem, but I thought perhaps we might look at it. This is kind of a statutory dilemna about the minor parties. You must put on the ballot a candidate of minor parties, even where they were nominated by a political convention and even if the delegates to that national convention were not elected according to the constitution. Am I correct, Jim?

Mr. Marsh: Yes. The reason for that was the decision by the federal court which said that Ohio did not have a compelling state interest to interfere with the internal affairs of a political party to the extent of telling that political party how its delegates and alternates should be selected; to require them to hold conventions, to require them to have national conventions. The theory was that a party with very little support could not possibly hold a state convention, and could not elect a committee member in every precinct of the state, and may not be able to hold a national convention. So we were directed to put George Wallace and the American Independent Party on the pres-

idential ballot without convention and we amended the statute under the theory that there was a legitimate way to control major parties, but to set up the same standards for the minor parties would be an intrusion into their affairs that really couldn't be justified.

Mrs. Sowle: The memorandum suggests something which I was wondering if it is correct. It says, "If Ohio delegates participated in such a convention and they were not chosen in a primary, would not the party candidate be disqualified from running in the general election by the provision of section 7 requiring direct election." Am I right, from what you said, that this would not be true, that you would have to put them on the ballot?

Mr. Marsh: That's correct. You would have to put those from the minor parties on the ballot.

Mrs. Rosenfield: The question that entered my mind concerns the case where a party is very strong state-wide and is non-existent nation wide. There's one I think in Wisconsin, that is farmer-related, and is strong enough to elect state-wide offices. Where would they fall in our present thing where they have no standing nationally at all and state-wide they're a major party?

Mr. Marsh: I think as far as holding the state convention, they may have to do that. As far as holding national conventions, they aren't a national party, and the requirement might be in violation of statutes.

Mrs. Sowle: But our current provision doesn't require the holding of a national convention, does it? It just says that if there is one, this is how the delegates shall be chosen.

Mr. Carter: He's talking about the statute, and the constitution doesn't require this. That's why I'm in favor of leaving it out.

Mrs. Sowle: Shouldn't we keep this problem in mind in any proposed revision, in the sense that it seems to be undesirable to have a constitutional provision that is in some respect a violation of federal law? We should take into account the status of these minor parties when we write it, so it doesn't read in such a way that it cannot be applied to the minor parties.

Mr. Marsh: We don't have any now, but we might have three tomorrow.

Mr. Carter: I think this has been a good discussion. I think that we've come up with some constructive thoughts on this problem. Although we may not have solved your problem, Jim, the first major step is getting it out of the constitution.

Mr. Marsh: I think it's eventually going to come down to an agreement between the political leaders as to what they want to do with it.

There followed general discussion about the initiative and referendum for the purpose of determining how much revision was thought to be needed. Mr. Carter thought the present provisions were a good compromise, although there were several technical problems. Mr. Aalyson was in favor of as direct legislation as reasonably possible. It was noted that when the percentage of signatures to initiate amendments or laws is high, in order to reduce the number of things on the ballot, a lot of money was almost a prerequisite to getting something on

the ballot. Consensus was that the sections would require a lot of discussion, and an all-day meeting was scheduled for January 30.

Mr. Carter: Since I will not be here for the next meeting, I'd like to say this now. I think as far as discussion is concerned, it would be well to identify the problems. One is the entry level problem - the minimum number of signatures required - which is a very simple value judgment, that's going to be a matter of opinion. And the other thing is a whole raft of other things with regard to the mechanics that are set forth in the constitution, and what we can eliminate. I agree with Peg's idea that these are regulations even more than statutory problems. But on the other hand, I think we have to make sure that we protect the initiative and referendum.

Mrs. Sowle: Let's turn now to Article III section 18 and Article XVII, sections 1 and 2 - vacancies the Governor is to fill. I don't think there are any substantive problems. I'll see if I can summarize it by presenting the issues one by one. First of all, there is a question of duplication between Article III, section 18 and the third paragraph of Article XVII, section 2. They pretty much provide the same thing and there may be a way of getting around it. The first one provides that "the Governor shall fill a vacancy in the office of Auditor, Treasurer, Secretary of State and Attorney General..." There's also a provision to prevent a short term appointment in that section as well, and I can't see any problem with that. The last paragraph of Article XVII, section 2 reads very much like the other section. It says, "Any vacancy which may occur in any elected state office..." so it's an umbrella provision, "other than that of a member of the General Assembly or of Governor, shall be filled by appointment by the Governor." And then the rest of that section reads the same as section 18. There are two problems with it. One is simply the matter of duplication. I think what my suggestion would be is to repeal section 18 with some word changes in paragraph 3 of Article XVII, section 2.

Mr. Carter: That's really a mechanical change, not substantive.

Mrs. Sowle: That's right. In other words, section 18, I think, is just superfluous. If you eliminated it, all of these things would be done under Article XVII.

Mr. Marsh: One covers lieutenant governor and the other does not.

Mrs. Sowle: That's the next thing about it. Jim, do you see any problem aside from the lieutenant governor problem? Do you see any problem with repealing section 18?

Mr. Aalyson: Article XVII covers it, it says "any elected state officer...".

Mrs. Sowle: There is another problem with this and that is the problem of the lieutenant governor. If you read the other provision of Article III, section 18, it becomes apparent as the memo develops that really the intent is fairly clear that the office of lieutenant governor is not to be filled. That if the lieutenant governor succees to the governorship then there is a provision for an appointment or election of a president pro-tem of the senate. So really the constitution seems to contemplate leaving that office vacant. There is also a provision for succession if the lieutenant governor is disabled or suceeds to the governorship. Then there is a provision for further succession to governor.

Now, if you assume that that is the intent of the constitution, then you read the third paragraph of Article XVII, it provides, it seems, for the governor to fill the vacancy. It appears as if that were unintentional.

Mrs. Rosenfield: This is not analogous to the president, so I could see leaving it vacant if he succeeds to the office of governorship, but what if the lieutenant governor dies in office? Does the governor appoint a new lieutenant governor?

Mrs. Sowle: Apparently, under Article XVII, he does, but under Article III, section 18, it is not contemplated that that office shall be filled. Because the two things that he does, being available for the office of governorship, and being president of the senate are provided for, filling those vacancies without putting a new man into the office of lieutenant governor is contemplated.

Mrs. Rosenfield: I think that if you have the two running together, then it becomes logical that he would appoint another to keep that office filled if they ran together as a team.

Mr. Aalyson: Is there a real reason for keeping it filled, in view of the provision for a president of the senate, etc.?

Mr. Carter: That's a good question because obviously the lieutenant governor is a lot different from the vice-president of the United States.

Mr. Aalyson: But they're elected together.

Mr. Carter: As I understand it is really what we have now and whether it should be kept.

Mrs. Sowle: In other words if it is the intent of the constitution not to fill the office of lieutenant governor, then we ought to reword the first sentence of the first paragraph of Article XVII, section 2. (John Skipton joined our meeting.) Maybe John has something to say on this. The question has come up, if the governor and lieutenant governor are elected together, is it desirable to have a new lieutenant governor if that office becomes vacant?

Mr. Skipton: I think the attitude of our executive committee was that, no, it would not be necessary to fill that office. If the office existed primarily to be the back-up for the governor, on the rare occasion that it becomes necessary to provide a back-up it isn't necessary to provide a back-up for him. It's a rare problem and we decided that it wasn't a sufficient problem to attempt to do anything about.

Mr. Carter: If we are going to re-work this, I think it would be a good thing to take care of, I think, just to make sure that the wording is changed to read "other than a member of the General Assembly or of Governor or Lieutenant Governor."

Mrs. Sowle: So we would recommend repeal of section 18 and amendment and renumbering subsequent paragraphs to say, "of Governor or Lieutenant Governor". Jim, does that sound alright?

Mr. Marsh: I think that it accomplishes what you say you want to accomplish.

I don't think our office has any position on whether or not the vacancy in the office of lieutenant governor should be filled.
Mr. Marsh agreed to request the Secretary of State to make some recommendations in the initiative and referendum area for discussion at the next meeting,

Mrs. Sowle: Do I get a consensus on the repeal of section 18 and the rewording of the other? The other two problems are like that. The first paragraph of section 2, Article XVII. According to the memorandum, everything in that paragraph except for the last sentence is taken care of elsewhere. Not only that, but there are some inconsistencies between this and later provisions elsewhere in the constitution, so that there really is a good reason for repealing this.

Mr. Aalyson: I had some problem with that last sentence in the first paragraph. What do the words "so prescribed" mean?

Mrs. Sowle: If we retained that sentence we would have to reword it to say the term of office, and so forth, shall be such even numbered years not exceeding four years as may be prescribed by the General Assembly.

Mr. Aalyson: Yes, that would solve the problem.

Mrs. Sowle: It says shall be prescribed by the General Assembly two sentences before that sentence, and I gather that's why the word "so" is in there. Is there agreement on that action? Repeal of that paragraph and retention of the last sentence. (There was agreement). The recommendation of the memorandum was to retain that very short second paragraph because it has some usefulness. That says, "The General Assembly shall have the power to so extend existing terms of office as to effect the purpose of section 1 of this article." I think what my suggestion there was to move that to section 1. That would change the sentence to read, "The General Assembly shall have the power to so extend existing terms of office as to effect the purpose of this section."

Mr. Aalyson: Aren't all the terms fixed?

Mrs. Rosenfield: Wasn't the power just to fix it so as to get the sequence going initially?

Mr. Marsh: They have passed section 3.01 and 3.02 which does extend existing terms under certain circumstances.

Mrs. Rosenfield: Now I understand. I just wanted to make sure "existing terms" didn't mean existing terms at one point in time.

Mrs. Sowle: The memo says that in the event that the terms of office of municipal officers or other persons whose election is provided by statute, should be changed, the general assembly's power would prove useful. But it seems to me that it would be better draftsmanship to move it. I think that's all. So the changes suggested involve repealing all of section 2 of Article XVII except for the last sentence which would remain in section 2 and moving the second paragraph up to section 1. The third paragraph would be retained with the addition of the lieutenant governor provisions. I think that takes care of the issues of those sections, unless there is further comment.

Mr. Carter: No, that's a good clean-up.

Mrs. Sowle: We have remaining for discussion at the next meeting the four memoranda on the initiative and referendum, and to entertain discussion on campaign financing. As soon as I receive a copy of the summary of this meeting, I would like to send an agenda out to all the committee members so that we can pinpoint what everyone ought to be thinking about. Since we are going to have an all-day meeting, we want to make it as productive as possible.

The date of the next meeting was set for January 30 to begin at 10 a.m. in the Commission offices in the Neil House.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
January 30, 1974

Summary

Present at the meeting were Katie Sowle, Chairman, Craig Aalyson, Peg Rosenfield of the League of Women Voters, James Marsh and Roy Nichols from the Secretary of State's office. Ann Eriksson and Brenda Avey were present from the staff.

Mrs. Sowle: The original proposal from the Secretary of State's office to our committee had five different recommendations. One matter we have not discussed. Let me read you the proposal. "To provide an election for the unexpired term of the office of Governor..." Now I'll stop there because that proposal was considered by the committee studying the executive article, and they decided not to fill an unexpired term for the office of Governor. The provided, rather, for succession, and that's not reaaly in our jurisdiction. The other portion of it, however, is. "and to require all such elections to be held at the first general election occuring after the vacancy instead of being deferred to the next even-year election." Now the present provision in Article XVII, section 2, in the third paragraph says, "any vacancy which may occur in any elective state office... such successor shall be elected for the unexpired term of the vacant office at the first general election in an even-numbered year, which occurs more than forty days..." and so forth. The proposal of the Secretary of State is to change that to the first general election occuring after the vacancy.

Mr. Aalyson: Without restriction as to the passage of time?

Mr. Nichols: We had a text of the proposal that accompanied the letter and I believe there was a number of days specified, occuring a certain number of days after the vacancy occurs.

Mrs. Rosenfield: But the basic idea is that there's no reason you couldn't elect that replacement during municipal elections.

Mrs. Sowle: That's right. The Secretary of State's proposal says, "Such successor shall be elected for the unexpired term of the vacant office at the first general election that occurs more than forty days after the vacancy." And he simply, in this proposal, deletes the words "in an even-numbered year". I see no problem with this. Do you Craig?

Mr. Aalyson: I don't either. I'm rather in favor of it.

Mrs. Sowle: It makes a lot of sense to me and I can't imagine anyone would object. Then by consensus of those members of the committee present, I think we would recommend to the Commission that deletion, which simply deletes the words "in the even-numbered years" from Article XVII, section 2, the third paragraph. And, of course, this will go out in the summary, for other committee members to comment on.

If we propose to amend the bedsheet ballot provision in accordance with SJR 5 as proposed by the Secretary of State, or any other way we decide to recommend a change in the bedsheet ballot provision, that we must take into account the provision of Article V, section 2a, the last sentence. That says, "Any elector may vote for candidates (other than candidates for electors for President

and Vice President of the United States) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate." So, if we propose that the elector vote for the presidential candidate, and not directly for the candidate for delegate, it would be inconsistent with the sentence. I think we should keep this in mind, and if we decide to recommend a change in the bedsheet ballot provision, we would also have to take into account this provision. The Secretary of State's proposal would change the vote in the primary to a way similar to the way the elector votes for President and Vice President in an election, where you express your preference for the candidates for President and Vice President instead of for the electors who will go to the electoral college. But one way to change this would be to add to the material in parentheses in section 2a. I think we would have to make the same kind of exception to that sentence that was made for candidates for electors for President and Vice President.

Mr. Nichols: For delegates and alternates also.

Mrs. Sowle: Right. I think, probably, the first thing we ought to take up today is to go back to the bedsheet ballot provision. I did talk with Bill Lavelle and perhaps I better start with that, and report on my conversation with him. If you recall our discussion at the last committee meeting, we talked about a number of different possibilities. We discussed the possibility of repealing the provision, and we talked about the possibility of leaving certain decisions to the legislature or to the parties, instead of spelling out in the constitution what ought to be done. If you recall too, things that we thought might be a problem in trying to amend this section were that various suggestions are being considered by the Democratic Party on the national level, and we don't want to propose a change in this provision that will then simply be an impediment to things that the national parties are trying to do and then be faced with going through that all over. First of all, Bill Lavelle said that he saw no problem in eliminating the direct election of delegates to national conventions and substituting the direct vote for presidential candidates in the primary. He also saw no problem with other alternatives too, but he didn't see that there would be any objection to that on the part of the Democratic Party, at least as he could see it now, because that national meeting, of course, hasn't been held. He does sit on the executive committee of the Democratic National Committee so he was a pretty good person to discuss this with. He does not think that SJR 5 would preclude using proportional representation, because it's possible that one of the national parties would go to that method of electing delegates. He didn't think SJR 5 precluded that. Would you agree with that, Mr. Nichols?

Mr. Nichols: Yes, I would.

Mrs. Sowle: Now, he brought up something that we hadn't thought of at all and this makes this revision much harder to draft. The one thing that he sees that SJR 5 would not permit is a new idea being discussed in the Democratic Party whereby some 80% or so of the delegates would be elected at direct primaries. The, the remaining 20% would be selected by the 80%. In the summary of the state laws, that you sent us, I noticed that there are variations on that proposal by legislation in several states. One of the states, for example, permits that remaining percentage to be chosen, not by the delegates elected, but by the central committee of the party.

Mr. Nichols: Is he talking about a national primary?

Mrs. Sowle: No, he's talking about the selection of delegates by the states to the national convention, as I understand it. Now the 20% or so, not directly selected in the election would be bound to the candidates in the same proportion that the 80% elected were bound to the candidates. The purpose of the provision would be to prevent what happened the last time round in Ohio, where neither the Governor nor the state chairman of the Democratic Party was a delegate to the national convention. The justification for doing it this way, according to Mr. Lavelle, was that national party conventions do not just select their party's nominee for office, the conduct a lot of other party business. The party officers, certain members of the party in the state, by virtue of their position, should be representatives to the national convention for these kinds of deliberations: selection of the platform; determination of internal party machinery, and so forth. Of course, they would not be bound by anything in those votes, but they would be bound in voting for the candidates.

Mr. Nichols: What in SJR 5 does he feel would preclude that system?

Mrs. Sowle: Article V, section 7, either in the Secretary of State's proposal or in the present language. "All delegates from this state to the national convention shall be chosen by direct vote of the electors." You see, all delegates being chosen by vote would preclude 15 or 20% not being chosen by direct vote. It seems quite possible to me that the parties would even do something like this: the party might say that the remaining 15 or 20% should be composed of the following: the governor, the lieutenant governor, any state senators of the party, the state chairman of the commiteee. It occurs to me that one of the things they might do is to specify certain people that occupy certain positions. That possibility would not be allowed for by this language. When we talked about the basic reform that we kind of were agreeing on at our last meeting, one of the basic reforms that we all agreed probably ought to be retained was retention in principle of the direct primary. This is a modification of that.

Mr. Aalyson: Is there anything which prohibits an office holder, such as a governor or senator from running as a delegate to the national convention?

Mrs. Sowle: They did.

Mrs. Rosenfield: But they lost.

Mr. Aalyson: Then it's the purpose of the parties to see that this does not occur, that these people are too important to party policy and party procedures to be excluded.

Mrs. Rosenfield: They were excluded, not necessarily because the people didn't want them to go, but because the presidential candidate didn't get enough votes.

Mrs. Avey: Why couldn't the Governor and the Party Chairman attend the convention as other than delegates?

Mrs. Sowle: Oh, they can, I'm sure.

Mrs. Avey: Then, why not send them in another way. It seems to me that delegates are elected for their choice of presidential candidate rather than for what they're going to do with party machinery.

Mrs. Sowle: The feeling that Mr. Lavelle expressed to me was that the party did

not feel that way. One of the functions of the national convention is to nominate the candidates for President and Vice President. But they also do a lot of other things like choose a platform, determine future party policy.

Mr. Aalyson: Is Mr. Lavelle saying that they can't be heard or exert any influence unless they are a delegate? I'm not against the proposal, I'm just trying to sort out in my mind why they care whether the Governor goes as a delegate or not.

Mrs. Avey: The people voting for the delegates are voting for them for their choice of president and not for what they're going to do on the other matters. So if the other important persons can attend the convention and be active decision makers in a capacity other than delegate, why take up the delegate spots with these other people? Then you can still keep the direct primary.

Mrs. Sowle: I suppose his answer to that would simply be that if the political parties should choose some form such as this, the people that they want to represent the state in this fashion, that it would be very much of a handicap if the state constitution prevents the party from acting. I suppose the party could adopt a rule such as: for the purpose of voting on these matters they will be delegates chosen as the state says for voting for President and Vice President; for all other purposes, we will use this kind of a format and include certain people. I suppose they could get around it that way.

Mr. Nichols: This idea has not been voiced to our office before. We were aware, of course, that the resolution was hung up in the House committee and awaiting some kind of resolution at the national level. They wanted to find out what direction the national party organization was going before they decided what to do with the resolution.

Mrs. Sowle: Now, he was raising this, of course, simply as a possibility, as one of the things under discussion that he thought SJR 5 would be inconsistent with. He didn't say this is what they were going to do in the party. And I don't know whether that was the cause of delay in the committee. He was simply reading the proposal to see if he could think of anything that this wouldn't permit.

Mrs. Rosenfield: This possibility would not be resolved until that national convention next December?

Mrs. Sowle: No. He also pointed out the possibility that both parties may push for some such type of arrangement. He definitely favored retaining the direct primary. He also thought that repeal would be a rather unrealistic alternative because it would be hard to sell. One reason that he thought repeal would be very hard to sell was that Ohio was one of the first direct primary states, and historically the direct primary has some importance to the state, so he thought it would be very difficult to repeal it. He did think, as we have discussed before, that one possibility might be to retain the principle of the direct primary leaving all details to resolution by the General Assembly. He also thought one possibility was something that we discussed at our last meeting, that rather than leaving the details to the General Assembly, to leave them to determination by the national parties, so that one party cannot foist upon the other party rules that that party did not want to accept.

Mrs. Rosenfield: Well, if you had the principle of the direct primary in the constitution, and left it up to the parties to decide what they wanted to do with that principle, then you are really leaving it up to the courts to decide whether the parties have stayed within that constitutional concept.

Mrs. Sowle: That's true.

Mr. Aalyson: Aren't you opening the door for even a worse mess than we have with the bedsheet ballot? If you leave it up to the parties, we say direct vote, and then they're going to determine how, we may be back in the same mess that we are now.

Mrs. Sowle: That's possible, but, I think this came up at the last meeting, and somebody said in response to that, "Well, certainly if it were left to the General Assembly it would be subject to change. It would be written in stone such as it is now." If you leave it to the parties, that's something else. I should mention one other thing. He did not think SJR 5 precluded electing delegates by district. Mr. Nichols, do you see that SJR 5 would preclude district elections?

Mr. Nichols: No, in fact the present section doesn't either. Delegates are elected by district and at-large. It's a combined system now and SJR 5 would not change that. I wanted to ask one question on leaving this to the parties. What exactly would they be leaving to the parties?

Mrs. Sowle: That wasn't too clear either.

Mr. Nichols: There has to be some kind of statutory specific provisions because an election can only be conducted pursuant to law and a non-public body couldn't dictate to the state how it must conduct it's election. Whatever provision this party might decide upon, it would have to have some kind of statutory authority.

Mrs. Sowle: Let me mention some of the things that occured to me on that. Let me outline the five concepts that I think we are dealing with and then show how I think the idea of some party delegation might work into this. Everyone seems agreed that the concept or the principle of the direct preference primary should be retained. That we should not recommend repeal of that. Secondly, that whatever we propose should permit certain alternatives and one of those alternatives should be proportional representation, pro rata delegate representation to a national convention. Thirdly, that the proposal should permit choice by district. Fourth, should a proposal permit perhaps a percentage of the delegates to be chosen not by direct primary but by the other delegates or in another way, decided upon by the party? If this happened, that in so far as they are voting for presidential candidates at the convention, that minority percentage would be bound to the candidate in the same proportion as those directly elected in the primary. What do you think of that idea?

Mr. Aalyson: I'm wondering about the mechanics of the thing. How can we possibly draft an amendment or suggestion if we don't know how the party might finally resolve this thing, whether they're going to have the small percentage elected by the other delegates, or by the central committee, or whatever.

Mrs. Sowle: Of course, we don't know what they're going to do at the meeting in December, nor do we know what they might decide to do 5 or 10 years from now.

I think, maybe, one of our objectives ought to be the kind of flexibility that retains certain basic concepts and beyond that permits change. My feeling, and I'm subject to being argued out of this thought, is that the principle of the direct primary for presidential candidates is retained by this idea, in that the choice the voters make in the primary would be reflected in the national convention in their votes for the presidential candidate. However you define being bound for a certain number of ballots. This idea retains the principle of the direct primary.

Mrs. Rosenfield: It seems to me that what you're really talking about is that national convention is two things in one. Because people are sent off there to vote for presidential candidates, but they're instructed on how they're going to vote on that pretty rigidly. They're also sent off to a simultaneous convention that does a lot of other things and they're not instructed so specifically on that. So somehow, however they are selected is not as important on the presidential part of it, because what you're really doing on the presidential candidate part is sending some robots off to cast their automatic votes according to the way the voters told them to cast it.

Mr. Nichols: They're not being instructed against their will. They specifically went on the ballot pledged to the candidate who happened to win.

Mrs. Rosenfield: But it's not so important <u>how</u> they get there.

Mr. Aalyson: Or is it more important?

Mrs. Rosenfield: But that 20% doesn't worry me so much.

Mr. Aalyson: I think what you're wanting to say, Peg, is that it's important how the electors get there who are going to elect the president from the standpoint of the constitution, but it may not be so important from the standpoint of the constitution as to how the delegates get there who are going to concern themselves with party business.

Mrs. Rosenfield: Yes, maybe it isn't so much the state's business. It is only the business of the Democrats or the Republicans how their party chooses its platform and its national chairman and all that stuff.

Mrs. Sowle: That's true.

Mrs. Rosenfield: That what you're really doing is sending off forty-three votes or something for candidate.

Mrs. Sowle: But, it's more than that. If you look very closely at the present provision, actually the people who select the delegates to appear on the ballot in the primary, the people who make that choice are the presidential candidates, because for delegates to get on the ballot, you need the signature of the presidential candidate. Now, that delegate goes off with the imprimatur of the candidate to the national convention. But once he is no longer bound to that candidate, there still is a lot going on at the conventions and then there may be an interest in having a person at the convention that's going to use his judgment. Now the Muskie delegates were released and maybe he released them entirely, maybe he expressed a preference to them as to where their votes should go, so there is still some judgment operating.

Mrs. Rosenfield: And maybe he also expressed a feeling that, "You know, I can't get elected president, but you all came here pledge to me, now I want to be sure that this plank is in the platform." What I'm concerned about is if I wanted to be a delegate to that national convention, and none of the candidates says I can be one of their delegates, there's no way I can get there.

Mr. Nichols: Unless you run pledged to your own candidacy, which, for example, John Ashbrook did once.

Mrs. Sowle: Apparently, this problem arose for the first time in the last election because the tradition was that favorite son candidates ran from Ohio and as long as they did that, we didn't run into the problem under this provision. So last time, when they didn't do that was when we ran into the problem of the bedsheet ballot.

Mr. Nichols: I think that the concept that Ohio delegates are not free will agents is not entirely correct if you contrast the two extremes that other states take. Some states where they have a primary that is binding in no way on the delegates, is merely a preference and has no legal effect, just influence of public opinion. Other states where they have a preferential primary that is not connected with the selection of delegates - delegates are selected in other ways but that preferential vote is binding on them. They have to vote for the candidate even if he is not their choice. In Ohio, it's binding on them, but that does not mean he is not a free agent because before he entered the contest for delegate, he already made his choice for presidential candidate so he's not being bound to a candidate against his will, he's being bound to a candidate of his own choice.

Mrs. Sowle: Let me ask you this, Mr. Nichols. I understand from the chart and the material sent out that Ohio candidates for delegates sign a pledge? And is that turned in with the material?

Mr. Nichols: Yes.

Mrs. Sowle: And is that a statutory requirement.

Mrs. Avey: I thought the pledge was optional.

Mr. Nichols: What pledge are you speaking of, now?

Mrs. Sowle: A pledge to be bound to a candidate at the national convention.

Mr. Nichols: It's in the section of the constitution, Article V, section 7, "Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed on the primary ballot below the name of the delegate. "

Mrs. Sowle: But that just says "state", that doesn't legally bind him.

Mrs. Avey: But he's not pledged unless he signs a pledge in addition to stating his preference. So he could run on the ballot with A and B as his first and second choices and yet still not be pledged to A or B if they win, That, I think, is the misleading part about it.

Mrs. Sowle: Yes, it doesn't seem to me that the constitutional provision binds

the delegates.

Mr. Nichols: No, and as you pointed out, Muskie released those of his delegates who did win and of course James Rhodes did the same thing in 1964 as a favorite son candidate. I believe Rhodes was the first choice and Saxbe was the second choice and the delegates didn't vote for either of them.

Mrs. Sowle: So really the principle established in our provision is the principle of direct election of delegates. That's what the electors are really voting for is the delegate and that was the reform idea.

Mr. Nichols: I believe under SJR 5 the delegates would be committed to the candidate who's candidacy they were pledged to.

Mrs. Sowle: Is that really accomplished, do you think, in the proposal? I haven't read it with that in mind. "A vote for any such stated first choices for the presidency shall be a vote for each corresponding delegate." But I wonder if it really binds that delegate, once he gets to the national convention.

Mr. Nichols: It may not.

Mrs. Avey: When favorite son candidates run, binding delegates to them is like not binding delegates at all. Most of the favorite son candidates don't seem to be strong presidential choices. Especially if you go to just putting the name of the presidential candidate on the ballot and people vote with the intent of having those persons, like Rhodes or Saxbe, and as soon as the primary is over, the delegates are released, then the voters are completely in the dark.

Mr. Nichols: I think in that case they were released at the convention. But it was probably just a matter of strategy, a way of keeping the delegates uncommitted.

Mrs. Rosenfield: And a voter voting for them knows what he is doing. He knows that what he is doing is sending free agents off to the convention to dicker.

Mrs. Sowle: Yes, he's voting for the delegate, not expressing his presidential preference.

Mr. Aalyson: What is the mechanism which determines that party business at a convention as opposed to the selection of President and Vice President shall be conducted by the delegates who are voting for the President?

Mrs. Sowle: I suppose simply party rules.

Mr. Aalyson: If the party is confronted with the problem of having delegates there who do not include the people who they think should be involved in setting up party structure why don't they simply change this?

Mrs. Sowle: Just try to think it through and see if that's a problem. Let me present a possible argument. Might you argue this way? The issues, perhaps, of nominating a vice-presidential or presidential candidate, are not that divisible from the other issues, from the issues in the platform, for example. All the business the Democratic Party went through last time of who should be represented at the national convention. Should different minority interests, womens' interests, poverty interests, all those different interests. Now, if

you've got one group selected one way voting on issues and party machinery and another group selected another way voting on presidential candidates, might you not really split your party into pieces? What the aims of the national parties are might be at odds with a state freezing delegate selections for presidential candidates one way, so that in order to go off on another direction on issues, they would endanger themselves. The party would be in danger of this kind of a division. I could see where it might be very difficult for a party to operate that way.

Mr. Aalyson: Well, it occurs to me, that if the delegates for election of the president are bound to do something and the party is free to do as it chooses with regard to setting up its machinery, and conducting its own business, that they would be more likely to be brought together than divided.

Mrs. Sowle: What does being pledged or bound mean? It means only for a while, and after that point, if you're still voting to try to select a presidential nominee, you get into all kinds of negotiations and trading and compromising.

Mr. Nichols: Do you feel that the provisions of the constitution should bind them rather than just commit them to a presidential candidate that is their stated choice?

Mrs. Sowle: If we get to the point of trying to permit something like Mr. Lavelle suggested and we spin off this 10 or 15 or 20% I don't think we can do that without binding them and still be consistent with the principle of the direct primary.

Mr. Nichols: You've always got the possibility that the candidate who won the primary in Ohio will no longer even be a viable candidate by the time of the convention and you've also got the possibility of favorite son candidacies. And if the candidate is still a viable candidate, probably his declared commitment is enough to ensure that the delegate will vote for his stated choice. But if the candidate was merely a favorite son candidate or is no longer a viable candidate, it may be questionable whether he should still cast his vote for that candidate.

Mrs. Rosenfield: Well, can he be bound until that candidate officially releases him?

Mrs. Avey: That's done in some states.

Mr. Nichols: Oregon binds them past the first ballot even if the candidate is no longer viable. They have to vote for the candidate because he doesn't have the power to release the delegates, which makes a unanimous ballot impossible on the first ballot.

Mr. Aalyson: I have difficulty seeing this except as two separate problems. One problem is whether we shall have the direct election and the other is how we are going to let the two different political organizations determine their entire workings. I can see how they are close to each other, but I don't necessarily see how they intertwine.

Mrs. Sowle: I personally would want to hear some discussion from people who are involved in national parties or state party business, because I don't know the answer.

Mr. Aalyson: I have no reason to believe that anyone other than the party itself determines that the delegates to the convention shall also be those people to formulate party policy. If that is so, they could change that very easily and provide for the handling of the party machinery without being concerned with the delegates directly.

Mrs. Sowle: That makes very good sense to me.

Mr. Nichols: If I may, I'd like to back up to a statement made earlier that some of the agreed features were by district selection and proportional representation. It may be just a definition in terms, but in my mind, those two things are contradictory.

Mrs. Sowle: I don't mean that we should consider providing for those in a constitutional amendment proposal, but whatever proposal we come to, we should have the flexibility to allow either. That's all I meant. I think that one of the things that I supposed is an undercurrent in what we've been discussing is the objective that we've tried to have in all of our considerations, not to come up with a constitutional provision that is so narrow that it will preclude some things that might be desired later. Let me throw out something a little more specific for discussion. "The General Assembly shall provide by law for a presidential preference primary, at which the voters may express their preference for either (1) delegates and alternates to the national conventions of the major political parties or (2) the electors would vote for presidential candidates of the major political parties as provided by law." If the provision was to vote for the candidates rather than for the delegates, then the delegates to such conventions shall be chosen in the manner provided by the rules of the political parties, provided that the delegates shall be bound to support the candidates selected by the electors in the primary, and this could either be winner take all or proportional representation as the national party rules may prescribe." Now, the idea of binding them would permit this suggestion that a percentage be chosen by the other delegates or by the state committee.

Mr. Aalyson: It seems to me that if we provide for a direct election of the presidential candidates and leave to the parties the means of selecting the delegates, that we get a lot of sense out of the thing and not too many problems.

Mrs. Rosenfield: And bind the delegates, whoever they are, until that presidential candidate releases them. Then, it doesn't matter so much how they are selected, until released. And that would also mean that you could have both district and proportional simultaneously. However they get there, at least so many of them have to vote for each candidate. I don't care how they divide up their votes, frankly. And then they're free to vote any way they want to on all of these other things.

Mr. Aalyson: And the party has selected the delegates. Of course that eliminates the ability of the people to choose the delegate so that he can exercise any kind of judgment.

Mr. Nichols: One problem is that currently your candidate for delegate is committed to the presidential candidate of his own choice which means that he probably is going to vote on platform issues and things of that sort that are compatible with the candidate that he's committed to. Now, if you have a delegate who must vote for a candidate that he really is totally against - if you have, for example, a McGovern supporter who because of a primary election is committed

to George Wallace - he may by law have to vote for Wallace at the convention. but he wouldn't vote for a platform provision compatible with him. So that's the kind of problem that you could open up.

Mrs. Sowle: That problem, according to the philosophy of this kind of proposal, would be the legislature's problem. That would be something that the General Assembly should wrestle with. I think what this does is try to retain the concept of the direct primary, a choice by the voters, and then all those other problems are really up to the General Assembly to face.

Mr. Aalyson: It would permit the party to select the delegates in a manner prescribed by law. I'm not so sure that the spectre you raised is a horrendous one. If you have delegates who are obligated to vote for an individual who has been designated by the electors who disagree with that individual's platform, it might not be all bad.

Mrs. Sowle: There is a certain harmony in the present situation where the candidate must say that he's willing for this delegate to represent him. Let me mention one other thing that I tried to incorporate with this proposal just for discussion by saying "major political parties". Now, of course, a term like that would have to be defined in some way in the provision. If you recall, we discussed at the last meeting that there was a problem in the current provision when you try to apply it to the minor parties, that it just doesn't work. There are certain situations in which minor party candidates, by court decision, must be put on the ballot, even though they may have had a national convention without their delegates being selected according to this provision in the Ohio constitution. It was felt that perhaps we shouldn't have a constitutional provision that can't be applied in certain situations. I would suggest that perhaps a way to get around that is to make this provision apply to only major candidates. We would have to define what we meant by that.

Mr. Nichols: The Code defines "major party" as a party that has the support of more than 20% of the electors at the last election for Governor or President.

Mrs. Sowle: Do you see any problem with incorporating the idea of major party in any kind of way?

Mr. Nichols: If you felt that it was necessary to have a definition in there, it should probably be consistent with the Code's definition, but it may be more proper for a definition to be in the Code than in the constitution because the concept of what should constitute a major party may change from time to time.

Mrs. Sowle: Is there any problem with putting in the constitution that the definition should be as provided by law?

Mr. Nichols: Major political party as defined by law? I wouldn't see any problem with that.

Mrs. Sowle: Perhaps this is something of which we ought to try to test against other people and discuss with other people.

Mr. Nichols: I would certainly want to discuss it with Mr. Marsh and Mr. Brown because I know the time factor is important here. If you wait until after the December mini-convention of the Democratic Party, that's getting into the next legislative session. The resolution would have to be re-introducted. If it went

as slowly as SJR 5 has, you would have the filing deadline for the 1976 presidential convention past before the resolution would ever be voted upon by the people in May of 1976. We need a change in the constitutional provisions by November of 1975 in order to have it effective before the primary in 1976.

Mrs. Sowle: When does the legislature have to act by your timetable?

Mr. Nichols: About February 22 if they're going to put it on the May ballot, and about that time in August for the November ballot. You can see that there is a good deal of risk involved in delaying the thing until next year and from our point of view it would be far simpler to move ahead this year.

Mr. Aalyson: Perhaps we could have a summary following the meeting of the type of thing you've started with a list of elements the committee in general thinks they would like to preserve or have, and a list of items the party would like to have, and a very rough draft of a section which we could discuss.

Mrs. Sowle: Mr. Lavelle suggested the possibility that we could leave to the General Assembly to provide for the direct vote for presidential candidates or delegates, Dick Carter suggested that alternative, and that's why I incorporated it here. I don't think this would make the office of the Secretary of State quite as happy as SJR 5 because they would still have the problem of getting legislation.

Mr. Nichols: We would still have the problem of having the bedsheet ballot in 1976.

Mrs. Sowle: Of course, it's our obligation to think in terms of other things too.

Mr. Nichols noted a problem in the SJR 5 language with respect to the person or agency to whom the candidate's choice is reported.

Mrs. Sowle: I think it's probably understood that the choice is made when the candidacy is filed but the language might be clarified just a little bit.

Mr. Marsh emphasized the importance of prompt action on the bedsheet ballot.

Mr. Aalyson: Even if we come up with a provision which we think is suitable, it has to go to the assembly who could drag its feet on it just as much as SJR 5. Maybe it would be better just to have a provision providing for the direct selection in the primary and leave it to the legislature on the mechanics of the thing.

Mrs. Sowle: That would preclude, if the direct election is stated in the constitution, this one possibility that Bill Lavelle mentioned, and that is that small percentage of delegates being chosen in a different way.

Mr. Marsh: I really don't think that that's the problem that he thinks it is anyway. I think the Democratic Party has been specifying their call that the Governor, Senators or Congressmen, etc., will be a delegate to the national convention and that other delegates will be elected either at-large or state-wide. They can leave it up to headquarters to specify how it will be done.

Mrs. Sowle: But they couldn't vote on the candidate for president under the present provision.

Mr. Marsh: I think they could.

Mrs. Sowle: Well, doesn't that violate this provision?

Mrs. Rosenfield: "All delegates from this state to the national conventions shall be chosen by direct vote of the electors." The chairman of the Democratic State committee is automatically a delegate? When did the electors elect him?

Mr. Marsh: That controls the election but I don't think it controls in any way the assembling of delegates for a national convention which is peculiarly a party process.

Mrs. Sowle: If they vote for the presidential candidate, it seems to me that that is in conflict with this language.

Mrs. Rosenfield: That doesn't say just voting. It says all delegates to national conventions shall be chosen by direct vote of the electors.

Mr. Aalyson: We can amend that, that all delegates who are entitled to vote in the election of the President shall be by election

Mrs. Sowle: If the party says we want the Governor and the State Chairman and so forth to be delegates, that's not consistent with this.

Mr. Marsh: I agree that it probably is not, but I think that what we are doing with our constitution and laws is setting up a procedure for an election, but once you have the convention, you're playing not under the constitution and laws, but under the laws of the party.

Mrs. Sowle: Couldn't the court rule the nominee of a presidential party off the ballot?

Mr. Marsh: I don't think so. In the Mississippi delegation, for example, the credentials committee decided that they were not the proper delegation for Mississippi even though chosen under Mississippi law and that therefore they were not going to recognize them or they were going to seat another delegate or they were going to give that delegate a half vote with another delegate.

Mrs. Sowle: Okay. Now, after they did that, what happened when the time came to vote?

Mrs. Rosenfield: What did the Mississippi Supreme Court say in that case as to whether the presidential candidate nominated by that convention that broke Mississippi law, say, can be listed on the Mississippi ballot?

Mrs. Sowle: It sounds to me, Jim, as though what you're saying is that it doesn't really matter what we provide.

Mr. Marsh: I think it does as far as our election is concerned. We provide the procedure for the election of delegates, but I think that once delegates are chosen, that it's up to the national convention of either political party as to how those delegates are seated and what authority and power they have when they get there.

Mrs. Sowle: I think that's true too, but then when it comes back to the presidential election in Ohio, if that procedure is violating the Ohio constitution, then

how can you have that ballot in Ohio?

Mr. Marsh: You're not really putting on the ballot the candidate for President that was chosen by the Ohio delegation. You're putting on the ballot the candidate for president chosen by the national convention.

Mrs. Sowle: Now I'm really confused because I don't see what difference it makes what we have in our constitution.

Mr. Marsh: I think that the only importance of the constitution is that you have provided a vehicle where in you can have a direct election of delegates to the convention.

Mrs. Sowle: What if a major party held a state convention, elected its state delegates to the national convention, went off to the national convention, participated, and then here comes the Ohio vote in November, I can't see how that would be valid in Ohio law.

Mr. Marsh: It's my opinion that it would be, I don't know. I think that you are putting on the ballot the candidate for President and Vice President. It isn't really because you've provided in this a vehicle for the selection of delegates and alternates which can be ignored or can be followed by the major political parties. The Democratic National committee could issue their call, and the call could specify that the Governor or the U.S. Senator or Congressman, state Auditor, Attorney General or other such persons as are chosen at convention of the political party will be delegates in such and such a number. I think you could have a court test at that point as to whether or not these people are properly delegates to the convention, whether they should be seated or certified. But I think that the court would determine that this is peculiarly a party matter and as long as it's handled in accordance with the rules of the party, that the several states cannot impose rules and laws that would be contrary to the rules and laws of the party.

Mrs. Rosenfield: And even if the courts rules they weren't and even if the went anyway, what are you going to do, lift their passports?

Mr. Marsh: Otherwise, you'd have 50 states that would make laws that would control the Democratic Party.

Mrs. Sowle: Yes, now that part I follow, but if that's true, then the only logical thing to me would be to repeal this. Why have something in your constitution that is absolutely unenforceable? I mean, in terms of effectiveness. If you can still have a state convention and send people off, them it seems to me pointless.

Mr. Marsh: This is effective to the extent that if we have an election, we'll have the election under the Ohio law, which is the Ohio Constitution and the statutes.

Mrs. Sowle: But if that election is pointless, in terms of the result of it, then why have it in the constitution?

Mr. Marsh: I don't really think that you can control the meaning of an election.

Mr. Nichols: But in the past the parties have consented to proceed in accordance with the Ohio law on the subject, and as long as there are going to be delegates elected at a primary, you have to have provisions in the law, for that election.

Mrs. Sowle: Well, you can have it in the law, but I don't see the point of having it in the constitution.

Mr. Aalyson: Are you saying, Jim, that no matter what we do with our constitution to provide that electors or delegates to the national convention be elected by direct vote, that when they get there, the party can pretty much do what it wants to?

Mr. Marsh: I think they can. The worst that could happen is that you'd end up with a court test as to whether the credentials committee had the authority to seat somebody else or whether somebody else had the right to vote.

Mr. Aalyson: Then what I have been thinking apparently is correct. That the question raised by Mr. Lavelle as to whether or not certain people should be included in the national convention because of their status in the party, really presents no constitutional problem.

Mr. Marsh: I don't think it does.

Mr. Aalyson: Are you saying that probably we cannot, at least without a court decision on the matter, provide constitutionally that those delegates who go to the convention for the purpose of voting for president cannot be required to get there by direct vote of the electors?

Mr. Marsh: I don't think that we can. I think that's up to the credentials committee. I think that we can provide it, if we do, I think that in the absence of any court order to the contrary, I think the credentials committee can seat whoever they wish.

Mr. Aalyson: To provide the flexibility that you're looking for, in view of Mr. Lavelle's comment, and to hopefully influence the national convention, couldn't we say that all delegates from this state to the national convention who are to vote for a presidential candidate shall be chosen by direct vote of the electors in the manner provided by law? And then you leave the party's inner-workings to the party.

Mr. Marsh: That leaves us some statutes to change, and it leave us with our problem.

Mr. Aalyson: Yes, it leaves you with your problem, but is the legislature unsympathetic to your problem?

Mr. Marsh: I don't know.

Mr. Aalyson: Can we solve your problem by constitutional amendment?

Mr. Marsh: I think SJR 5 solves our problem.

Mr. Aalyson: But even if we adopted a suggestion to the Commission which you felt would solve your problems, you've still got to get that by the legislature

so I don't see that we can solve your problem.

Mr. Marsh: I think that there has to be a dialogue back and forth, that there has to be an agreement to solve the thing. There isn't that kind of a dialogue now. We are still in the position, from the standpoint of the Secretary of State's office of pushing SJR 5. If we are unable to get SJR 5 through, we would prefer some kind of an amendment that would eliminate from the constitution the procedure of placing on the ballot the names of delegates and alternates to the convention. We would not object to the direct election of delegates. We're not in favor of the convention approach. We'd like the Commission to get behind SJR 5 and if there are provisions in SJR 5 that the Democrats object to and we can accomplish by amendment then we would like to resolve this.

Mrs. Sowle: Bill Lavelle wasn't raising an objection to SJR 5. We were just trying to brainstorm, to see whether this was flexible enough to allow for all possibilities, and of course the committee's consideration is what kind of proposal would be consistent with the aims we have felt throughout our deliberations in all areas and that is something flexible and basic.

Mr. Marsh: Could we amend SJR 5 to the effect that in addition to the direct election, the national parties may provide other procedures for the selection of delegates? That would give them the right to designate the Governor and the U.S. Senator.

Mrs. Sowle: Well, the language that I was toying with is an attempt to do that.

Mr. Marsh: You can't have it both ways. You are either going to have the election or the selection some other way. Why can't we just specify the provision for the elimination of the bedsheet ballot as per SJR 5, and an additional paragraph to the effect that national delegates or alternates may be selected by the national conventions in other ways in accordance with their party rules, or something to that effect?

Mrs. Sowle: Everyone wants to retain the direct primary concept. My feeling is that the present language and SJR 5 would preclude the selection of some delegates by the party in the language " all delegates shall be chosen" as follows.

Mrs. Eriksson: Yes, I agree. Of course, you could get around it by calling those persons something other than delegates, but the party would have to do that in its own rules, I think.

Mrs. Sowle: But am I right in thinking that if you did that, those other people, non-delegates, could they vote for presidential candidates, or would they be there just to vote on platform and other things?

Mrs. Eriksson: That would depend on the wording of the Ohio constitution. If you were restricting this to persons who were going to vote for presidential candidates, then they would have to be delegates. But you could reword it. If you put that in the constitution, then I think you would be restricting it, but if you didn't put it in the constitution, then it seems to me that it would be up to party rules. If they wanted to have advisory persons and wanted to permit the advisory persons to vote, I don't see why they couldn't. Of course, you might have a constitutional question in that someone might take you to court and say that this is certainly contrary to the spirit of the Ohio constitution if not to the letter.

Mrs. Sowle: It occurs to me that there is one possible way of reconciling these: the idea of the direct primary where the elector has a say in the nomination process of the presidential candidate and the idea of permitting what Bill Lavelle has suggested as a possibility and that would be if the elector expressed his preference on the ballot for the presidential candidate instead of for delegate, that the delegates to the convention should be chosen in the manner provided by the rules of the party, provided, that delegates shall be bound to support the candidate selected by the electors in the primary. You let the party select how those delegates are to be chosen, but you bind those delegates to the choice of the voters in the primary. Now that's the only way I can see that these two ideas can be reconciled.

Mr. Marsh: I think the call from the national parties usually is that there are a certain number of delegates to be elected. It's usually based on the number of votes for Governor in the district or something like that, and sometimes they leave it up to the state headquarters to determine how many are to be elected in certain districts. I don't think that the call really provides that they're pledged to vote for anybody when they get to the convention. I think they're sort of free agents when they get there.

Mrs. Eriksson: Probably, as far as the party is concerned, I'm sure they are. But some states do have provisions binding the delegates from that state usually through one or two ballots.

Mr. Nichols: SJR 5 could be amended to say that the General Assembly may provide by law for the selection of delegates to national conventions, and eliminate it from the constitution entirely.

Mrs. Sowle: We did discuss that at the last meeting and I agree with you. I did raise that with Mr. Lavelle too. He said, and it was also suggested at the last meeting, although I don't know whether this is valid or not, that it would be very hard to sell because Ohio was one of the very first direct primary states, and in effect just to leave this entirely to the legislature might not get passed.

Mr. Nichols: You could retain the right to elect delegates which would nonetheless leave the details to the General Assembly. The constitution would then permit the flexibility, that if after the 1974 mini-convention the Democrats had adopted rules that are inconsistent, you wouldn't have the problem of being inconsistent with the Ohio constitution. It would only be a matter of possibly changing the statutes.

Mr. Marsh: That leaves us with our problem, though. It doesn't really solve anything for the Secretary of State. That's definitely our second choice.

Mrs. Sowle: To say that the General Assembly shall provide by law for the selection of delegates, aren't you really talking about saying just repeal this?

Mrs. Eriksson: I agree. The only advantage is that you're making it clear why you are repealing it, because you think it should be done by the legislative process.

Mr. Nichols: As Jim pointed out, it would necessitate further legislation which wouldn't be as speedy as passage of SJR 5 in its present form. Of course it would have the advantage of removing the constitutional requirement for the bedsheet

ballot and so that would be part of the progress on the issue.

Mrs. Sowle: I personally think we ought to repeal it.

Mr. Aalyson: You don't think the problem exists any longer that led to adoption of this provision?

Mrs. Sowle: I don't think the problem exists that gave rise to this and that was the state political conventions electing delegates to the national convention. I don't think that Ohio would go back to it, but some feeling was expressed at the committee meeting and Bill Lavelle expressed the feeling that repeal was impractical.

Mrs. Rosenfield: If you put this on the ballot to repeal it, I'm just convinced that the reaction of the people is going to be, "Aha, the parties are trying to regain control over the selection of delegates." Particularly in the Democratic Party, it is going to be seen as an attempt by the party regulars to get rid of the McGovernites.

Mrs. Sowle: My proposal is that both alternatives appear in the constitution and the General Assembly would decide which one would be used. If the General Assembly decided that the voters would elect presidential candidates, then they could leave it to the parties to assign delegates, but the delegates would be bound by the primary choice of candidates.

Mrs. Eriksson: Suppose you're going to elect delegates, then are you going to do away with expressing a preference for presidential candidate?

Mrs. Sowle: Well, I suppose if you were going to do that, you would have to retain some of what we have in the constitution now.

Mr. Marsh: That still leaves us with legislation problems, and we do have statutes on the books which would be in effect, we would have the same problems then as we have now except that we'd need a majority vote instead of 2/3.

Mr. Nichols: The constitutional requirement for the bedsheet ballot would be gone, but we still need legislation to get rid of it.

Mr. Marsh: I would like to see the Commission temper their desire for purity in constitutional reform with political reality and I would think that there would be a way to amend SJR 5 and although it would not be as clean a process as you would like, it would eliminate the bedsheet ballot and would satisfy the objection, and that's the way we would like to see the Commission go.

Mr. Aalyson: How can we amend SJR 5?

Mr. Marsh: I think the Commission can go on record for it, and I think the Commission is representative enough to reach out and get a dialogue going. As long as you are going to select delegates and we've operated for as long as I can remember, or at least as long as the constitutional provision as been there, that you select delegates in the state who are pledged to a first choice for President, and it seems to me that the placement on the ballot of the first choice for President instead of the delegate does not involve any concept that would be anti- any kind of procedure that the Democrats would adopt. The same way as you elect presidential electors.

Why not write SJR 5 as a hybrid concept?
The election of some, the selection of others - we have no objections to that, except that the election should be by first choice for president, even though you are electing the delegates and alternates. We're moving into 1975 with the need to amend legislation. I think it would be just as hard for us in 1975 as it is now to get some agreement on a constitutional amendment.

Mr. Nichols: I was making the point before you came in Jim, that if a change in SJR 5 was desirable, it would be better to amend that resolution than to substitute another because practically speaking a substitute amendment would not be acted on this year and if it were reintroduced in January of the next session, the odds would be that it would never be in effect before the 1976 primary.

Mr. Marsh: I think that if the Constitutional Revision Commission went on record in support of a constitutional amendment and it had in it the ingredients that people could get behind, we could take that recommendation and make the necessary amendment to SJR 5 and get the thing sailing through on the November ballot.

Mrs. Eriksson: Did Mr. Lavelle express any opinion as to whether the party would object to a binding of the delegates for one or two ballots?

Mrs. Sowle: What is under discussion is the possibility of 80% being chosen by vote and the remaining percent being chosen by the 80%, and the 20% being bound to the same preference vote in the proportion of the 80%. So I don't think there would be objection to any binding of the delegates.

Mr. Marsh: I don't think that the binding of the delegates would really be a good idea because you might have some objections from the Republican side, that I think they might feel that the delegates should have the flexibility of going any way they want.

Mr. Aalyson: Are we going to recommend an amendment to the constitution so that it will be in conformity with SJR 5, with the change we have discussed?

Mrs. Sowle: It's possible that we could say that we endorse SJR 5 with the following change.

Mrs. Eriksson: We've never made a recommendation like that. I really think it would be better for this committee to make a recommendation to amend the constitution that would be the same as SJR 5 with the addition.

Mr. Marsh: That would be perfectly acceptable, and then we could pick that up and make the recommendation for SJR 5.

It was agreed to work on drafting language for section 7 which would incorporate SJR 5 with the change. The committee broke for lunch and the meeting recommenced at 1:15. After lunch, the committee discussed the initiative and referendum. Mrs. Eriksson noted that the 4 memos had been sent to all the members of the official committees on the last three issues. One was the income tax constitutional provision and another was the initiative proposal that did not get on the ballot which would have been for tax reform legislation. There was recently a referendum movement for a referendum on legislator pay raise issue which also failed to get on the ballot. Copies were also sent to the Secretary of State and to the Attorney General because the Attorney General is involved in the process of approving the summary. One gentleman answered that he would like to have an opportunity to tell the committee what he thinks about the process.

Mrs. Sowle: It should be very helpful to us. It strikes me as if the fourth memorandum might be a good point of departure since it is a summary treatment of the others.

Mrs. Eriksson: You could start with the basic question as to whether to even leave the provisions in the constitution.

Mr. Marsh: At the last meeting, we were asked to come up with some ideas on proposals, and one is the reduction of the number of signatures. We feel that it's reasonable although it's not something we are real strong about. We do think that the basic concept that the Ballot Board should do the ballot, and that the provision for initiating laws should be a direct process instead of an indirect process, and the requirement that these things be finalized so that the Ballot Board has time to draw the ballot, and in time for it to be prescribed 75 days before the election is really very essential. The present provision permits things to remain in limbo right up to the 40th day before the election which is intolerable. We suggested a reduction in signatures for constitutional amendments to 6% and for referendum and initiated measures 4%.

Mr. Aalyson: Jim, may I ask why you elected the percentage as opposed to the specified number?

Mr. Marsh: Roughly, you've got around 3,000,000 who vote for Governor. The percentage could go up, but 6% is around 180,000 which is a whale of a lot of signatures, and if you can get 180,000 signatures, you ought to be able to get something on the ballot. And 4% is 120,000.

Mr. Nichols: The percent changes the exact figure as the population and the vote for Governor changes.

Mr. Aalyson: I don't see any benefit to that, and that's why I'm asking. My own feeling, perhaps,is that a specified number is a superior device, but that's just a personal reaction.

Mr. Marsh: In the year 2080 we might end up with a state where you might have to amend the constitution if you came up with a specified number. If our population grows...

Mr. Aalyson: I'm thinking of something less.

Mrs. Rosenfield: 180,000 is not going to be a lead-pipe cinch even if you have 30,000,000 people voting. It's still a lot of signatures.

Mrs. Sowle: Even in 1912, wasn't the very most liberal proposal made 200,000?

Mrs. Eriksson: 50,000 sticks in my mind.

Mr. Aalyson: That's a lot of people, and I think if they want to be heard, they ought to be heard.

Mrs. Rosenfield: I think once you get beyond a certain number that the increased number is no longer so much of a protection as an impediment.

Mr. Aalyson: Even though the number increases arithmetically, the difficulty I think increases geometrically.

Mrs. Sowle: The original proposal was 60,000 for initiated state-wide constitutional amendments.

Mr. Marsh: With 60,000 you would have many more measures on the ballot than you now have, because 60,000 would not be that difficult to get, I don't think.

Mrs. Eriksson: Even if you continued the restriction that it has to be from at least half the counties?

Mr. Marsh: We eliminated that. It's our conviction that that probably wouldn't pass constitutional muster if it were challenged with an equal protection argument.

Mrs. Sowle: Have any of these provisions ever been challenged? Are there any federal cases on that?

Mr. Marsh: There are federal cases on the candidacies. They knocked down an Illinois statute requiring candidates to get a certain number of signatures from a certain number of counties.

Mr. Nichols: Our Ohio statutes have been changed with respect to signature requirements on questions of candidacy.

Mrs. Sowle: Now your proposal is that both constitutional and legislative initiative should be direct, not through the General Assembly.

Mr. Marsh: Right. Constitutional is now.

Mr. Aalyson: I definitely agree with the Secretary of State's office on that position. I think there is an inconsistency in the idea of an initiative petition and it being indirect by having to go through the legislature. I'm strongly in favor of the direct initiative.

Mr. Marsh: We think that the indirect process has one problem. If you present it to the General Assembly a certain number of days before they commence session, then they have a certain amount of time to act upon it, and they can either pass or refuse to act or pass in an amended form. And then the committee has a certain number of days to get additional signatures. You've got too many imponderables in there and it's too difficult to get your date fixed at which the petition must be filed for election. Plus the fact that the General Assembly is now in annual session and if there are initiative petitions circulating, and if they want to act on the subject of those petitions, they can do it. There's nothing to prevent them from doing it.

Mrs. Eriksson: The way things are now, the General Assembly could effectively prevent that initiated measure from ever getting on the ballot because of the interpretation that it has to be the general election in the same year that it's filed. By taking some action and then refusing to reject it, the General Assembly can effectively prevent that matter from getting on the ballot.

Mrs. Sowle: Of course, if that were the only problem, that could be corrected by changing language too.

Mrs. Eriksson: Right, but it is very difficult to ascertain exactly whether the General Assembly has acted or not acted.

Mr. Marsh: It's kind of like ordering a court to make a decision within a certain number of days. It's very hard to do.

Mr. Nichols: I might add that another thing in our reasoning was that as long as amendments to the constitution can be directly initiated, why require a mere statute to be initiated indirectly?

Mrs. Eriksson: One of the valid arguments for requiring it to go through the legislature is that a statute is so complex, and unless you have an opportunity for someone who knows something about laws and drafting of laws to have a look at it, you may get something on the ballot, adopted by the people, which was so poorly drafted that nobody knows what it's all about.

Mrs. Rosenfield: The legislature could always pass a well written one to take the steam out of the thing.

Mr. Nichols: We also included some language in the proposal that would require in effect that the initiated statute would be subject to the same limitation as statutes proposed in the General Assembly concerning being confined to one subject. Currently, the Secretary of State must split the question if it involves more than one subject, and this proposal would put the burden on the petitioner to confine the proposal to one subject in each proposal. That should eliminate the problem of having complex issues and someone having to determine how to split them.

Mr. Aalyson: Another thing. I think the comments with regard to the complexity of drafting legislation lacks a lot of persuasiveness. The constitution can be amended by direct initiative.

Mrs. Eriksson: The theory is that the constitution is in simple terms that anyone can understand.

Mr. Marsh: One reason we felt that the indirect approach was not needed was that when this particular provision was adopted in 1912, probably the General Assembly was in session for about 30 days every two years and if they were going to get a look at the thing there would almost have to be this kind of an opportunity. Now they're in annual session and it stretches on for twelve months at a clip, it's not really essential that you have the indirect provision.

Mr. Aalyson: I think also that in 1912 probably the people as a whole were not as knowledgeable as they are now and the chances of someone trying to draft something himself without getting legal advice are much more unlikely.

Mrs. Rosenfield: And the make-up of the legislature was much less democratic in 1912, I think.

Mr. Aalyson: The screening process has eliminated many things from the ballot and it still would, don't you think? When you mentioned that you think that there would be many more items at least attempted to be initiated, do you say that with some reservations as to whether that's a good idea?

Mr. Marsh: I would not like to see us like California where the voters have 10 or 15 choices to make every election. I think that the initiative and referendum procedures should be an exception to the representative form of government.

Mr. Nichols: Our thinking was that it should have some difficulty but not as much.

Mrs. Rosenfield: How many signatures can people get on petitions fairly easily?

Mrs. Sowle: Some people sign anything.

Mr. Aalyson: Yes, but if you impose a figure, let's say 75,000, wouldn't you have difficulty even in the university town?

Mrs. Rosenfield: Is there some kind of a number where the people with the kookie ideas can always get and then it falls apart?

Mrs. Sowle: My experience is that most people do not deliberate. They will sign for one of a number of reasons, one of which is because they like the person who is circulating the petition. I think, too, it should be an exception to the representative process.

Mrs. Rosenfield: People signed Issue #2 petitions, although they were against it, but they felt that people should have a right to vote on it.

Mrs. Eriksson: But do people sign petitions of this nature quite that easily? Particularly in the university area I think that you would find lots and lots of petitions floating around which do not have any kind of legal effect.

Mr. Aalyson: People vote on things they don't understand, too. What is the objection to having a large number of items on the ballot, other than the extra printing or whatnot.

Mr. Marsh: Too many issues on the ballot, in our judgment, does a number of things. It slows down the election, number one. You get long lines at the polls on some charter issues for example. Some communities may present fifty charter issues at one election. Or they may have a bedsheet ballot for the election of members of the charter commission, something like that. Any time your ballot is overly complex, the voting time is in the direct proportion to the complexity. This means that people get discouraged and they don't vote. If they do vote, they haven't become familiar with the things that they are voting on and they have to study them at the polls.

Mr. Aalyson: A solution might be limiting the number of initiative petitions which can be voted on in any election to a certain number according to the order in which they have been filed.

Mr. Marsh: If you reduce it to make it easy for the initiative process, then I think that would be very wise.

Mrs. Rosenfield: What do you do when you start to have a backlog?

Mr. Aalyson: Then they would be in the next election.

Mrs. Rosenfield: Then you start having people with valid petitions waiting 7 years to get their petition on. But it may discourage them to the point that it slows them down.

Mrs. Eriksson: Some states limit, for example, the number of times you could put any particular issue on within a certain period of time. There is no federal

constitutional right to the initiative process, so I don't think there would be any objection to restricting it.

Mrs. Rosenfield: I'd rather restrict it by raising the number of signatures, because once you have a thing with enough signatures, I think you should be able to get it on the ballot while the issue is hot. If you have to wait a year or even 6 months to put it on the ballot, I think you are really being done in.

Mr. Aalyson: Another suggestion would be that those will be placed on the ballot in limited number and in order of the number of signatures.

Mrs. Rosenfield: That would appeal to me more because then the ones with more popular support have first place.

Mr. Aalyson: I believe in letting the people speak as often as one can let them speak without abusing the process.

Mrs. Rosenfield: It's very difficult to explain all of those issues so anyone understands them. Last year we had 7 items and this is just chaotic. It's very hard to explain seven ballot issues.

Mr. Aalyson: The Ballot Board to some extent is supposed to eliminate some of that problem by clarifying what it is all about.

Mr. Marsh: It will help but it will never eliminate the problem.

Mrs. Rosenfield: If a limit is placed on number, I would think that the limit would only be on the number of initiated petitions, and you are still going to add to that the ones the legislature puts on and local ones and the inevitable tax renewal items.

Mr. Aalyson: If we are confining our discussions at this point to initiated constitutional amendments, I seriously doubt that there would be any flood of constitutional amendments.

Mrs. Rosenfield: Oh, I don't think it would be constitutional, I think it would be legislative.

Mrs. Sowle: Aren't there a large number in California? Are they legislative or constitutional or both?

Mrs. Eriksson: They are both.

Mr. Marsh: I would think that it would be easier, from a practical standpoint, to sell something to the General Assembly if you had the same percentage that is now required or a small reduction.

Mr. Aalyson: Why? Do you feel that the General Assembly is jealous of this prerogative? And if you do, I agree with you, and I'm not so sure that we shouldn't be restricting the General Assembly.

Mr. Marsh: If you make it too easy for initiative and too easy for referendum your ballot is going to get more complex and I think that there is a lot to be said for the criticism that we almost have too much to vote on. We've got boards of education, we've got judges, we've got representatives to the General Assembly,

all your county, township and municipal offices, charter amendments.

Mr. Aalyson: That argument is somewhat self-serving, because there is more work involved for someone other than the voter. The voter can always not vote and eliminate any problem that he has and yet the one who wants to vote and consider every issue, it seems to me he ought to be given the opportunity to do it.

Mrs. Rosenfield: But then you have a lot of offices, particularly all those judges, who are elected by fairly small interest groups because the other people do not vote on them.

Mrs. Sowle: But there is the question whether the voters are informed.

Mr. Aalyson: But the fact that they are not informed, I don't think should prevent them from having the opportunity to vote. You're going to meet the failure to become informed on almost every issue in an election.

Mrs. Sowle: Isn't that the basic problem between representative and the true democracy forms of government? Basically, we have a representative form. The closer you get to true democracy, everybody has a little more say, but there are advantages and disadvantages. The disadvantage is that a lot of things can happen and there are perhaps kind of an abuse of a democratic system because of the vocal strong minority and the apathy of the majority and lack of informed voters.

Mrs. Eriksson: But doesn't each item have to be decided separately? Some think that we should elect judges and some think we should not, but that should not be mixed up with trying to restrict the use of the initiative.

Mr. Nichols: This proposal simply cuts out some of the red tape on initiated laws and reduces the signature requirements on initiated laws and initiated constitutional amendments and referendum petitions, making all three somewhat easier but none so easy that the ballot is going to get flooded with them.

Mr. Aalyson: I would like to see a fixed number. Does the Secretary of State have any idea about what number would eliminate the problems we've just been talking about? When I think of a number like 50,000 people, that to me seems like a lot of people, and if they want to be heard, maybe they should be. But maybe that would create the abuses that you are talking about of too many things on the ballot. But 75,000 or 100,000 might not. I don't know what the cut-off point is, but a number in my own mind is preferable to a percentage of the previous election. A very important item might be kept off the ballot because in some elections, where there is a great turnout for some reason or another, you run up a vote of 4 or 6 million, and then an item comes up which you can't get on the ballot simply because the percentage requires such an astronomical number. Whereas if you fix a number that would dissuade the crackpots and yet let the people be heard, it would be preferable.

Mr. Marsh: Since I have been with the Secretary of State's office, we get, in the average year, maybe three or four initiative efforts. It's amazing how many we do get and I think that, by and large, I'm inclined to agree with Katie's assessment that you can get anybody to sign anything. If you get 9 or 10 people that are interested in putting something on the ballot and they need 50,000 signatures, I think they can do it.

Mrs. Eriksson: How many signatures did they get on the recent referendum?

Mr. Marsh: About half as many. Their organization wasn't very broad - they were all located in Elyria. By the time they had spread out, their time was up.

Mr. Aalyson: It seems to me that points out the extreme difficulty in getting a large number of signatures.

Mr. Nichols: That was on a referendum question where you have got the 90 day deadline before the law goes into effect. You've got a time limit that you wouldn't have on an initiative petition.

Mrs. Sowle: What is the percentage in California?

Mrs. Eriksson: Five percent. In California they do not have a requirement of distribution over the state. In other words, you can hire a professional firm and they can stand on the street corner in Los Angeles and they could probably get all the signatures they need.

Mr. Aalyson: It has just occurred to me that if you use a percentage, and if you argue in support of that theory that it will mean pure issues before the voters or on the ballot, it's kind of contradictory to the idea that you can get anybody to sign a petition, and even with the percentage you ought to get a lot of these things in because anybody signs a petition. I don't see that there is any preference if you use that as the basis of that argument against numbers.

Mr. Nichols: I don't think that that was the argument. It would be influential in determining how high or how low a percent or how high or how low a flat figure, but it doesn't really make that much difference whether you use a percentage or a flat figure.

Mr. Aalyson: All right.

Mrs. Sowle: Is there a restriction about being paid to circulate petitions in our constitution?

Mrs. Eriksson: No. A signer cannot, by law, receive compensation. The person who circulates the petition can be paid, and that has to be reported.

Mr. Marsh: I don't think 6% or 4% is going to be all that tough really. You are cutting a constitutional amendment from 10% which is roughly 310,000 signatures down to 180,000 signatures. That's almost half.

Mrs. Sowle: Do you think that the geographical provision is more important than the number?

Mrs. Eriksson: Yes.

Mrs. Sowle: I think we could go round and round on number. Is there much choice that the commission will have on the issue of geographical distribution? Sure we can ignore it, but if there is a pretty good chance that it's unconstitutional, we would have to face that, I would think.

Mr. Aalyson: Again, you could have a large segment of the voters who would want something and could not meet that requirement.

Mrs. Sowle: I think we ought to get that behind us now, that it is our opinion that that particular issue ought to be eliminated, and this will be disseminated to the other committee members for their opinion. Perhaps another hurdle that we can get over very quickly and in the same manner is whether we want any initiative and referendum provisions in the constitution.

Mr. Aalyson: I'm in favor of them.

Mrs. Sowle: The hard part I think is going to be these other things, whether its' going to be direct or indirect, and the entry level number.

Mr. Aalyson: I'd like to propose 100,000 and 150,000. The first for law and the second for constitutional provisions. I think that's high enought to deter some people and they are nice round figures.

Mr. Marsh: That's not too far from what we had in mind.

Mrs. Rosenfield: If people are serious, it's better to know exactly what that number is from the very beginning.

Mrs. Sowle: Another area that we might get agreement on is the Ballot Board section, that that would be a less debatable problem than the entry level, to make this consistent with our former ballot board proposal.

Mrs. Eriksson: You would permit the General Assembly to provide for writing the arguments, or would you still permit the proponents and opponents to prepare the arguments, as in the present provision?

Mr. Nichols: We have the ballot board providing the explanation. We have the petitioners providing the arguments on their side of the issue, and the ballot board doing this on the other side of the issue unless the General Assembly otherwise provides by law.

Mr. Marsh: We wrote it as if the previous proposal had already passed and you already had in the constitution an existing ballot board. If it doesn't pass, I think we'll have to do some rethinking on this one, because you won't want a ballot board for initiative proposals and not for legislative ones.

Mr. Aalyson: The language says that the person to prepare the argument shall be named in the petition. That doesn't say that the person who prepares the petition shall have the right to prepare the argument.

Mrs. Sowle: Perhaps we should rewrite the sentence.

Mrs. Rosenfield: At what point does somebody get identified as the initiator?

Mr. Marsh: They would get identified under the present law when they make the filing with the Attorney General. They have to get the summary approved by the Attorney General.

Mr. Aalyson: And that initiator should be granted the right to argue in favor.

Mrs. Sowle and Mr. Aalyson agreed to recommend for consideration by other committee members that the committee accept this parallel ballot board proposal to Article XVI, section 1.

Mr. Marsh: You've got to get the General Assembly to provide for publication because not only do they have to come up with the idea, they got to come up with the dough.

Mr. Nichols: It could be handled again with the Ballot Board doing it unless the General Assembly provides otherwise by law. There you've got a problem with whether the General Assembly would approve of that kind of an approach.

Mrs. Rosenfield: Except the Ballot Board will have an annual budget or do you think it will have an item by item budget?

Mr. Marsh: If there would be no law providing for dissemination, there probably won't be anything in the budget for it.

Mrs. Eriksson: You can go back, of course, to what was originally in here and require a mailing to every voter. Then it would be the Secretary of State's problem of getting the money.

Mr. Nichols: That was just taken out in 1971.

Mr. Marsh: It's awfully expensive for what you get out of it.

Mr. Aalyson: If we give all the privileges which I think we give to newspapers, maybe we should give them some obligations too, and maybe one of those obligations should be that they print in some prominent place, I don't know that I would want to say the front page, but I'm almost willing to say that, things as a public service. Maybe we could require this in the constitution.

Mrs. Sowle: I think you would have to amend the federal constitution first. A Florida law that mandates that if you editorially criticize a political candidate, you have to give the political candidate the right of reply, is before the Court now.

Mr. Aalyson: I'm not talking about the arguments, I'm talking about the proposed amendment.

Mrs. Sowle: Anything you want to mandate that they have to print raises real first amendment problems. Does anyone have any other comment about the provision that the General Assembly shall provide by law? The General Assembly has plenary powers to do it if they want to. Just because the constitution says it doesn't mean they have to do it. I dislike the principle of having a sentence like that.

Mr. Marsh: We took that from Article XVI which was proposed, and it was the thought then that at least this is directory to the General Assembly.

Mrs. Rosenfield: I really wonder whether the General Assembly, on Issue #2 would have made any appropriations for dissemination unless it was to oppose it. I think that it is terribly unrealistic to think that they would spend a year working out that very painful decision and then they would do anything for the opposition.

Mrs. Eriksson: On Issue #2, this section requires that the proponents prepare the arguments for and then a committee prepare the arguments against and that committee did consist of legislators, the committee that prepared the arguments against.

Don't you think that it's possible that the General Assembly might pass a law providing for mail to all voters or something else? Because they've got their arguments against in that mailing, and if they do want to persuade people, they are going to be as interested in getting those out as the proponents are.

Mr. Aalyson: But if there is an initiative petition, the legislature might be rather reluctant.

Mrs. Sowle: If the legislature is opposed to the initiated proposal, might the General Assembly take public funds and become an advocate, a majority of the General Assembly decides to devote public funds to disseminating information that was really advocacy. I think that what we are really contemplating here is that the General Assembly disseminate the kinds of information we've already discussed: the explanations, the pro and con arguments, and so forth. Where it's the kind of provision that will permit the voter to make up his or her mind on it.

Mr. Aalyson: Am I correct that the reason we have no way of forcing is because of the separation of powers?

Mrs. Eriksson: Yes, essentially.

Mr. Aalyson: And since the separation of powers comes about because of our constitution can not we in at least one instance provide for a non-separation to the extent that the courts could enforce this, perhaps by mandamus action.

Mrs. Rosenfield: What the court could require is that the legislature give the money to the ballot board to do the disseminating. But what you really get back to is the problem of enforcing that.

Mr. Aalyson: What's to prevent us from initiating appropriation laws and in effect providing that this shall constitute an appropriation law to provide money to the ballot board? I think we can avoid the legislature. We could avoid this whole problem then by taking it out of the hands of the legislature and leaving it with the ballot board to prepare explanations and to disseminate information.

Mr. Marsh: I think as a practical matter you have to get money from the General Assembly.

Mr. Aalyson: And add a provision that the General Assembly shall provide reasonable funds for this purpose.

Mr. Marsh: And if they don't, then you've got an obligation or duty which you can't meet because of lack of money.

Mr. Aalyson: All right, and then we get on to the further provision that if they fail to do so, you're going to have a self-executing initiative to get the money from them. It seems to me that the General Assembly would have to be placed in the position of saying that they don't want to be fair and that's why they aren't adopting our recommendation.

Mr. Marsh: I think that, as a practical matter, the Ballot Board, when created, will receive some kind of funding with the annual appropriation and if there are any extraordinary things that come up that are not provided for in the budget, you're going to have to go to the controlling board and present your case. As far as the laws providing for the dissemination and the explanation, I would think that

those would be general and would not be passed for each situation, but rather be general enactments that would provide for this sort of thing whenever it does occur. As far as getting the money on a case to case thing, you're going to have to sell it to the controlling board and not the General Assembly.

(There was agreement that Mr. Marsh was probably right.)

Mrs. Sowle: You don't see the need to build in any other words, like "objective information" or other dissemination of the explanation and arguments?

Mr. Marsh: I think this attempts to achieve the same flexibility for the ballot board as was done in Article XVI, section 1.

Mrs. Sowle: But you don't want to require that the information that they disseminate be restricted to this material, the arguments pro and con, and the explanations, or put in a qualifying word like "explanatory" or "objective"?

Mr. Nichols explained some of the technical details of the proposal.

Mrs. Eriksson: Another matter you might want to discuss is whether you want to prohibit professional circulation of petitions, or whether you want to consider some of the proposals which would prohibit circulation completely and require that people go to the clerk of courts office to sign. That hasn't been adopted anyplace but several of the people recommended it. But I think the more reasonable thing to talk about would be whether you wanted to prohibit professional circulation by paid circulators.

Mrs. Rosenfield: I don't think professional distribution is as bad as it sounds.

Mr. Aalyson: No worse than hanging the Upper Arlington News on my doorknob by some professional distributor. I think there is a perjorative tone to it but I don't think it's a valid one.

Mrs. Eriksson: In the California study, it is criticized because it appears that anybody with a given amount of money can get a measure on the ballot.

Mrs. Sowle: Special interest groups with large financial resources are at an advantage.

Mr. Marsh: I agree that it would be a problem. If it were to be curtailed or eliminated it might be better to be done by statute rather than by the constitution.

Mr. Aalyson: I think you get a first amendment problem here just as much as you would in my newspaper situation.

Mrs. Rosenfield: Right. What right have you to keep me from doing it just because I'm rich?

Mr. Marsh: Labor gets behind something and frequently they pay the people to work for them, and I would think you'd get opposition from them.

Mr. Aalyson: I would think there would be opposition from the opposite side - from the Ohio Manufacturer's Association.

Mrs. Rosenfield: And you are not going to get a law on the book by money. You

are just going to give people a chance. If a small interest group spends money to get something on the ballot, and if after the third time you get something on the ballot it gets defeated 10 to 1, you may begin to see that maybe you are wasting your money.

Mrs. Sowle: But if you have a lot of money you could put on a lot of heavy T.V. advertising. But then you're back to whether you trust the voter or not.

Mrs. Rosenfield: And the voter has the right to make the decision.

Mrs. Eriksson: Another matter is the possible limitation on putting the same issue on within a given number of years. There would be a lot of problems involved, one of which would be deciding whether it's the same issue or not.

Mrs. Rosenfield: Theoretically, I like it. On the other hand, I think of all the issues which would never have made it, for example. the COTA levy and the school issues. And that is almost a voter education process, particularly for a novel and complicated issue. So perhaps you don't want to cut into people's chances in that way.

Mrs. Sowle: They have to go through the whole petition process each time. That's handicap enough, I would think.

Mr. Aalyson: Section 1b prohibits veto of an issue which was petitioned by the governor. I wonder whether we shouldn't also restrict the General Assembly from tampering with an initiated law. Could we restrict the legislature's right to modify, amend or repeal?

Mr. Marsh: That's one of the things that drives people up the wall with municipal issues. They get something on the ballot and have a referendum or an initiated measure and a vote which is successful, and then council goes and either passes or repeals something contrary to the vote.

Mrs. Rosenfield: You could certainly do it within a time span. You don't want a restriction forever or you've got the equivalent of a constitutional amendment.

Mr. Nichols: Your memorandum pointed out that the state of Arizona restricts the legislature from repealing, and some other states do, within a given period of time. In the state of Washington restricts according to the percentage required to overturn the vote. So that there are modified forms and various alternatives.

Mrs. Sowle: We don't have anything like that and I think that's a very good idea.

Mr. Marsh: The only good reason I can think of for not doing it is that in passing something, you might find that you've made a horrible mistake and probably the General Assembly should have the authority and power to correct that.

Mrs. Rosenfield: Isn't the General Assembly going to want to change all the initiated things passed? They might think that 99% of them are a terrible mistake.

Mrs. Sowle: But might they not think that if the measure got all these votes, they had better...they have to run for re-election, after all.

Mr. Aalyson: As Dick Carter is fond of saying, the purpose of the constitution

is to place restrictions on government.

Mr. Marsh: I don't think our office has a position but you might want to consider making it a 2/3 vote.

Mrs. Rosenfield: Maybe you'd want an extraordinary majority for three or five years, and then after that they can do it with a majority.

Mrs. Sowle: Yes, because we don't want to hamstring the process so much that if there is a real problem, it can't be fixed.

Mrs. Rosenfield: Then they can amend it with a 3/4 majority if it is a really technical and trivial thing.

It was agreed to draft such a provision for further consideration.

Mrs. Avey: There are other ways of taking care of bad proposals. An initiated proposal might be passed where there was not enough money to carry out the provisions of the initiated amendment. If you restrict it by the number of votes needed in the legislature that's one method of handling it. Another method is by not restricting the number of times the same subject can appear on the ballot, and in the case of a poorly drafted or impossible measure, at the next election the legislature can propose an amendment or law changing the one that was already passed.

Mrs. Eriksson: But we don't have any possibility in Ohio for the legislature to put something on the ballot other than constitutional amendments. So that would be another provision.

Mrs. Sowle thanked Mr. Nichols and Mr. Marsh for their assistance.

The meeting was adjourned until the evening of February 17th when the committee will meet at 7:30 in the Commission offices at the Neil House. Topics for discussion will be SJR 5, the initiative and referendum, campaign financing, and the model election system memorandum.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
February 17, 1974

Summary (Section 7 of Article V)

A meeting of the Elections and Suffrage Committee was held on Sunday, February 17, 1974 at 7:30 p.m. in the Commission offices, and February 18 at 9:00 a.m. Present were Mrs. Sowle, chairman, Mr. Carter and Mr. Aalyson; Mrs. Rosenfield, League of Women Voters, and Mrs Eriksson, staff.

Mr. Carter stated that he thought that the dialogue at the prior meeting on the "bedsheet ballot" was excellent and that he had a new proposal for consideration.

Mr. Carter: The problems with this section show the difficulties of mixing partisan politics in the constitution. There are three things that we're trying to accomplish in the Constitution: one, and this I agree we can't take it out, is something indicating the voter can express his presidential choice at the primary. The second thing is that I think we've got to leave flexibility for the parties to work out their plans. It would be a big mistake to change this. And the third thing I think we ought not to do is to write statutory material. I have a great deal of sympathy with Jim Marsh's position. He's got a terrible problem that's got to be solved. And I think we can help solve it, but I don't think we can sell to the Commission the idea of placing statutory material in the Constitution. I think we should do whatever we can to solve the legislation problem at the same time as we take care of the constitutional problem, but not try and write statutes in the Constitution. There is still the possibility, some day, of the direct presidential preference vote - we're talking about that nationally - that we should not rule that out by a constitutional change. I think that was pretty well agreed. As a matter of fact I think it was you, Craig, who made the very interesting comment that we could solve the whole problem if we have a direct vote for the presidential candidate, and then let the parties elect the delegates elect the way they please. We accomplish both and to me that's the key. My view on S.J.R. 5 is that it is a statutory change and I suggest we support the legislative change. To make this effective and to solve an immediate problem, we can state that statutory action is required as well as constitutional action.

I did come up with some language which I have here for the second part that's been bothering us. It is not new in concept. It emphasizes the voter's right and leaves out all details of a statutory nature. "The General Assembly shall provide by law for electors to vote for their choice of those party candidates for the presidency who have given written consent for their names to be so used, and such vote may be either directly for such candidate or for delegates to a national convention who may be identified solely on the primary ballot by their choice of candidate."

Mrs. Sowle: Implied in this, I assume, that if the vote is directly for the candidate then everything else will be provided for however the legislature wishes. That would allow for all of the possibilities that we were talking about.

Mrs. Rosenfield: You've made it very clear that only people who give written consent can have their name on the ballot. Do you feel strongly that it should be?

Mr. Carter: I kind of gather that that was the sense of the committee. I personally don't feel strongly about that at all. I like the language in some of the states that the secretary of state can put anyone on who is in the national limelight.

Mr. Carter: I would have no objection to leaving that out. This proposal indicates clearly that you don't have to identify the delegate candidate on the ballot. It says they may be identified solely on that last phrase, which then gives the legislature the right to get rid of the bedsheet ballot.

Mrs. Rosenfield: I can see a day when you elect them by small single member districts to a convention, that in fact they can go under their own names, maybe from a legislative district.

Mr. Carter: My thought was that it should be a legislative matter rather than a constitutional one.

Mrs. Sowle: I think this is excellent.

Mr. Carter: Katie, it follows the same language that you had. It does not mandate that we have to vote for delegates but it means we have to vote for delegates or we have to vote in a primary - people do have an opportunity to express themselves on presidential choices.

Mrs. Sowle: The objective is still there, that we don't have the party conventions.

Mr. Aalyson: May I make two suggestions? Insert after the word "law" in the first sentence "the opportunity" and remove the word "solely" from the next to the last line just after ballot. "The General Assembly shall provide by law the opportunity for electors to vote for delegates to a national convention."

Mr. Carter: Now I might point out one other thing that this does. You raised a point which I think is a good one, this whole problem if the parties want to have delegates of their own, now we leave this entirely up to the legislature. To the extent they want to get involved in it, let them worry about it. I think it ducks the whole question of major parties, and again I would think we would leave that up to the legislature. It merely says that the electors shall have the opportunity to vote. It becomes a legislative matter and that's where I think it should be.

Mrs. Sowle: I was glad that Bill Lavelle suggested that idea of a percentage being from the party, just because if we can provide enough flexibility for that and still have the principle involved, we don't know what they're going to come up with in five or ten years.

Mr. Carter: There is nothing in here that wouldn't permit them to do that.

Mrs. Sowle: Does this mean that a minor party doesn't need to go through this primary process?

Mr. Carter: No. It merely leaves it up to the law to decide. I think it solves that problem because the constitution merely says we want to give the people the right to vote for a presidential candidate. That's the principle we're trying to establish. The more I think of crossing out the phrase, "who have given written consent for their names to be so used", I'd just as soon leave that out and leave that to the legislature.

Mrs. Sowle: The legislature can do this if it wants to.

Mrs. Rosenfield: Yes, we do have a definition of what a political party is, so

the laws are already defined to take care of all these different sizes of parties.

Mr. Carter: If this makes sense to everybody, this is going to be a lot easier to get through the legislature than S.J.R. 5, And then the Secretary of State has a real opportunity to work on getting the legislation to solve these problems.

Mrs. Sowle: No, and I think we run a real danger in trying to solve a specific problem for the next election. That's really not our function. But if they have the legislation all ready to go the minute the voters approve this, assuming they did, then they would have time to solve their problem before the next primary.

Mr. Carter: Incidentally, I think that's another thing we might be able to do with the Secretary of State is to make a special report on this particular thing and make sure it gets on the ballot in November. In other words, in view of the coming problem, we could make another special request of the legislature for this one.

Mrs. Rosenfield: I wondered - this says "for delegates". Does it specify whether it means all, or some, or a few?

Mr. Carter: No, it leaves it open.

Mrs. Rosenfield: I wonder if the Supreme Court is going to look at that and say for delegate means for all the delegates.

Mr. Carter: Well, that's the old problem of court interpretations of anything that you do.

Mrs. Rosenfield: We were assuming up here that "for electors" meant for all the electors.

Mrs. Sowle: That's right, but I think that putting "the" in there pins it down a little more clearly. I really don't see much problem with that, as long as whatever they provided for was consistent with the spirit of this. And I think 80% elected and 20% bound in the same proportion, that kind of thing, would be within this spirit. There might even be a little legislative history, although I know that in constitutional amendments they don't always look at legislative history, but for the meaning of words...

Mr. Carter: Probably the best legislative history they would have is our Commission report.

Mr. Aalyson: If you eliminate the words "who have given their written consent", don't you also have to eliminate the word "those" in the preceding line?

Mrs. Eriksson: Yes. I wonder if you need the word "party", because I think there aren't any other kind of candidates in a primary.

Mr. Carter: No you don't, as a matter of fact. Because it's really covered as far as the national convention by the use of the word "primary" later on, so you could take it out.

Mrs. Rosenfield: You're not creating an open primary, are you?

Mr. Carter: You could.

Mrs. Eriksson: But you can at the present time anyway.

Mr. Carter: The remaining words are then, "The General Assembly shall provide by law the opportunity for the electors to vote for their choice of candidates for the presidency, and such vote may be either directly for such candidate or for delegates to a national convention who may be identified solely on the primary ballot by their choice of candidate."

Mrs. Sowle: Would it be desirable to put something about the primary up in those first two lines?

Mr. Carter: I don't think it's necessary.

Mrs. Rosenfield: You don't want "primary" up there. You might have two elections. You might have a presidential preference primary and a separate delegate selection.

Mr. Carter: Again with this theory, what we're doing is simply stating the very broad principles: One is that electors should have a right to vote, to voice their preference and then we're saying thereafter they can do it one of two ways, and if they do it by the delegate role you don't have to identify the delegates. Just to make sure that we've covered this point that's now in the constitution. I'm even tempted to leave that out but I'm afraid that we might have a problem if we do leave out the words "who may be identified solely..." Again the theory is, if you don't put it in the constitution, the legislature could do it.

Mrs. Eriksson: Did you agree to take out the "who have given written consent..."?

Mr. Carter: Yes.

Mrs. Sowle: If we want to make it flexible we leave that to the legislature too.

Mr. Aalyson: Do we have any wish to make the selection of the voters binding on the delegates?

Mr. Carter: No, I don't think so. First of all, we're talking about representative democracy, and this comes back under the initiative and referendum issue. I think you have to assume, and I think history largely assumes, that the elected delegates or representatives, as the case may be, where they are following certain voting instructions, they're not going to take that lightly. If they're pledged to John Q. Public at the convention, the fact that we don't constitutionally state that they have to vote for so many rounds, doesn't bother me at all. Because if they don't follow the mandate of what they were elected to do they surely aren't going to be elected again. I think, if anything, it should be statutory matter. Once again, you're getting into this horrible problem of trying to say in the Ohio Constitution what they're going to do in Miami, Florida at a convention. You just can't do that.

Mrs. Sowle: I'm very pleased with this. I think this accomplishes everything we were hoping for.

Mr. Carter: There are some other questions in Section 7. One of the questions that was raised is whether we should continue to have this requirement for a preferential vote for U.S. Senator.

Mrs. Eriksson: It used to be that people didn't elect U.S. Senator, the legislature did. And this is a hold over from those days.

Mrs. Rosenfield: It was a guide to the legislature?

Mrs. Eriksson: Yes, it was just so that people would be able to express their preferences even though they weren't actually electing senators. Because now it's a direct election of senator and so it's unnecessary to have that in there at all. I've not yet discussed it with Jim Marsh. The other question that I raised was the question of Section 2a. But now under the formulation that you're proposing, I'm not sure that it's necessary to do anything with Section 2a.

Mrs. Rosenfield: Do we really need this thing in the constitution that says that you don't have to have a direct primary to nominate for township offices and municipalities for under 2,000? It says earlier that all nominations for these offices shall be by direct primary, so I suppose then if you want someone excepted, you have to look at the exception.

Mr. Carter: Clearly. Craig, what would you think about dropping that business about U.S. Senators?

Mr. Aalyson: I see no reason to put it in. I wondered myself why it was in there.

Mr. Carter: Why don't we do that then, subject, of course, to checking with the Secretary of State's office. It would have been in there since 1912.

Mrs. Eriksson: It was sometime after that, when they went to the direct election of senators. In 1913.

Mrs. Sowle: Ann, you had made the point that we would have to look at Article V, section 2a.

Mrs. Eriksson: Article V, section 2a has a very technical kind of clause. It says that electors may vote for candidates, other than candidates for electors for President and Vice-President only and in no other way than by indicating his vote for each candidate separately. If the General Assembly goes to having the people elect the candidates for president, or indicate their choice, then we're okay. But suppose for some reason they do provide for election of delegates. Then I think we still need to make an exception in some way to be correct.

Mr. Carter: The theory, as I understand it, is that if there is a conflict, the later one covers it.

Mrs. Eriksson: I'm not sure that it would be a conflict. Because what we've said here is "who may be identified solely by their choice of candidates". The General Assembly could still require it, so it might not be a conflict. I would say that maybe we ought to consider proposing an amendment to section 2a at the same time.

Mrs. Sowle: How would you go about that, Ann? Add to the material in parentheses?

Mrs. Eriksson: Yes. That's what we did in our proposal for joint election of governor and lieutenant governor. I think Jim is very concerned about the timing, and if this could get on in November it still gives all of 1975 for legislation.

Mr. Carter: It's not going to be easy because it's going to be partisan.

Mrs. Rosenfield: If S.J.R. 5 passed, their problem is solved.

Mrs. Sowle: Is it an advantage for us to present this to the Commission as soon as possible?

Mr. Carter: I think it would be well if we review with Jim Marsh our thoughts on this thing and then, depending on what we find out, go from there. The Commission is going to be in a position to act quickly on this right now. We ought to avoid waiting if we can.

Mrs. Sowle: So we could probably have this proposal ready for the Commission by the next meeting. I think this pretty well winds up this matter for the moment.

Mrs. Eriksson: You received a memo on campaign financing. Do you have any thoughts on whether anything should be done in the constitution?

Mr. Carter: To me, it is not a constitutional matter.

Mrs. Sowle: Yes, it certainly was my feeling too.

Mrs. Rosenfield: It's another impossible problem and there is no solution. How you can require adequate limits and still protect people's freedom of speech and so forth.

Mr. Carter: I think we are all agreed that there's nothing we can do about it for constitutional purposes.

Mrs. Rosenfield: How about the model election system?

Mrs. Sowle: Yes, we might as well talk about that now, too.

Mr. Carter: As far as I'm concerned, again, I don't think that we have anything to do in that regard.

Mrs. Eriksson: We went through the model law just to see whether in fact there was any hindrance to adopting that scheme in Ohio and we couldn't ascertain that there was any reason why Ohio couldn't... in fact, already has an election system in some respects that follows the model. We have a Secretary of State who is a chief elections officer, and we have a special person who handles elections, all done by procedure if not by law.

Mrs. Sowle: This is something that I believe I remember the committee on the executive discussing too, where to place that duty and so forth.

Mrs. Rosenfield: I could get very upset if the Secretary of State became extremely partisan in a lot of things, but I think the legislature could handle it.

Mrs. Sowle: Well I think we discussed it in connection with whether certain officers ought to be elected or appointed. The feeling was that as long as he's doing this he ought to be elected. Does that dispose of this matter?

Mr. Carter: That is correct.

Mr. Aalyson: Going back to our section 7 language, it seems to me that it is not clear enough that we are talking about nominations, not the election. If you substitute "nominee" for "candidate" everywhere it appears that does alter the intent.

Mr. Carter: What we're really talking about is a candidate for a nominee. Does "such" mean that you really have used that word prior?

Mrs. Eriksson: Yes, I think that we have to take out that word "such". I'm just wondering what would follow. "and such vote may be either directly for....? for the candidate?

Mr. Aalyson: Why not vote their choice of candidate for the nomination for the presidency?

Mrs. Eriksson: "Candidate for the nomination" I think is the best suggestion.

Mr. Carter: That certainly makes it clear. That really ties in with that first sentence.

Mrs. Eriksson: And then we talk about nomination consistently.

Mr. Carter: When we add the words "nomination for" that makes it very clear.

Mrs. Sowle: Ann, what does this procedure mean? In the present provision, "shall be made at direct primary elections or by petition as provided by law"? Are those petitions provided by law?

Mrs. Eriksson: Oh, yes. For example, judges are all nominated by petition. Independent candidates are all nominated by petition.

Mrs. Sowle: Do we have to retain that in this provision, then?

Mrs. Eriksson: Yes. I would leave that first sentence alone.

Mrs. Sowle: Taking out the business about U.S. Senator.

Mrs. Eriksson: Because there are still offices that go on the ballot by petition, rather than in the primary.

Mr. Carter: Katie, I thought at the Commission meeting today, we might have a little discussion of this question to acquaint the Commission with what this is all about. We really have to have a public hearing somewhere along the lines, so I would think we would want to schedule a public hearing for the next Commission meeting. The Secretary of State is more interested than anyone else. And we could take action on it at the next Commission meeting, we could then submit a special report to the legislature like we did on this matter that's already through, and then get going on the November Ballot. The key thing is to point out the problems that the state's having with the bedsheet ballot and the urgency of dealing with it and the request by the Secretary of State and their concern. I wouldn't get into the merits of our argument. But we should prepare them for getting information so they will be prepared to act on it. Getting back to this language, I think it is very good constitutional language.

Mrs. Eriksson: I think that's really tying it into the first sentence by using the word "nomination" and it makes it very clear.

Mr. Carter: I think it's important that Jim understands that we think it's likely to expedite the matter rather than delay it by going this course, because this is certainly something we'll have no problem with the Democratic Party on. Politically, I think it will be easier to get this thing going, since S.J.R. 5 is not moving.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
February 17 and 18, 1974

Summary (Initiative and Referendum)

Present at the meetings on February 17 and 18 were Mrs. Sowle, chairman, and committee members Mr. Carter and Mr. Aalyson. Also present were Mrs. Rosenfield of the League of Women Voters and Mrs. Eriksson, staff.

The committee discussed the initiative and referendum, sections 1-1g of Article II.

Mr. Carter: Most of the disucssion at the last meeting was on the question of percentages, how big or small, or the number of signatures needed. The other item discussed was the question of direct or indirect initiative on statutory law. There are a number of other questions that have to be dealt with. It seems to me that we would do better to determine what we want to do in some of the other areas, and then we can resolve these questions. I do not agree with the idea of eliminating the required distribution of signatures among 44 counties.

Mrs. Rosenfield: Under our present provision, is there anything to prevent you from having one signature from each of 43 counties?

Mrs. Eriksson: You cannot do that. It's interpreted to mean one-half of whatever the percentage is. You can't get just one signature.

Mrs. Rosenfield: Okay. You have to have 3% of the voters of that county, if you need 6%.

Mr. Carter: I'm not saying that I disagree with your impression at the end of the discussion, but I'm not prepared to go along with it now, because I think it depends on some other things, it doesn't stand on it's own.

Mrs. Sowle: Is it pretty certain that the provision is unconstitutional? Because don't we have a case involving not this type of thing, but candidates.

Mrs. Eriksson: It was Jim's conclusion that it's pretty certain to be unconstitutional because of that case. But I'm not convinced that the reasoning that the Court would use would be the same reasoning because people have a right to be candidates. And that's the argument. That it's really equal protection of the law because you have a right to be a candidate for public office, but nobody's got a right to the initiative and referendum. You only have that right in so far as it's given to you by your constitution. You don't have a federally protected right. So I'm not sure that the reasoning could necessarily be applied.

Mrs. Sowle: That casts a different light on it. It's not the equal protection of the voter that's being considered here. It's the equal protection rights of the candidate.

Mrs. Eriksson: It might, of course, be unconstitutional.

Mrs. Sowle: I think that the requirement makes a big difference because it would affect my feeling about numbers.

Mr. Carter: That's what I mean. They're inter-related.

Mr. Carter: I would certainly think that we ought to consider something appropriate. What we're all struggling for in this discussion is where do you draw the line between the privilege of special interests of too-narrow judgment against denying people an opportunity to present a real grievance.

Mr. Aalyson: The thing that bothers me about retaining even the concept is you could have Cuyahoga, Franklin and Hamilton counties all in favor of something which they would be unable to do because of a provision of this character.

Mrs. Sowle: That's true.

Mrs. Rosenfield: And yet, if they could get it on the ballot, they could win it overwhelmingly.

Mr. Aalyson: Without any question. It boils down to the question of whether you like the idea that the majority should rule or whether you don't. And I would like to hear some discussion as to why this provision or something similar to it should be retained. Because I've been unable to think of anything that's persuasive along that line. And if somebody else has, I'm certainly willing to be persuaded.

Mr. Carter: What we are basically faced with is that what you're trying to do is get away from the California situation. It's so easy to have mass chaos out there at election time. It certainly is not good democracy what's going on in California. In Ohio, we haven't reached that stage. We might be too far on the other side. But if we go too far, you're going to have these frivolous issues on the ballot. If they stand on the street corners in Cleveland, like they do in Los Angeles, and get people walking by to sign the thing, it's very easy to get things on the ballot. Where there is a requirement that you have to do this in a number of areas, it makes it a little more difficult for a parochial, parochial in the sense of geographical, group to get by. It's got to be of statewide interest. And I also think that it may be desirable to do this, because the matter should have statewide implication to get on the ballot by initiative petition.

Mr. Aalyson: But aren't there some things that are very important that don't have statewide application that perhaps should be on the ballot? Simply because they're important to that particular sector of the state?

Mrs. Rosenfield: Particularly laws, not amendments.

Mr. Aalyson: Yes, or it may affect a group of people which is not widely disseminated over the state where legislation should be had and cannot be and if you restrict it, or if you require the thing to have some statewide impact in that it's got to have the approval of the voters of a specified number of counties, or a specified percentage of counties, it may fail simply because of a lack of interest in the other counties for a particular problem. Some special interest problems, as I said earlier, do not carry a perjorative connotation, simply because you label it special interest, and if you thwart the opportunity for that special interest to get it's problem resolved, I think you are demeaning the democratic process.

Mr. Carter: Craig, I'm not disagreeing with you. Nor am I subscribing to at least one-half of the counties, but I don't think that we should just dismiss it without thinking of alternatives and also putting it in the context of what we're doing in other areas.

Mrs. Rosenfield: You mean like they should be from 10 counties.

Mr. Carter: Or five.

Mrs. Rosenfield: But something so that it can't all be from Cleveland or Cincinnati.

Mr. Carter: As I read the minutes of the last meeting, following your line of thinking, Craig, if you get 50,000 people that are going to sign a piece of paper, they ought to be able to put that issue on the ballot. That kind of approach has some validity. And then another item in the same category, the General Assembly should not be permitted to repeal or amend initiated laws for three or five years. You see, this whole thing begins to draw the picture that the legislature is on one side of the fence, and the people are on the other, and they're fighting. That the legislature isn't listening to the people. I don't think that's going to happen except in extremely rare instances, that the legislature is not responsive to the people. For example, if you have, either by initiative petition or by referendum, the people saying to the legislature, "this is what we want", they aren't going to repeal it or amend it. If there is enough public demand for a law, why doesn't the legislature pass it? If the will of the people wants to do that... Years ago there was more validity in not trusting the legislature than there is now, before we had the one man one vote thing where the country boys would deny the cities anything that would help them. We don't have that anymore. We have a much greater balance. As a result, it seems to me that if there is a valid public concern, the proper way to do it is through the legislature, representative democracy. It should be pretty tough, I think, to put legislation directly on the ballot.

I went back and took a look at all of the indirect initiative petitions submitted to the legislature sunce 1912. There have been 13. Let me identify for you what has happened, so that you have an idea about the substance of these issues. One was increased school taxes, increased foundation support. In my opinion, a very important thing which did not get through the General Assembly. The people got it on the ballot and it was voted down. But that was, I think, a very valid issue. The one before that was an unemployment compensation question back in 1955. It did not get through the legislature, was taken to the people, and lost. The one before this, in 1949, did not get through the legislature. It was the question of colored oleomargarine, and it was an initiative measure. And the legislature was dominated by the farmers at that time in Ohio, so the city folks got together and got it on the ballot and it passed. So that this system that we've got has not been inoperative. This one was limited. It did not get through the legislature and was put on the ballot by indirect initiative. It was not the old age pension but certain special things I think, for people who were ill or poor, extra help. In 1927, the General Assembly would not pass a law to appoint a state board of chiropractors, and it was put on the ballot and lost. My guess is that the people have used pretty good judgment over the years on these issues.

Mrs. Rosenfield: It's interesting to see that in a large number of cases the legislature was representing the people.

Mr. Carter: Yes. The people agreed with the legislature. There were only two times that they haven't. One was the oleo case and the other was the aid to the aged. Going back before that, in 1923, this was when California was trying to get the big pensions for the aged, wouldn't get by the General Assembly and was put on the ballot and lost. Now before that, 1917, a workman's compensation issue was sent to the General Assembly and they passed it. In 1915, the legislature did not pass a workman's compensation issue and they did not take it to the people. Before that, classification of cities, in 1913. Three things they did not take to the people. Two of them were liquor issues in 1913, the other was classification of

cities. The legislature didn't pass them and they were never taken to the voters. And yet it's interesting that in that same year two things were given to the legislature and were passed. So after 1913 there have been 8 issues actually coming to the legislature.

Mrs. Sowle: Dick, are you making a brief for the indirect with this presentation?

Mr. Carter: I'm making a brief that I do not agree at this point that we should drop the indirect approach. I'd like to have more discussion on it. I do have some very definite concern about writing laws without going through the legislature. I know, Craig, that you do have some contrary comment on this.

Mr. Aalyson: My only contrary comment, really, is because of the rather narrow field in which I practice and which has compelled me before the legislature on approximately half a dozen times. I go over there before a subcommittee and it has been my experience that approximately 3 people on the subcommittee might know what they're talking about and the rest of them are voting a straight party line. And I'm not nearly so convinced as perhaps you are that this legislative process is all that it's talked up to be. I also feel that the legislature is not responsive to the wishes of the people and I don't think that any tabulation of the sort that you have made necessarily refutes that idea.

Mr. Carter: I agree with that.

Mr. Aalyson: Because oftentimes the failure of an issues is through inertia. These first five that never got on to the ballot, people get tired and they stop. Maybe they had a very good program in mind, I don't know. I am at this point fairly well disenchanted with the legislative process, and I think the only reason we have it, of course, is because it becomes unmanageable to have a true democracy where everyone votes such as in a town meeting. But I think that we should try to approach that as closely as we can. The legislative process has grown up out of practicality and it isn't necessarily the best process. I think it certainly is inferior to the opportunity where the voters express themselves and speak rather than through a person that has been elected by them because I feel that oftentimes a legislator feels that he knows what is best for his constituents and votes accordingly, or he may have some other compulsion for voting the way he does, but he certainly doesn't always vote the way his constituents would vote if they were able to vote instead. I like the idea of the people being able to do what they want to do although I recognize the problems that California has had with the multiple issues on the ballot. I'm not sure that I understand the objections to multiple issues on the ballot other than maybe confusing the already confused voter or causing some additional trouble for the elective process, or maybe costing more money and I'm not sure that that is a valid argument against permitting the people to speak since it's the people's money anyhow that's being spent.

Mrs. Rosenfield: With an indirect initiative, the time frame you're talking about is over a year.

Mr. Carter: There's no way we should leave it the way it is.

Mr. Aalyson: An argument that made some sense to me was why would we permit the people to amend their constitution but not to amend the law directly?

Mrs. Rosenfield: But you don't think at this point it's easier for people to initiate a constitutional amendment than it is an initiated law?

Mr. Carter: I'm not drawing that conclusion either way. I would say this, that the mere fact that we've had many more constitutional amendments brought, I think 32 since 1912, would indicate that it's easier to get a constitutional amendment on than it is a statute. And I also suspect that if the statute amendment were as easy to get one as a constitutional amendment, we'd have 10 times as may statutes by initiative petition. It's really quite difficult and that's why we don't have too many.

Mrs. Eriksson: Of course, it take more signatures for a constitutional amendment.

Mrs. Rosenfield: But it's really easier to get a lot at once than it is a few, twice.

Mr. Carter: The reason that it's more difficult is this business of going through the legislature and putting up with all the delays. Volunteer groups are great at starting things, and then a few months go by, waiting for the legislature to act, and then they're on a different kick.

Mrs. Sowle: And then they have to do the second petition, and that's the hard part.

Mrs. Eriksson: Besides, to draft a bill can be very complicated, and that, perhaps, is a discouraging factor.

Mr. Carter: I do think that we ought to change the procedure and maybe make it easier to do, but I'm not willing at this point to give it up.

Mrs. Sowle: The legislature can, of course, always take up a matter that has been proposed and when this procedure was originated, the legislature met less often, so there is a change in that circumstance. Of course, I guess you still have the difference that you have to have the two petitions in the indirect route even though this other consideration has changed.

Mr. Carter: I'm not even sure it's essential to have the second petition. There's some reason for it, but I'm not sure that we have to say that you have to have the second petition.

Mrs. Eriksson: Somebody has to decide what's going to go on the ballot if the General Assembly does or does not act.

Mr. Aalyson: Is the suggestion being made that if there is a sufficient number of people who would initiate to get it before the General Assembly, that if the General Assembly failed to pass, then it goes on the ballot without a second petition?

Mr. Carter: It could be structured that way.

Mr. Aalyson: This would give the General Assembly the opportunity to review and approve or disapprove.

Mr. Carter: The problem comes up when the General Assembly does something. Now the question is who then makes the determination of whether that has met the thrust of the initiated petition or whether it hasn't. Unfortunately, I agree that this has to be in the constitution. It would be possible to have the petitioners nominate as part of their nomination a group of 6 or 7 or 11 or 13 people who are authorized to act on behalf of the petitioners.

Mrs. Eriksson: Could you give the General Assembly an absolute period of time to pass it?

Mr. Carter: Yes.

Mrs. Eriksson: Then the only decision would be did it pass or did it not pass. You wouldn't have to decide whether the General Assembly had taken any action or rejected it.

Mrs. Rosenfield: Yes, but you have to decide whether they passed for the amended form which they surely are going to pass.

Mrs. Eriksson: That would be what this committee would decide, I think.

Mrs. Rosenfield: But if that committee has to make no effort to get that on the ballot other than to say, "No that's unsatisfactory", if the General Assembly has amended it, I'm afraid that you'd end up with things on the ballot that are ridiculous.

Mr. Carter: I agree. My point is that I don't think we have to assume that our alternatives are accepting what's there now, or rejecting it.

Mrs. Sowle: But, Craig, you think that you might be more agreeable to the indirect approach on this if there were no second petition.

Mr. Aalyson: Yes, my feeling is that if you can get a number of voters, and this committee is going to have to come up with that number, that would be sufficient to carry it to the people. I am not averse to the idea that the legislators should be entitled to review the matter. I am only averse to the business of making it, then, more difficult to get beyond the legislature. So the idea of removing that second petition or the impediment there is appealing to me as is the opportunity to give the legislature the right to review the thing. If they want to pass it, fine. But if they don't, I don't think the legislature should be entitled to keep the people, once we decide what the magic number is, from attempting.

Mrs. Sowle: It seems to me it would have the advantage of showing to the legislature that there was a certain kind of movement behind this proposal. And then if the legislature went on and passed it with that encouragement, it would save the rest of the rigamarole.

Mr. Carter: Actually, what's going to happen in most cases is that the legislature is going to act. I'm not sure that you can avoid the second petition at all. We may come back and say that there is no other way of determining the sense of the public going back and circulating another petition. But you could make it a very small number of signatures. It could be something like 5% the first time and 1% the second time. But I would prefer to find a way not to circulate another petition.

I really feel quite strongly that you should give the general assembly the opportunity to pass laws at any time. This is properly their province. I see that what you've ended up with is an extraordinary majority. Ann, is that constitutional, to in essence pass a law by initiative petition which can't change for five years?

Mrs. Eriksson: If it says in the constitution that you can, I don't know any reason why it wouldn't be constitutional.

Mr. Carter: I think that's terrible.

Mrs. Eriksson: Jim said that it's a frequent problem in city council. The old age pension bill of course has been amended by the General Assembly, but I don't think there has been a problem of frustrating the general public will in Ohio. But there has been in other states, in Oregon or Washington, apparently there was some kind of a problem.

Mr. Carter: But the people could pass a bad bill.

Mrs. Rosenfield: And then they could amend it by an extraordinary majority. If it's just really cleaning it up, that won't be hard to sell.

Mr. Carter: But you don't buy my argument that if the people say, "this is the way we want it", that the General Assembly isn't going to tamper with it?

Mr. Aalyson: I don't buy that argument, Dick. I think that oftentimes the General Assembly will do exactly the opposite of what the people might want.

Mr. Carter: After the people have passed the law? Let me give you an example. We had the lottery passed here a short time ago. I talked to a number of legislators who thought that it was a terrible mistake, bad business. But people have spoken and "I'm all for it."

Mrs. Sowle: One area of conflict would be in an area of personal interest to the legislature, like salary. If the people had spoken about the salary of the members of the General Assembly and then the members of the General Assembly came right back and changed this, political process probably would take care of that and would be the answer there. What about the other areas that might involve just pressure groups, or the strong political leader? Then maybe the General Assembly and the voters would be at odds and there the will of the voter might be frustrated. Now, if it was frustrated, the voters can always tie the hands of the General Assembly by a constitutional amendment.

Mrs. Eriksson: But then you have to go through the process twice.

Mr. Carter: I'm also concerned about the legal implications and what you mean. Let's suppose you pass a tax law, and the legislature says this is an awful, unworkable law, and so by a 2/3 vote they amend it to incorporate the federal code to make it workable. You could amend it very substantially. Are you talking about every amendment to an amendment? What does this mean, "for a period of time"?

Mrs. Eriksson: There would be a problem if you were going to make this a restriction for a long period of time, but for a period of 3 or 5 years, I don't think it would be a substantial problem in the interpretation of what you were amending, because that would only be about one or two sessions and they just don't move that fast.

Mr. Carter: If I may comment on the next item, I was interested in the discussion on the philosophy of the fixed number of voters and the percentage at the last election. I think there's some logic to both. I would merely submit that it could be a combination of the two.

Mrs. Rosenfield: You mean 100,000 or 6% or which every is greater?

Mr. Carter: Right, or it could be 100,000 plus one percent of the voters. It doesn't

have to be one or the other. Without going into a great amount of detail, I don't think either of them is the best way. What was relevant in 1912 in terms of a fixed number is clearly not relevant today.

Mrs. Rosenfield: Except that the numbers they were proposing in 1912, there's not much difference.

Mr. Carter: Even so, the practical matter of getting 100,000 signatures in 1912 with horses and buggies was a lot tougher than it is today when we have more and more urbanized society. It's easier today to contact that many people.

Mrs. Sowle: Getting back to what we've discussed in another context, if you could do this by hitting a button on your T.V. set, that would make it a lot easier.

Mr. Carter: That's possible. On the other hand, I subscribed that the difficulty certainly goes up more than just proportionately to the number you're talking about. It goes up a lot faster. I don't pretend to know the answer to this. I don't think I would be in favor of a flat number. I am prejudiced by our financial discussions. When you look back to the fixed numbers in the constitution over a passage of decades, they become very dated. But it was valid at the time.

Mrs. Sowle: The considerations are different for numbers of people to amounts of money.

Mr. Carter: As a practical observation, I think what we've talked about is likely to be academic anyway, because I do not think that it's likely we will find much interest in the legislature in lowering the number of signatures. It's interesting to me that this was presented to the voters in 1939 and even they didn't go along with it.

Mrs. Rosenfield: I would have liked to have heard the arguments.

Mrs. Eriksson: Maybe there really weren't very many. In 1939 the people were concerned about many other things.

Mrs. Rosenfield: But why did it get brought up then?

Mrs. Eriksson: Don't you think it was a culmination, maybe, of some years of work? This was still the progressive movement. It was the very tag end of it.

Mrs. Rosenfield: I'm wondering if there weren't some initiatives that floundered because they couldn't get enough. And the people got mad enough to put that on the ballot.

Mrs. Sowle: This is going to take some time and reflection and discussion. I think we ought to encourage our legislative members to join us on this.

Mr. Carter: Yes, that would be very helpful.

(The committee agreed to consider asking other persons to join the committee for discussion of this issue.)

Mr. Carter: It was interesting to me to learn that not all states have an initiative and referendum provision. We've been considering the question of whether to keep it in the constitution or not. It's a valid question to ask, when you put it in

the context of when these were put in, the movement took place when you had the farmers dominating the state legislatures, and the representation was almost geographical rather than per capita. Back in those days you didn't have the communication that you have today. The voters weren't nearly as well informed. You had bi-annual sessions for a very short period of time and you had the opportunity in that time for the strong political bosses who weren't very responsive to public needs.

Mr. Aalyson: The idea that we have representative government, I think, has its foundation in a number of things. Two of them would be the difficulty of travel in the old days and lack of education on the large part of the voters. I think that our aim is to go more toward direct representative government or direct vote than to representative government since we're removing some of the impediments that used to be there. We argue that everybody should get out there and vote. And then on the other side we argue, well, we can't leave the legislation to the people. There is some inconsistency to this. We've got to let somebody vote for the people and tell them how they should act, but when it comes to selecting those people who are going to tell them how they should act, they should choose them themselves. The idea is in conflict.

Mr. Carter: I don't think they're in conflict.

Mrs. Rosenfield: I think you can only ask people to make a reasonable number of judgments at any one time. In England, where they only elect a member of parliament and a member of city council, it's much easier, I think, to keep tabs on just those two people who represent you, rather than all the people we expect people to choose.

Mr. Aalyson: What is the advantage of the legislative process over the process whereby the people speak for themselves? There are some obvious advantages as far as practicality is concerned. But in theory, what is it?

Mrs. Sowle: These are people who arrange their lives in such a way as to spend time on the problems, to educate themselves on them, to specialize in public matters, to deliberate. Those people make it their business to think about the public policy. And I think that is a superior method. I go to a doctor when I have a health problem. I go to a person, I hope, to pass laws who has made it part of his life to do that, his specialty to do that. I think that I would prefer it to a totally participatory democracy. The only instance we had of it was the New England town meeting.

Mr. Aalyson: Our discussion so far has been something of a philosophical discussion, has it not? And that was whether or not it is a good idea to have a direct initiative and that seems to boil down to whether or not we are going to get a lot of special interest type legislation on the ballot or whether we are not. I guess we've tried to ford that by designating a sufficient number of signatures on the ballot to impede this sort of thing.

The committee adjourned until the following morning at 9:00 a.m. Upon reconvening, the committee agreed to go over the initiative and referendum sections one by one and discuss the various points raised in the staff memoranda.

Mrs. Sowle: In section 1, the memo points out that the section says that the people have the right to propose amendments to the Constitution in the indirect fashion. But then there's nothing to implement it. And I wondered whether that ought to be deleted.

Mr. Carter: It certainly seems that way to me.

Mrs. Sowle: That may be hard to explain to the public.

Mr. Carter: I think we ought to make some other changes in this section too. There is no point in leaving in the indirect initiative for constitutional amendment. Now if you take that out, then it seems to me you really simplify section one which was written, I think, in a very tortuous style.

Mrs. Eriksson: It was written by adding everything on to the end of what is the basic statement of legislative power.

Mr. Carter: I think it can be rewritten much shorter not changing a thing. Could we have a redraft prepared simplifying the language and removing the redundancy?

Mrs. Sowle: We need it to tell people we're not trying to take away their rights.

Mr. Aalyson: This section provides for indirect initiative for laws and of course we're going to be struggling with the question of whether we're going to have direct or indirect. In item 4 in the comment on section 1, where it talks about Arizona prohibiting repeal of an initiated law, we have discussed this previously. I'm not so sure it's a good idea and I'm not so sure it's a bad idea either. The sense of the committee's discussion earlier was that perhaps there should be either some limitation timewise or an extraordinary vote to get to it. I don't know that I like a restriction by time because it's entirely conceivable to me that within a fairly short span of time it could be determined that an initiated law would be a bad law but I kind of like the idea of the extraordinary vote. I don't know that I like 3/4 but 2/3 seems reasonable.

Mrs. Sowle: You mean for all time? Would it limit that in time?

Mr. Aalyson: I'm not so sure that I would. It seems to me that if the legislature after consideration of the proposal decides by 2/3 vote of the entire legislature (rather than of those voting) that it should be modified or repealed that it should carry considerable weight. Again, if you limit by time you may get a bad law that needs some change that you can't modify.

Mr. Carter: Basically, what you're talking about - it would put it on the status of a constitutional amendment. It would require an extraordinary majority to get through the legislature just as a constitutional amendment. The only difference is that the people wouldn't have to vote on it. I would like to ask a question here that relates to this and a number of other things we're going to be talking about. The articles and the experts that I have read about constitutional revision have always pointed out that one of the very difficult jobs of constitutional revision is to balance the practical, what you can reasonably expect to do, with what the ideal is. My own conclusion is that we don't want to be in the position of saying we're only going to propose those things we think can carry - I don't think that's an appropriate posture to take - on the other hand, I don't think that it's appropriate to go through an exercise in futility of something that's never going to see the light of day. Somewhere in between those two things is the judgment factor. How much do you want to try to leave, how much do you want to innovate even though you don't expect to get anything done. Now the reason I bring this up at this point is that in my judment there is not a chance in the world that the legislature is going to go along with the idea of having a super majority in this case imposed upon them to pass laws. That's my guess. I have a lot of confidence in that statement. If we propose some things that the legislature is just going to reject, then it's likely to tar the whole package. I merely bring this out as a caution, somewhat,

tempering the ideal with the practical, which you always have to do.

Mr. Aalyson: The thing that occurs to me, then, would be to change the thought that I had instead of making it a substantial majority of the legislature then a substantial majority of those voting. I am not necessarily advocating this. I think there is some merit to the idea of the people deciding for themselves the power to initiate a law without the intervention of the legislature that there should be some restriction on the legislature about upsetting that law. On the other hand, if hindsight determines that it is an improper law, the legislature should be entitled to act. I don't have any opportunity for gauging the sense of the legislature but my own feeling is that the legislature should not be too unhappy if a little better than a majority of those voting could upset. I think it should be something more than just a majority but I don't think it should be something that would make it so restrictive that they couldn't act.

Mr. Carter: Well, there is some logic to that. The present Constitution says it's not subject to gubernatorial veto so that it means the legislation is put in a special category, but it does seem to me that perhaps I would not try more than 3/5 as a restriction.

Mrs. Eriksson: Generally, most majority requirements in the Constitution do require it to be a majority of the entire membership. This would then be an exception to even the basic rule which says that to pass a bill it takes a majority of the entire membership, not just a majority of those voting.

Mrs. Rosenfield: It's not onerous to ask that 60 members of the house voted for something particularly if you put in that kind of time limit. It you only need this extraordinary majority for three or five years. Three years is not much and it simply means that the people who were in when the initiative was done have to go through at least one election and then, hopefully, the emotions have cooled. Even the Issue 2 emotions have cooled and they could start dealing with it as a normal thing.

Mr. Aalyson: Are you proposing the time limitation without the extraordinary majority

Mrs. Rosenfield: No I would say you need the extraordinary majority for a time while everybody is still mad. I used to think that 3/5 was trivial but what it does do, it usually means that one party can't do it. Seldom does one party have 60 votes.

Mr. Aalyson: I think this discussion is valid whether we retain the indirect or decide on the direct.

Mrs. Sowle: Is there a sense of this now? I think we're going to find we have some crucial things that we'll keep on the back burner for a little bit.

Mr. Carter: Should there be any limitation on the kinds of things that you can do by initiative? The memo raises the question about matters such as salaries that are legislative responsibility in the present Constitution. Should we try and clarify the Constitution with respect to whether the people could initiate such a law? My own conclusion was that I think it's a very good point but I'm not sure it's worth the political complications of monkeying around with it.

Mrs. Sowle: Does this take us over to section 1A then? The only notation I have

was that the term "in any year" apparently here was not a problem.

Mrs. Eriksson: It hasn't been raised in 1 A because 1 A does not really set forth the procedures, but my thought is that that expression ought to be taken out wherever it occurs.

Mrs. Sowle: Especially where it says the next succeeding regular or general election.

Mrs. Rosenfield: The requirement that the election be in the same year as the petitions creates an impossible situation on the referendum. If they pass a law as late as the middle of June.

Mrs. Eriksson: But you can take out that expression and make it clear that it can go over to the next year. Then you can do it. Jim would like to take out the expression "regular" election because that has no constitutional meaning.

Mrs. Sowle: Did he want next succeeding general election or did he want to add special election?

Mrs. Eriksson: He only suggests removing "regular". If you think that an initiated measure should be able to go on at a special election - that has to be written in because at the present time, that is not included in "regular". A legislative constitutional amendment can only be submitted at a special or general election. That's the phrasing of Article I, section 16. And that's why we always call a primary a special election for that purpose.

Mrs. Rosenfield: It's actually two elections held simultaneously. But the problem they worry about is in many municipalities you don't have a primary election in odd-numbered years and therefore you only have a special election where the vote drops down to zilch.

Mr. Carter: Is there any big problem of limiting initiative to a general election? We're not denying the people very much. This kind of action should have plenty of time to be debated so I have no problem with it.

Mr. Aalyson: I'm not so sure I like the language of this section. The problem that we're going to encounter later and perhaps more specifically is whether a percentage of the electors is more desirable than a specified number.

Mr. Carter: I again feel that the language is terrible. That first clause we certainly don't need in the Constitution. We could just start it at "The signatures". Where it says the initiative petitions above described you can take out the word "initiative". The Secretary of State would want to have it filed at least 120 days instead of the 90, which I completely agree with, particularly for initiative petition. Presumably you don't have the debate in the legislature which means that you should have time for public discourse on the question of this sort and I'm not even sure that 120 days is enough time. The Secretary put it in there because of the procedural problems but I raised the question as to what is appropriate. I would buy 120 days but I wanted you to know my reason for extending it was other than what the Secretary of State suggested. I really thing you ought to have some time.

Mrs. Eriksson: Of course, that's 120 days after filing so that means that well before that you're talking about it and getting signatures.

Mr. Carter: In any event, I think we're all pretty well agreed that this will be

redrafted. We won't change just to change but any time we have a change to suggest, let's take the opportunity to rewrite. This question of initiative and referendum - the whole question that we were talking about last night - I wonder why the Model Constitution has removed the initiative and referendum from their recommendation.

Mrs. Eriksson: The theory of the Models now is to strengthen the legislature. This is the thrust - to stress power in the legislature and anything which removes any of the legislative powers is viewed with suspicion. There's no discussion in the Model about reasons for placing it in the Appendix.

Mr. Carter: That tracks with the historical summary memo we had. That there has been very little since 1918 in the way of initiative and referendum activities. States haven't taken them out but they haven't added them to any significant degree. There isn't any great demand for it, which I think is relevant to the philosophical discussion that we were having.

Mrs. Sowle: The ones who have it are using it.

Mr. Aalyson: The usage, I suppose, is declining but on important things they use it still.

Mrs. Sowle: Turning to section 1 B. To start out with, the problem here of defining when the General Assembly has acted or not acted. I think we all realize the problem is there. Does anyone have any ideas for tackling that problem?

Mr. Carter: Specify a time. Simply say if they have not passed the measure, and take out the references to "no action".

Mr. Aalyson: If it's either passed in an amended form or not passed at all within four months.

Mrs. Sowle: We have to keep this time limitation in order to know when it can be submitted to the Secretary of State.

Mr. Aalyson: I have a very succinct statement here. My notes say we should have direct initiative which would eliminate most problems. That may or may not be acceptable, but I say it is a very cumbersome procedure which should be done away with.

Mr. Carter: Let me suggest an alternative. Let's go through and see what we can do with the procedure, and then take a look at what we end up with, and see if that is not an acceptable middle ground. I'm very leery of taking away the legislative power to look at initiated laws first. I think that would be an exercise in futility. Plus the fact that I'm not sure I'm in favor of it. So, I think it's worthwhile seeing how we can work it out, and then seeing if that is acceptable.

Mr. Aalyson: Since I have several other reservations about the language - let's begin with "not less than 10 days less than prior to the commencement of any session of the General Assembly " and eliminate that.

Mrs. Eriksson: Give the General Assembly four months from the time it is filed.

Mrs. Rosenfield: What happens to your four months if you submit it on June 17 and the Assembly is just winding up?

Mr. Aalyson: My intention was if you file a petition, then it's got to go to the

General Assembly for consideration if we retain it.

Mrs. Rosenfield: Even if it's a special session.

Mr. Aalyson: Unless it's put over to the next session.

Mrs. Rosenfield: But your months has to be four months of legislative session.

Mr. Aalyson: It says four months from the time it is received by the General Assembly.

Mr. Carter: One way you could do it is to define "receipt by the General Assembly" as being defined as a day when they're in session.

Mrs. Rosenfield: But it still doesn't solve your problem if you do it at the end of the session.

Mrs. Eriksson: The way it's worded, however, if they don't file it within 10 days you might have a situation where it never got to the General Assembly then, because it wasn't filed 10 days ahead of time and maybe the Secretary of State would take the view that therefore it can't be carried over to the next session. One of the problems is with the word "session" itself, because now that we have annual sessions it might almost be better to tie this into the other language which says - where we talk about the first regular session and the second regular session.

Mrs. Rosenfield: The way this is written now it would allow them to call a special session of the legislature to deal with initiated measures and maybe you ought to leave that. If it's really important maybe the legislature should be called.

Mrs. Sowle: Ann, I'm not sure of what you mean by that. In other words, if I get there not prior to ten days of commencement, say 8 days, then I have missed it. Then I have to wait until the next session.

Mrs. Eriksson: I'm not sure that it would necessarily mean that your petition would be presented to that next session. They might say you have to resubmit it.

Mrs. Sowle: So I go out the door and bring back my material a year later.

Mrs. Eriksson: You might have to recirculate the petition. I don't know.

Mr. Aalyson: I think we should try to eliminate the necessity for that.

Mrs. Sowle: We certainly don't want that.

Mrs. Eriksson: You might skip the idea of its being filed at any particular time. You might simply say that any time the petition is filed, if the General Assembly is in session, that it must be presented immediately to the General Assembly. When a petition is filed with the General Assembly, and if it's that important, then maybe the General Assembly could stay in session for four months. If they are not in session when the petition is filed, then simply say that it should be presented at the next session. Don't worry about how many days ahead of what session. If they don't want to consider it, then the people can go to the ballot. That will eliminate a lot of worries about timing.

Mr. Carter: If you follow that line of thought, which I like, you might give some

thought to extending the four months. It might make some sense to do that. It's pretty hard to find a six month period when the legislature wouldn't have an opportunity to act in session. That would be unusual.

Mrs. Eriksson: The chances are they are going to come back within the six month period. The question of special session, of course, raises another question as to whether you can consider a bill that's not on the Governor's list of topics, if the session is called by the Governor.

Mr. Carter: What happens if the legislature does not pass a bill that meets the requirements of the petitioners? Let's leave that open for the time being.

Mrs. Sowle: The percentage is going to be with us for a while.

Mrs. Rosenfield: You're only going to allow these to go on in a general election?

Mr. Carter: No, that was the constitutional amendment. We haven't come to that question on this yet.

Mr. Aalyson: I think it ought to go to the General Assembly period. The language says "if not passed by the General Assembly". Then the petitioners get a crack at it.

Mr. Carter: We're saying that if it hasn't passed either in the original form or in a form that's satisfactory to the petitioners then it can go on the ballot.

Mrs. Sowle: My understanding of how to do it would be this way. If it shall be passed in an amended form or if it shall not be passed within four months from the time it is received.

Mrs. Eriksson: I think the four months has to apply to both, though.

Mr. Aalyson: Can't we leave the language as it is, just deleting that phrase "no action"?

Mr. Carter: If the legislature actually votes to reject something the petitioners can immediately go forward. That's what the present language says.

Mr. Aalyson: We're eliminating that. We would agree that if it is passed or passed in an amended form within four months from the time it is received, the petitioners can proceed.

Mr. Carter: If the legislature doesn't want to act on something, they are going to ignore it.

Mrs. Sowle: What if they vote it down in a month?

Mr. Carter: I don't think that will ever happen.

Mrs. Sowle: They would still have to wait?

Mrs. Eriksson: That may be the disadvantage to this but at least no one will have any question about when they can do it.

Mr. Carter: If I'm a petitioner, there's a lot to be said to knowing what the time schedule is.

Mr. C. C. Petro from Elyria was introduced to the Commitee. Mr. Petro was one of the initiators of a recent referendum petition, which failed to get enough signatures within the alloted time to get the law on the hallot.

Mr. Petro: It took us about two weeks to get the summary approved by the Attorney General. I wanted to make the summary as simple as we can, because people stop to read this. But they get to reading this thing and they almost get distressed because there's so much to it.

Mr. Petro noted that, in his opinion, it should not be necessary to have both the summary and the text of the section of the law referred.

Mrs. Eriksson: The requirement of having the text is a constitutional requirement and the summary is a code requirement.

Mr. Aalyson: Mr. Petro, speaking as a lawyer I can see where it would be advisable to have a summary and the entire text because a person such as myself might want to read the entire text. Too often summaries are not good summaries. I can see a reason for both but I would like to hear from you as to why you oppose their both being on there. I think you said something about raising doubts in the mind of the signers.

Mr. Petro: It frustrates them. You have the definite identity of the law right here, the amendment, of the thing that we're having the referendum petition. A lot of people, although they don't object, they want to read it.

Mr. Aalyson: Are you saying that impedes circulation? Because most people will want to read everything whether they understand it or not?

Mr. Petro: And then they'll sign it anyhow. But the circulator is having a problem. There was strong support for this petition, according to all the polls.

Mr. Aalyson: Did you find that a substantial number of persons who were solicited to sign the petition did not sign it because they didn't want to take the time to read the whole thing?

Mr. Petro: Not exactly, except when we were doing this at shopping centers. We put a notice in the paper and we were allowed to put our stand up in front of the stores. Now those people didn't want to take the time and therefore they would not sign.

Mr. Carter: How many signatures did you get?

Mr. Petro: I think we had 61,000. We needed about 180,000. We had 56 counties we had signatures from.

Mr. Carter: Did you find that to be a burden? The necessity to have signatures from 44 counties?

Mr. Petro: It was because we couldn't get headquarters in the various county seats. I've got a solution for this.

Mr. Carter: What is that, sir?

Mr. Petro: I would say that if each board of elections facility would permit a

man to be put in there voluntarily during the period who could take signatures, and those that aren't qualified voters could register just before they signed this thing. You find a lot of nonregistered voters.

Mr. Carter: What you're suggesting is that the board of elections office be required to give you the facility to expose this to the people?

Mrs. Eriksson: Do you think that you would more easily have found a person who would sit there rather than going around from house to house?

Mr. Petro: Oh definitely.

Mrs. Sowle: Now who's going to be coming in to sign, just those that happened to be at the board of elections?

Mr. Petro: No, we would publicize the fact that we were at the Board of Elections and they could register at the same time before the signed petition.

Mr. Carter: So they would know where to go to sign a petition.

Mr. Petro: We have to find some place. The schools were denied me for such things - I couldn't even use the front of the school where there's a shelter, on Saturday when there was no school. We started off going house to house. Now this is a slow process. I got as many as 50 signatures in a period of around 3 hours. That's a hard job. You've got to have a lot of solicitors to get 191,000 signatures. So we got publicity, we did a little advertising, and we found areas like grocery stores. I contacted senior citizens groups and we did very well there.

Mr. Aalyson: You feel that if provision were made for you to have space someplace, say the board of elections, you would do better that way than soliciting door to door.

Mr. Petro: Oh definitely.

Mr. Aalyson: I want to revert back to your original problem. Do you feel that the problem which you confronted in this particular referendum petition of having a summary on the face and the full text of the law on the back would be eliminated if, for instance, under the heading summary there would be printed in red, for example, "the full text of the law is available should you desire it." Do you think that would eliminate your problem?

Mr. Petro: Indeed.

Mrs. Rosenfield: I was thinking of the same problem in a different way, if you had a shorter summary or would that make it hard to read?

Mr. Carter: Maybe what it should be is an identification rather than a summary.

Mr. Aalyson: My suggestion might satisfy persons who would like to read the full text and eliminate your problem by not requiring the reading simply because it's on there.

Mrs. Eriksson: How did you find people reacting to this summary, those who just read the summary?

Mr. Petro: They read the title and they started in on the summary and they would get about half way through. It was a legislative pay raise bill. To start right out with a $14,000 to $17,500 - a $3,500 hike - and it looks excessive.

Mrs. Rosenfield: This title is not my idea of a title - a title to me tells you what this thing is about and that title does not tell me what it's about. It tells me what section of the Code to look in to find out what it's about.

Mr. Petro: The circulator signs the petition twice. Why must it be notarized?

Mrs. Eriksson: The solicitor is saying that the persons who signed it are who they purport to be, which actually the solicitor can't know anyway. About the only thing that the solicitor really can say is that they signed in his presence because it also says that as far as he knows they are qualified to sign. He doesn't know that either except as they tell him.

Mr. Carter: That's assuming, of course, that these people are good people. In Cook county in Illinois where you would have an organized campaign, you may get fallacious signatures; then it seems to me it is significant to prevent abuse and to prevent people from going around making ajoke of the process.

Mrs. Rosenfield: Why can't you accomplish the same thing by certification instead of having to go to a notary, like you do your income tax?

Mr. Aalyson: And provide that the penalty would be the same as if sworn to in front of a notary.

Mrs. Rosenfield: Not only the penalties of perjury, but spell out what those penalties are. If convicted of perjury your are subject to five years in prison or $5,000 or both, so that people know.

Mr. Petro: I know that we didn't get a lot back because of the notary provision.

Mr. Aalyson: I think the answer might well be by certifying the signatory. You've got his address somewhere there.

Mr. Petro: One of the problems was time. It took us 5 weeks to get the Attorney General's approval and the petitions printed by the Secretary of State. Now S.B. 238 will remove that job from the Secretary of State.

Mrs. Eriksson: Now the Secretary of State will not be in the business of issuing petitions. It will be up to the petitioners to get their own petitions printed, signed and filed, but you still will have to go to the Attorney General for approval of the summary.

Mr. Petro: One of our greatest problems got solved by this legislation and that was the fact that we had to come down here from Elyria every time we wanted more petitions or had a new circulator. People would say they would take a petition. Well we would say you'll have to wait. By the time we got down here and took them back and distributed them, some of these people were five and six days waiting for petitions. By that time they lost their enthusiasm.

Mrs. Rosenfield: If some of these roadblocks were out of your way, do you think that the number of signatures you had to get was terribly difficult or impossible to get?

Mr. Petro: No. The circulator procurement was hard to get.

Mr. Carter: You had problems getting circulators but it relates to the number of signatures you have to get. So it was a very difficult job.

Mrs. Rosenfield: You didn't have 90 days to get signatures.

Mr. Petro: No we had 40 some - not over 55 days.

Mrs. Eriksson: The 90 day period is the effective date for law but that's the period you have to get your referendum in.

Mrs Sowle: You could have a law go into effect right away and still have it subject to a referendum.

Mrs. Eriksson: How much of the time was involved with getting it through the Attorney General?

Mr. Petro: Two weeks.

Mrs. Eriksson: Did you have any problems with your solicitors in mixing up signatures from counties? Did you run into this problem at all?

Mr. Petro: No, fortunately. We got a place at the Summit Mall - that's a terrifically large shopping area. We had people from 22 counties that came into that shopping center. I had a lot of petitions. We set them right out on a table. identified by counties. Why must you be a qualified voter to have the right of petition? Now I don't understand why I, as a taxpayer, because I failed to register and denied my right to vote have also denied the right of petition. You have abridged it with this qualification.

Mrs. Sowle: Is that in the Constitution or in the statutes?

Mr. Carter: It's in the Constitution.

Mrs. Eriksson: The statutes require that you must be registered. That's an additional thing, but the Constitution does only permit electors to sign.

Mr. Carter: I would assume that the reason for that is, again I think you have to be concerned about the use of the right of petition, and someway or other you've got to be able to check the signatures.

Mrs. Eriksson: The Constitution just says an elector but it doesn't say you have to be an elector now.

Mrs. Sowle: I see the reason you have to be registered. After all, I suppose the idea is that the petition gives some indication that enough people are going to in fact vote after you get this on the ballot.

Mrs. Rosenfield: There are still 17 counties in Ohio where you do not have to register. And those people can sign a petition without being registered.

Mrs. Eriksson: Even though they don't have registration, those people have to be eligible to vote.

Mr. Aalyson: There might be something to be said also for the idea that if one does not have the incentive to vote for his legislator, should he be permitted to undo what that legislator has done?

Mr. Petro: I say you have the right of petition as long as it affects your tax situation. When you're voting increases in pay, it's affecting your tax situation at some time along the line.

Mr. Aalyson: I agree with that but if you haven't had the civic responsibility to go out and vote for the guy whose voting for an increase in taxes should you automatically have the right to undo what he has done?

Mr. Petro: I say yes, as long as it's affecting me.

Mrs. Rosenfield: By not voting you may have voted no.

Mr. Aalyson: I'm in favor of letting the individual speak for himself. But I also think that the individual has got to assume some responsibility other than the negative responsibility, so that argument kind of loses its force with me - simply because it affects me I should have a say in it. If I haven't had the gumption to do some things when I could have before hand, I'm not sure that I am entirely sympathetic with the guy who wants to react, rather than act.

Mr. Petro: You say he's indifferent. When this issue comes to him, he has lost that indifference. But maybe only temporarily. Now we get it on the ballot. He may not go there to vote - that's a point for those in favor of it. I can't see why he's denied the right of petition.

Mrs. Sowle: You did find it a major impediment to the collection of signatures?

Mr. Petro: Oh yes. Right across the street from me is a retired Lutheran minister and his wife. Neither one have registered. He's about 79 years old and doesn't get around too well. He said he didn't register because he didn't feel physically capable of it. My home is only two blocks from the school house. Two houses down is another lady. I think she is about 72. She just can't get out to do these things. But she still has to pay taxes.

Mrs. Sowle: Might you be arguing for door to door registration or something of that sort?

Mr. Petro: Sometimes it's a good thing to make a test by going a couple of blocks, to see what the general attitude is and I was amazed 49 out of 50 voters signed my petition.

Committee members thanked Mr. Petro for coming and sharing his experiences with them.

Mrs. Sowle: My experience with petitions is that people will sign it because they like or respect the guy that's circulating it. I was interested that he had a problem with people reading it.

Mrs. Rosenfield: Another reason for signing them is people who will sign a petition that they don't agree with on the ground that the people ought to have the right to vote on it.

Mr. Carter: Let's get back to 1 B. It seems to me that we were at the point of

saying that we had pretty much settled the point that the legislature has so long to pass, and then the petitioners have certain additional rights - that's the crucial item in this whole indirect petition. In the case where the legislature has done nothing it's rather clear that they should probably have the right to get on the ballot. I would be in favor of doing it without any additional signatures. The problem comes in as to whether the legislature through the deliberative process has weighed carefully the wishes of the petitioners and they come out with some sort of compromise or amendment, and there's where the problem lies. Who makes the judgment at that point as to what is appropriate. Who represents the petitioners?

Mrs. Sowle: And how is that done now?

Mrs. Eriksson: The people getting the signatures have the option of either going back to their original or taking it as amended at any point.

Mrs. Sowle: When you speak of getting a very small number of signatures I tended to think that might be a good idea. After going back and looking at the procedure it makes some sense to me that the petitioners get half of the number of the referendum, whatever that percentage would be, that we might decide on. It makes sense to me that you can get to the legislature with half, but I'm not so sure I'm ready to forgive the other half or have them get the whole 6% or whatever it is first. Here they only have to go half the distance to get it before the legislature.

Mr. Carter: What you're saying is that it makes sense to have the same number of votes for initiative as for a referendum. And whatever we decide eventually, 2% or 10% for referendum. In a referendum presumably the legislative process has had a chance already to be utilized in drawing up a statute so that what you're then saying is that you want the electorate to challenge the General Assembly. Now, in those cases that I looked at, in practically every case the electorate reversed what the General Assembly did. When you get a referendum on the ballot, the people generally reverse what the General Assembly did because there's enough of a public outcry to get it on the ballot that it is probably going to pass. It does seem to me to be some logic to saying that on something that has not been considered by the General Assembly it maybe should be somewhat easier. I think there's an argument there.

Mrs. Sowle: Just testing that you might argue the fact that the General Assembly hasn't enacted such a law doesn't mean that it can't be considered. The fact that all of these people are out petitioning, getting signatures and going through the petition process itself kind of suggests to me that they have probably tested the waters in the General Assembly so I'm not sure that implication is necessarily valid on the one hand the General Assembly has considered it and on the other hand it hasn't.

Mr. Carter: My only point is that circumstances are not necessarily the same.

Mrs. Sowle: Traditionally, haven't the percentages been pretty much the same? Referendum and initiative? The differences in percentages have been between the constitutional amendment on the one hand and the initiative on the other.

Mr. Aalyson: That might suggest that one would require the same percentage either to being the initiative or to cause a referendum. Then it seems to me that if the

legislature fails to pass then there should have to be no further signatures because the same percentage of people have indicated they want to get it on the ballot. Now if the legislature, on the other hand, amends the bill and passes it, perhaps again we could discard the notion of having more signatures but both the original and the amended statute would be put on the ballot and let the electors choose.

Mrs. Eriksson: The only problem is if the amended version is satisfactory to the petitioners they should have an opportunity to withdraw.

Mrs. Sowle: How do they do that?

Mr. Carter: The initiators of petitions are generally the extremists, and I'm not sure they would be representative of most petitioners.

Mrs. Rosenfield: You can't hold an election among the petitioners.

Mr. Carter: I don't think that's practical. I'm not so sure that we shouldn't go back to resubmitting it.

Mrs. Sowle: There are two functions as I see it: one that the most people have to think over what they want submitted to the voters and secondly, that you let this group of people get halfway home to the legislature before they have to go the rest of the way.

Mr. Aalyson: Let a lesser number make the legislature do something and if they won't do it then have the referendum.

Mrs. Sowle: If you have the direct, you don't have any problems. It seems to me if we require 6% initially it would not make as much sense for it even to have to go through the General Assembly.

Mr. Carter: I kind of like the way it is, 3 plus 3%. The other thing we wanted to talk about is making sure we don't run into technical problems on this 90 day business. And really the way we're talking about doing it now - it seems to me we have solved the whole problem - by merely saying that the election can be held at the first general election after the 90 day period has expired.

Mrs. Eriksson: When Mr. Petro was talking about the referendum, you utilize a portion of the 90 days just by mechanics.

Mr. Aalyson: You use up so much of the 90 day period for the mechanics of getting the petition prepared. Would it not be the same petition? If it's the same petition then it's almost nil.

Mrs. Sowle: It might not be the same petition.

Mrs. Eriksson: If you were going to put the amended version on, you would have to redo your petition.

Mrs. Rosenfield: And you don't know until the very last minute.

Mr. Carter: As a practical matter, you would know.

Mrs. Sowle: You would get an inkling along the way.

Mr. Carter: You would have to follow the law as it passed both houses - you'd have a pretty good idea. You could do good preparatory work, by knowing that certain decisions had to be made on certain days. It wouldn't be as bad as it is now.

Mr. Aalyson: I would like to give the petitioners a finite amount of time that they knew they had for certain - an amount of time that would be reasonable to circulate, without having to worry about mechanics.

Mr. Carter: You could go ahead with the petition and then have the election within x days after the petition is filed. They could move as fast or as slowly as they want.

Mrs. Eriksson: But maybe that would be a couple of years before they would get their petition in.

Mrs. Sowle: The problem with this is, if I sign a petition in 1974 and it finally hits the ballot 3 years hence, I may no longer agree. Circumstances change.

Mr. Carter: That's very true.

Mrs. Rosenfield: I have sympathy with the petitioners, having to keep the troops enthusiastic to keep it pushing forward and I am also sympathetic with the groups that may be fighting it - you shouldn't have to fight the same battle forever.

Mrs. Sowle: Maybe the 90 days isn't right.

Mr. Aalyson: I'm not sure that 90 days isn't right as long as the 90 days are available for circulation as opposed to the mechanics of getting things ready.

Mrs. Eriksson: That will be improved somewhat by the new legislation, in that the printing is now in the petitioners' hands and they don't have to wait for the Secretary of State. However, they still have to get the summary approved by the Attorney General. You might put that process in the Constitution and require the Attorney General to perform it in a certain length of time. That's not a constitutional function now at all.

Mrs. Sowle: Or have the time run from the time he certifies.

Mrs. Rosenfield: Or have the time run from the time petitioners are approved and printed. I think that when you have someone other than the Secretary of State responsible for the printing it's not going to be easier, it's going to take longer.

Mrs. Eriksson: One thing they won't have to do any longer is run back and forth to the Secretary of State's office each time they need more petitions or have a new solicitor. If you can identify the amount of time necessary for the Attorney General and for the printing, you could start the 90 days running then.

Mr. Aalyson: Require the Attorney General to certify the date of his approval and then start the 90 days running from that date.

Mrs. Sowle: We might have the Ballot Board brought into this, and have the time run from the time the Ballot Board certifies.

Mr. Carter: That's not a bad idea, because if you have the government dominated by one party, and the Attorney General is opposed to whatever the subject of the

petition is, he may try deliberately to slow down the process. If we use the Ballot Board, we have a lot of restrictions on the way that's structured. We could then fix an amount of time and start the running of the petitioners' 90 days after that. Have the Ballot Board do the summary - and change it so it only has to identify the subject in the summary. I do think, though, that you have to have a copy of that law.

Mrs. Rosenfield: Or require the circulator to have it with him.

Mrs. Sowle: I would want a summary on the petition, too. The identification makes sense on the ballot because hopefully the voter has studied the issue before going to vote. But when you have a petition handed to you, I would want a summary.

Mrs. Rosenfield: I would want both. I think the title should be an identification, but there should also be a summary.

Mrs. Sowle: The summary I would like to see in layman's terms.

Mr. Carter: If we bring the Ballot Board into this, it makes a lot more sense and then that gives us a tie-in date to which we can pet a time for circulation.

Mrs. Sowle: Let the Ballot Board decision be nonreviewable with respect to the summary.

Mrs. Rosenfield: Or take it to court, but directly to the Supreme Court.

Mr. Carter: Use the same procedure we used for the other one.

Mrs. Sowle: And then have the starting date for the signatures run after the Ballot Board is finished. Does that take care of printing time? Should we give a certain amount of time for the mechanics to be taken care of, including printing?

Mrs. Rosenfield: Make it from the time the petitions are printed and approved. Who will approve the petitions?

Mr. Aalyson: Have the summary and the petitions printed and then submit to the Ballot Board for approval. They can say, yes, this is what we said, so there is some assurance that they printed on the petitions what they were told to print.

Mrs. Rosenfield: Otherwise, the whole process could be challenged.

Mrs. Sowle: So have the petitions approved, as printed, and the time run from that time, which takes care of the printing.

Mr. Aalyson: I think I prefer the secretary of state to do the final approval.

It was agreed that petitions would be submitted to the Secretary of State for approval.

Mr. Carter: Do we want to put a limit on the preparation time? If you don't could that be strung out over a long period? Maybe that's ok, because the people doing this are going to be pretty eager to get started.

Mrs. Rosenfield: I can't see the Ballot Board or the Secretary of State purposely

dragging their feet on this thing.

Mrs. Sowle: We ought to have a time limit on the Ballot Board.

Mr. Carter: The same way we handled the other matter.

Mr. Aalyson: If the legislature fails to act within 4 months the petitioners can start their petition and there is no limit but once it gets approved and petitions printed then they have a finite amount of time to circulate. The only nebulous period is between the end of the 4 months and the time they want to get started.

Mrs. Rosenfield: If the legislature has passed an amended version, who will tell the Ballot Board to get started?

Mrs. Eriksson: The initiators will have to tell the Ballot Board whether they want to go ahead, just as the initiators now have to decide what version they want to go on the ballot.

Mrs. Rosenfield: You have these people who go out and get 3% and submit it to the legislature. By the end of April the legislature has passed a version that they consider unsatisfactory. Before they go out and get additional signatures they have to have the form approved by the Secretary of State. They do not want to take out the original form - what if they wanted to take out a slightly different form? They want to include some of the legislative amendments. Do they write up a summary and give it to the Ballot Board?

Mrs. Eriksson: Don't you think they ought to either take the version passed by the General Assembly or the original? If you permit them to take anything they want...

Mr. Aalyson: You're not going to make them be diligent enough when they framed that original proposal. When they file that original, they ought to be pretty sure that it's something they can go with if the legislature does not pass it. If they are not sure and the legislature causes them to stop and think, then I think they ought to have to come in with a new petition.

Mrs. Sowle: I had an impression from reading the memo that if there was an amended version working its way through the General Assembly but it didn't get through they could take that amended version even if it hadn't passed.

Mrs. Eriksson: They can, under the present provisions. They can take the original version or with any amendment or amendments. Do you want to continue to permit them to pick and choose among amendments? Or just take the original version or the amended version if it passes the General Assembly?

Mrs. Sowle: The purpose of the period before the General Assembly is to take advantage of the deliberative process so then why hamstring and say you can't now pick what you think is the best version?

Mr. Carter: I agree. The danger in this is that then you almost are in the position of saying what is an amendment and what is an entirely new proposal. Theoretically, you could have a situation where the legislature passes something not acceptable or does not pass it and then the group says now we are going to amend it and really introduce new material. Of course, if there was abuse of the process perhaps the courts could control it. After seeing what the legislature has considered, they are

not saying "we would like to change our proposition and make it better". The only problem would be abuse by the petitioners.

Mrs. Sowle: Let's say that they really rewrote it so that it was virtually unrecognizable to the people who signed that first time around. So what? They have to get another 3% and they can get to the ballot with that 3%. It may be an abuse in the sense that they are breaking faith with the first 3%, but I don't think it's abuse as far as putting something before the electorate.

Mr. Carter: We could put in here that the subject matter shall be reasonably related to the purpose of the original, and leave it up to the courts. We're talking about legislation by individuals who are working together and they certainly ought to have the opportunity to make changes that they feel are beneficial.

Mr. Aalyson: There is no restriction at present, is there, on using the same or a mixture of the original petitioners and some new ones?

There was discussion about the meaning of the present language and it was agreed that it was not clear whether the same people could sign the second petition.

Mrs. Eriksson: If it has to be different people, who would check and make sure that no one signed both petitions?

Mr. Aalyson: Some circulator might inadvertently get the same person twice. People do not remember whether they signed or not.

Mrs. Eriksson: Another point is that it is not clear whether the initiators have to be the same persons both times. Anybody who can go out and get the second petition circulated.

Mr. Carter: I don't think it should have to be the same persons. If the initial group of 5 persons disagree, two of them might say they want to carry the thing further and the other 3 might say the legislature met my objectives, I think the two should be able to carry on if they get three more with them.

Mrs. Sowle: If five persons go out with one version, will that prevent 5 more persons from taking a different version to the ballot?

Mr. Carter: I don't see why you can't have competition.

Mrs. Sowle: That's what's contemplated by the section saying that whichever gets the highest number of votes will prevail. Because you might have competing versions on the ballot at the same time.

Mrs. Eriksson: Yes, or someone might get out a referendum petition on the version passed by the General Assembly, and someone else might have an initiative going on the original.

Mr. Carter: I'd like to suggest that we have a draft prepared on what we've been talking about even though we haven't settled the big question of whether we should have direct ore ndirect initiative for laws.

Mrs. Sowle: Maybe there is a possible compromise in here on the direct-indirect. Maybe we could provide that if you want to go out and get 6% of the voters to begin with, you can skip the General Assembly. If you only want to get 3%, you

have to present it to the General Assembly first. Have an alternative - one direct and one indirect.

Both Mr. Carter and Mr. Aalyson agreed that it might work well that way.

Mrs. Rosenfield: The indirect then would be providing an alternative which may be easier, rather than making it more difficult.

Mr. Aalyson: And, at the same time, bringing in the deliberative process which I agree may be useful.

Mrs. Sowle: Perhaps in drafting, we could have that as an alternative to look at. Under 1 B, what happens if the governor vetoes a provision passed by the General Assembly? It seemed to me there was no provision for the running of time. That last sentence would not apply to a situation when the General Assembly passes a bill, in which case the governor could veto it.

Mr. Carter: Maybe we ought to say, instead of not passed by the General Assembly in 4 months, does not become law in 4 months.

Mrs. Rosenfield: What if the General Assembly passes it without any change, and they have no grounds for going on because it was their otiginal version, but the governor vetoes it? They have no grounds for going on the ballot because the General Assembly passed it.

Mr. Aalyson: How about, no law enacted in the initiative process is subject to veto?

Mr. Carter: That has some dangers, especially when we get into the amended version.

Mrs. Rosenfield: I think you should change it so that it has to become law. You want them to be able to go on if it's defeated at any stage.

Mr. Carter: If the governor vetoes it, we still would want these people to take their issue to the people. So we need to be concerned not only about the legislature, but about the governor as well.

Mr. Aalyson: If the people get something through the legislature, I don't think the governor should be able to frustrate their purpose.

Mrs. Eriksson: Do you want to extend the last sentence and say that the governor cannot veto a law passed presented to the legislature by initiative petition?

Mr. Carter: I prefer the other way, that it must have become law within the period of time. I'm not so sure the governor shouldn't have the right, especially if the legislature has amended the original version. Then the remedy to the petitioners would be to complete the process.

Mrs. Eriksson: Then I think that 4 months may not be enough time.

Mr. Aalyson: Would six months take care of the problem?

Mrs. Rosenfield: Six months would make it impossible to do the whole thing in a year.

Mr. Carter: I question whether that is very important. Most of the legislation

proposed by initiative petition is really not of an emergency status - more like constitutional amendments. It's hard to visualize an item that has such urgency that it has to go on the ballot right away. If it has that kind of urgency, the governor and the legislature and the people are going to coalesce.

Mr. Aalyson: We could provide that it be put on the ballot at the next general or special election. That way it could get to the May ballot.

Mr. Carter and Mrs. Sowle: I have no objection to that.

Mr. Aalyson: At the next statewide election.

Mrs. Eriksson: Or you could say at a special election and the petitioners would have to designate when that would be.

Mr. Carter: Perhaps we should do that - place the burden on the petitioners. They would have to justify to the people spending $3 million to do it if they picked a special election day that was not a statewide election.

Mrs. Sowle: Craig, how do you feel about the governor vetoing?

Mr. Aalyson: If we have a bill that is passed by the legislature as submitted by the petitioners, I don't think the governor should be able to veto that. We have 2 alternatives, the petitioners can start their supplemental proceedings and if they get it on the ballot and passed I don't think the governor can veto. If the legislature modifies, and the governor wants to veto and the petitioners haven't done anything, what do you do? If the petitioners have not availed themselves of their supplemental procedure, they apparently are happy with the bill as passed. Should the governor be able to second guess them? When the stage has been reached where the petitioners and the legislature and/or the people have decided what they want, the governor should be circumscribed.

Mr. Carter: I have some reservations about proscribing the governor's power to veto, but I am not sure they are sufficient. I'd like to think about it.

Mr. Aalyson: The difference between this and ordinary legislation is that a substantial segment of the population has compelled the legislature to act.

The meeting was adjourned.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
March 6, 1974

Summary

The Elections and Suffrage Committee met at 10:00 a.m. at the Commission offices in the Neil House. Present at the meeting were Mrs. Sowle, Chairman and Messrs. Carter and Aalyson. Mrs. Rosenfield of the League of Women Voters attended, as did staff persons Ann Eriksson and Brenda Avey.

The first item discussed was Section 7 of Article V. Mr. Carter questioned whether the committee should reconsider and mandate that, if delegates are elected, only the presidential choices would appear on the ballot. This would bring it closer to S.J.R. 5. After discussion, it was agreed to have it permissive and leave the matter flexible for the General Assembly.

Mrs. Sowle - Shall we begin to go through the draft of Article II that we were given? The first question would be on Article II, section 1, on your preference for the minimum or maximum drafts of section 1. All agreed that they preferred the "maximum" draft.

Mr. Aalyson - I have one question on Section 1a. If conflicting amendments are approved at the same election, who determines whether amendments are conflicting?

Mrs. Eriksson - The court does.

Mr. Aalyson - I wondered whether it needed to be spelled out whether it's the Supreme Court or whether there will be a regular appellate procedure. Often, it seems as though we would like to reserve a constitutional question to the Supreme Court.

Mrs. Eriksson - That language I transferred to Section 1a from Section 1b, on the assumption that it was better to put everything having to do with constitutional amendments in one section. It is existing language in the Constitution. Now, what has happened in the past, and there have been court decisions, and it's a question of somebody attempting to take some action under the amendment and then somebody saying that the amendment is unconstitutional. Generally the legislature passes a law which someone claims is unconstitutional because it conflicts.

Mr. Aalyson - I think leaving it to the courts is probably a better way than trying to spell it out in the Constitution.

Mr. Carter - We have some repetition and I understood the reason for it because this question comes up in several places. I wondered if it would be better if we couldn't have a general statement that would go in section 1 to cover these conflicts, both for constitutional amendments and for laws.

Mrs. Eriksson - Or, if you want to keep section 1 just a pure statement of principle, then it's possible that you might want to draft a separate section. Just as 1g covers procedures for all three processes, you might want to have a general section of general statements to provide all three processes.

Mr. Carter - That's a question of draftsmanship, not of principle, just organization of the material. I did have a question on this "as required" language that comes up throughout. It leaves me hanging just a little bit.

Mrs. Eriksson - "As herein provided" is bad bill drafting. It could raise questions as to what "herein" means. In this context, "herein" doesn't refer to this section. It has to refer to a later section because there is no requirement for verification in this section. So I took it out, and said "as required". I think, however, it would be better to say "as provided in Section 1g". That is really following the rules of bill drafting.

Mrs. Rosenfield - You would make it a cross reference?

Mrs. Eriksson - Yes. Although for a constitution that doesn't look too good, it looks more like statute.

Mr. Aalyson - I'm in favor, even though it may be poor constitutional draftsmanship of referring to the section. There's nothing like knowing where to go when you read these things.

Mrs. Eriksson - The policy of bill drafting is based on the theory that each section should stand by itself, and if you have to refer to something else, you should do it specifically. It's not usually done in the Constitution, but this is unusual constitutional language anyway, because it really is statutory.

Mrs. Rosenfield - And you're writing a section here that nonprofessional people use, and they really need everything in one place.

Mrs. Sowle - Percentage, I think, will be up in the air until we decide that. Are there any more comments about 1a? "Hereinafter" you don't like.

Mrs. Eriksson - Yes, for the same reasons that "herein" is not good. And there I think we could do the same thing--specify the section. When we get to 1g, we may very well want to write another section, and end up with more sections relating to procedures and details, because that's a very long section.

Mrs. Sowle - You cut out "in any year". And changed the 90 to 120 days.

Mrs. Eriksson - I think you did not specifically discuss it except for the general agreement that we needed more time. But that was the Secretary of State's suggestion, the 120. In a constitutional amendment, you're not bound by a time within which you must get signatures. This is strictly a question of which election is it going to be placed before the voters, once the petitions are filed. If you take out the "in any year", then I don't see any problem at all here with the timing. It may be a whole year away before it gets on the ballot, but I think you agreed that that didn't really matter.

Mr. Carter - Would you agree that it would be worthwhile to try and avoid the duplication by shifting that over into 1g, on the conflicts?

Mrs. Eriksson - Or another section, some section of general statements. I'll see what we can do with that.

Mrs. Sowle - Let's move on to 1b. I suppose the same comments on the "required" apply here. Is the language "as soon as it convenes" language for a time when the General Assembly is in session already?

Mr. Aalyson - We talked about this at the last meeting and my own impression was that it ought to be transmitted to the General Assembly, period. If they're not in session, they're not going to discuss it, but if they come into session, they will, I would think.

Mrs. Sowle - Don't we really mean immediately, or as soon as it convenes if it isn't in session? That isn't good drafting language but isn't that what we mean?

Mr. Aalyson - I think so. I don't know that we need to obligate them to consider it any more than they will already be obligated. I think he should transmit it as soon as he has it.

Mr. Carter - A technical question--if the General Assembly is not in session, can you transmit it to them?

Mrs. Eriksson - Yes, you can transmit it to the clerk, who is always there.

Mr. Carter - Would we need that phrase "as soon as it convenes"?

Mrs. Sowle - Just a period after General Assembly?

Mrs. Eriksson - A period after General Assembly would mean that it would go to the General Assembly immediately. The General Assembly is a continuing body; it's always in existence even though it's not always here. So you transmit it to the General Assembly.

Mr. Aalyson - They're not going to be out of session for very long, and the succeeding language requiring them to act within six months I think is enough.

Mr. Carter - If we go to six months, and considering the realities of the General Assembly meeting today, that we need not get wrapped up in this business of how much time we're giving them.

It was agreed to delete "as soon as it convenes" and insert "immediately" or "forthwith" to make sure that there is no delay in transmittal.

Mrs. Eriksson - If we say that as soon as it's filed it shall be transmitted to the General Assembly, it doesn't give the Secretary of State any time at all to check signatures. In initiative petitions for laws, I don't think the Secretary of State worries about signatures too much, anyway. And basically all the present constitution gives him is ten days which isn't much time. That might be something that perhaps we should ask Jim or Mr. Nichols. They certainly don't have time, in ten days, to send the petitions all out to the counties and get them back to the county board of elections.

Mr. Aalyson - Would the petition and the proposed law be void if the petition did fail for want of proper signatures, and isn't the place to attack that by someone who is opposing the thing, and therefore do we have a problem?

Mrs. Eriksson - I don't know. I think the Secretary of State does at least count them, and make sure there are enough signatures.

Mr. Carter - We have already said here signed by 3% of the electors and verified as required, which presuming again we will indicate the section.

Mrs. Eriksson - But "verified" doesn't refer to the action of the Secretary of State.

Mr. Aalyson - Is he required to authenticate the signatures?

Mrs. Eriksson - No.

Mr. Aalyson - Then if someone is challenging the petition, I believe it would be up to the challenger. I don't believe we need to give the Secretary of State any time to authenticate them.

Mrs. Eriksson - But you do not need some time for someone to challenge, for someone to go in and count the signatures.

Mr. Carter - Of course, that could always be done even after it was submitted to the General Assembly.

Mrs. Eriksson - But once it is submitted to the General Assembly, what is going to be the effect of finding out that there aren't sufficient signatures? Well, of course, then you would just halt the whole process. The people simply would not be able to go ahead with it if the General Assembly did not pass it.

Mr. Carter - What does verified mean?

Mrs. Eriksson - Verified is the affidavit of the solicitor.

Mrs. Rosenfield - What do you call what the board of elections does when they go through and make sure that all those voters are really registered voters?

Mrs. Eriksson - 1g contains all the requirements for how you sign, etc. "The petition and signatures, so verified," and verified here refers to what the solicitor verifies on the petition, "shall be presumed to be in all respects sufficient, unless not later than 40 days it shall be otherwise proved." And then 10 additional days are allowed for more signatures.

Mr. Carter - In the case of this indirect initiative, I don't see that we have a great problem because the legislature is going to be considering that matter, or forgetting about it, as the case might be. It's not like it's going on the ballot and is going to be subject to a court test. If there should turn out to be an insufficient number of signatures, it would seem to me that no great harm is done, it could simply be voided after it had been submitted to the legislature. And then the whole thing would crumble.

Mr. Aalyson - I reiterate my former comment on section 1b. I think the word "is", which appears first in line 4 of section 1b ought to be moved down one line and inserted before the word "filed". It should read, "When a petition signed by three percent of the electors and verified as required, or as provided in section 1g, for example, proposing a law the full text of which is set forth in such petition <u>is</u> filed"

It was so agreed.

Mrs. Sowle - How this sentence about the printing across the top, I see that's an insert.

Mrs. Eriksson - That's language that was at the end of the section that I moved up here because I thought the section was poorly arranged. And I think Dick pointed out at the last meeting that where it is situated now, it doesn't even apply to these petitions.

Mrs. Sowle - Now, the business about "becoming law." Might there be a question about the effective date of a law? When is a law effective, when it's passed or 90 days after?

Mrs. Eriksson - An ordinary law passed by the General Assembly is effective 90 days after. But it <u>becomes law</u> when it's signed by the Governor.

Mr. Carter - I have a problem with the last phrase in that sentence. As I recall, we agreed in our discussion, that when we say 3% of the electors in addition to those signing the original petition we want to be careful we don't infer that it's not additional people.

Mrs. Eriksson - This is a question that we were going to ask Jim.

Mr. Carter - I think we're all agreed that we do not want to say in any way that the same people can't sign the next petition to qualify for the additional 3%.

Mr. Aalyson - By the use of the language "become law" we are intending, are we not, that this shall go through the entire legislative process including the signature of the Governor rather than just through the General Assembly?

Mrs. Eriksson - Yes.

Mrs. Sowle - Are you agreed to that Craig?

Mr. Aalyson - If we are insuring that the people can get this on the ballot irrespective of the General Assembly or Governor's action, then this is what I think we should have.

Mr. Carter - That is my preference.

Mrs. Eriksson - We have said "if it fails to become law." It might fail to become law because the General Assembly didn't act, or because the Governor vetoed it within six months.

Mrs. Sowle - If there's no problem with that, I assume there is no problem either with the change from four to six months.

Mr. Carter - I still don't like that language at the end of that sentence. "in addition to those signing the original petition."

Mrs. Sowle - We really need to know what the Secretary of State says about what it means, and perhaps no matter what he says, then we might decide how to clarify it.

Mr. Carter - I wonder if you just couldn't delete that last phrase.

Mr. Aalyson - That's my preference.

Mrs. Sowle - It would be extremely difficult to find out who has signed the first one when you're collecting signatures on the second.

Mr. Aalyson - It would only be practical, especially if petitions are signed in places such as shopping centers or boards of elections or some other public place.

Mrs. Sowle - I had a question about the language "at the next general election". If it does not become law or if it becomes law in an amended form within six months, "it shall be submitted to the electors at the next general election". Next after what? This almost implies to me that it has to be the next general election after the expiration of the six months, and that's really not what we mean.

Mr. Aalyson - I think we might solve that if we were to have that "if" thing first. If it does not become law and if such submission is demanded by supplementary petition, it shall then be submitted . . . and that solves that problem. In other words two conditions: if it shall not become law or is amended; and if such petition is demanded by supplementary petition, then it shall be submitted by the Secretary of State at the next general election. I think that makes the whole thing hang together and clarifies the matter.

Mrs. Eriksson - Yes, because the next sentence says that the supplementary petition must be signed and filed with the Secretary of State within 90 days after approval of the form.

Mr. Carter - We could make two sentences. In other words, the concept thing--if it does not become law, then the people have the opportunity for supplementary petition. Then to say the supplementary petition must be filed and then go on to say it shall then be submitted to the Secretary of State.

Mrs. Sowle - I'd like to see language like that.

Mr. Carter - Right, put the ideas in the sequence that the events take place.

Mrs. Eriksson - Taking out the "shall be submitted" and put it after the end of the sentence.

Mr. Aalyson - Actually, I think you could do more than that. You could say <u>if</u> it is demanded by supplementary petition verified as required and filed with the Secretary of State within ninety days after . . . . it shall be submitted.

Mrs. Sowle - Our sentence is going to be a very long one, but I think it's the best way to do it. If you don't split it up, you have the advantage of saying, if, and if, and if, then . . . Now when you try to break that up into sentences it becomes a little harder.

Mr. Aalyson - I think it's a fairly simple and clear thing so that a long sentence is not necessarily bad.

Mrs. Sowle - Incorporate that sentence beginning with"the supplementary petition" in that previous portion, too. If it is possible to break it up into more than one sentence, perhaps that is preferable. So long as we have the sequence correct.

Mr. Carter - I'd like to go on to the next sentence, which is a difficult one and deserves review. To what extent do the petitioners have latitude to incorporate in

the second petition new subject matter? As I understand the way this reads now, they are really limited by what they have to start with and they have the freedom to incorporate only those amendments that are passed by either house. Is that right? I was concerned about the language "may have been incorporated therein by either branch". Does that mean that it passed either house?

Mrs. Eriksson - It's interpreted to mean that they could pick up amendments that are recommended by a committee of either house. Because an amendment is deemed incorporated in a bill as soon as the committee members incorporate it, and accepts the committee report.

Mr. Aalyson - Does it include the right of the petitioners to put an amendment of their own in?

Mrs. Eriksson - No.

Mr. Aalyson - And shouldn't it, especially if that amendment is something which embodies a legislative amendment but in some modified form?

Mr. Carter - The discussion the last time was that it does raise the question as to what extent they can incorporate new material. There was some concern as to who should determine whether the amendments were pertinent to the initial petition. Theoretically, what could happen, you could have someone initiate a petition with 3%, go through this procedure, and then essentially put in a new petition with 3% after the legislature acts. And we then raised the question that maybe they could not.

Mrs. Eriksson - Under the present language they could not.

Mr. Aalyson - We talked about permitting them to modify so long as it relates to the purpose of the original petition.

Mrs. Rosenfield - The idea of the things having to be germane to the issue is certainly not a difficult concept. Legislatures deal with this all the time. You do have a court and you can always challenge it through the courts if it is not germane.

Mr. Carter - That's really what it would boil down to. Someone has to make that decision is it germane or not, even though we say it should be germane. The question is is it or is it not. I guess the only recourse we would have would be to the courts to make that determination. And I'm not sure that's all bad. I think that's a substantive question.

Mrs. Sowle - We don't have that problem with the present language. The question would be if we wanted to free this up so that those carrying the supplementary petitions might want to go even beyond this, that's our question.

Mr. Aalyson - It seems to me that if the supplemental petitioners want to make a major modification, they ought to have to start over, and therefore we should be restrictive. If they come in with something new, they ought to start over.

Mr. Carter - Yes.

Mrs. Rosenfield - But if you are restricting them, they can only consider amendments

that were proposed by somebody that got through a committee. Does this mean they have to take or leave them exactly that way?

Mrs. Eriksson - I think that's what this language means.

Mr. Aalyson - Or stick with the original petition, or discard it.

Mrs. Eriksson - That would mean that they would have to be very careful on original drafting, and maybe that's good.

Mr. Carter - I would be willing to accept it as it is.

Mr. Aalyson - Is "petitioned for" good grammar? I was going to say, which form shall be as in the original petition or . . .

Mrs. Sowle - That would do it.

Mr. Carter - How about if you take out the words "which form shall be"?

Mrs. Sowle - "Such supplementary petition either as first petitioned or" . . .

Mrs. Eriksson - Or you could say either "as first proposed." If you look up here you see that we have said that a petition proposes a law.

It was so agreed.

Mr. Carter - Do we need that phrase "or by both branches"? I thought that was redundant.

Mrs. Rosenfield - If you've done both you've obviously done either in the process.

Mr. Aalyson - Which opens the question of whether some court might say it has to be by either and it can't be by both.

Mrs. Eriksson - I'd be inclined to leave "by both" in. If you take that out, someone might think that you couldn't put it up as finally passed by the General Assembly.

Mr. Carter - Is "branch" a right word?

Mrs. Eriksson - "House" would be better.

It was so agreed.

Mrs. Eriksson - I missed one thing that the Secretary of State had proposed. He was proposing in this section, as well as in the other section, that the election occur not sooner than 120 days after the filing of the supplementary petition. The 120 days is the period of time after the petition is filed "it shall be submitted by the Secretary of State at the next general election or at a special election occurring subsequent to 120 days after the filing of the petition." The way this reads it has to go on at the next general election.

Mrs. Sowle - It might be quite impossible, so he ought to have some time.

Mr. Aalyson - Why do we need to make it available to the petitioners to submit by

supplemental petition a proposed law which embodies all of the amendments which have been incorporated by the General Assembly? It seems we're permitting a supplemental petition to propose to the electors a previous proposal that the General Assembly has amended and with which the petitioners might be satisfied. It seems to me as though the language which we have here now permits a supplemental petition to put on the ballot something even though everybody is pleased.

Mrs. Sowle - Then why would they do it?

Mr. Aalyson - The General Assembly passes a law in an amended form with which the original people are pleased.

Mrs. Eriksson - But somebody else might be displeased, and they could put it on the ballot.

Mr. Aalyson - If they could, okay.

Mrs. Sowle - Then, too, it would be subject to referendum, if they weren't pleased, and that supplementary petition will take them only three percent of the votes whereas the referendum would take them six percent, am I right?

Mrs. Eriksson - That's right.

Mrs. Sowle - So they could challenge this amended version of their original petition with only 3%.

Mr. Aalyson - Which I don't think is what we intended originally.

Mrs. Eriksson - How are you going to write into the Constitution anything about whether some of the original people are pleased and some of them not? This would permit anyone who was displeased to come in with a 3% petition but if the movers are pleased, they don't have to do anything.

Mr. Aalyson - My question is that you're getting 3% of the voters who can perhaps avoid the legislative review in an indirect initiative.

Mr. Carter - Not really because it's already had the legislative review.

Mr. Aalyson - But they could change it . . .

Mr. Carter - Only to the extent that the legislature had at least recommended amendments by the incorporation language, so it's limited as to what they can do.

Mrs. Eriksson - If it becomes law in its original form then nobody's got any rights.

Mr. Aalyson - Good enough.

Mr. Carter - I want to raise the question of whether we need the language " and such amended law passed by the General Assembly shall not go into effect until and unless the law proposed by supplementary petition is rejected by the electors." First I see a procedural problem, I think, and that is that the law passed goes into effect in 90 days, unless they pass it as an emergency in which case it could go into effect immediately, then you could have the situation where a number of months go by, the

supplementary petition is qualified and is filed, and now you say the law shall not go into effect. Does that in effect mean that it would be in effect for 3 or 4 months, and then when the petition is filed it goes out of effect. You see my problem. In other words, if it goes into effect by the action of the General Assembly, and then when something happens to the petition then it cannot go into effect. So it's in effect for a while, and then it would have to be pulled out by this clause. What I'm wondering is if we simply couldn't delete this last clause without injury to the concept of the petition. If it is passed by the voters it of course takes precedence over what the General Assembly had done.

Mrs. Sowle - That's true. And if the earlier law passed by the General Assembly conflicted with that to that extent, it would be void, I assume. Wouldn't it Ann?

Mrs. Eriksson - Yes.

Mrs. Sowle - If the petition is filed within the 90 days, then would that amended law passed by the General Assembly go into effect without this language?

Mr. Carter - Yes, it would, and even with the language it would go into effect for a while while this process is all taking place.

Mrs. Sowle - What effect does the first part of that sentence have?

Mr. Carter - It has a great deal of effect.

Mrs. Sowle - It shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which has been passed by the General Assembly so that says the same thing as the second part.

Mr. Carter - The only thing it wouldn't mean is that a law passed by the General Assembly could be in effect for a short time until the voters had the opportunity to act. I have no problems with that.

Mrs. Sowle - That makes good sense to me.

Mrs. Eriksson - So you're proposing to delete the whole latter part of that sentence beginning "and such amended law passed by the General Assembly."

Mr. Carter - Why don't we just delete it tentatively until you've had a chance to see if we're doing something that is unintended. But the concept of saying that the law passed by the General Assembly is in effect until the voters have had a chance to act on it is consistent with the whole idea of the referendum and action of the voters. I think you would have chaos if you didn't have this.

Mrs. Sowle - If the General Assembly passes an amended version that the petitioners don't like, normally when would that go into effect?

Mrs. Eriksson - Within 90 days, unless passed as an emergency.

Mrs. Sowle - And how long do they have to file their petitions?

Mr. Carter - Ninety days after the six months.

Mr. Aalyson - The thing that bothers me about eliminating the section is that this type of law is a law which has not been proposed by the General Assembly and if passed in amended form which takes effect while the supplemental petition is being sought, it might have the effect of binding someone who is against it and who is instrumental in getting the supplemental petition. There is a period in there where someone might be bound by the law that is then in existence and he didn't want to be bound, and that's why he's after the supplemental petition.

Mr. Carter - But again, that's consistent with the whole idea of the referendum.

Mr. Aalyson - Except that the law as proposed was not the legislature's idea to begin with, and someone who is trying to achieve a certain position may be bound to a position to which he did not want to become bound simply because he initiated the process. It may be very, very unfair.

Mr. Carter - That can happen the way the language is now.

Mrs. Sowle - Let me ask the purpose of the 90 days before the law becomes effective. Isn't that in order to permit referendum? Then it seems to me that there is a logical pattern to this. If that's true, that 90 day period must contemplate that action will be taken within 90 days to hold up operation of the law in case they want referendum.

Mrs. Eriksson - There is a 90 day period here for getting signatures too. The same as for a referendum.

Mrs. Sowle - But where we put the delay is, that their 90 days does not start to run at the time that bill becomes law.

Mrs. Eriksson - In a referendum, no law takes effect for 90 days except an emergency, and of course an emergency law, you can't have a referendum, that's the point of the emergency measure, under the present provision. But an ordinary law doesn't take effect for 90 days. Then the section says that if in that 90 day period somebody files a petition, the law doesn't take effect until the people vote on it. And I think that's the same thing they're trying to say here.

Mr. Aalyson - I was recently involved in a case where the Supreme Court decision had the effect of changing the law, and the legislature at the next opportunity then changed the law to avoid the Supreme Court decision, and some people who were caught between the date of the Supreme Court decision and the change of the law, it had a disastrous effect upon them. Because there was, in effect, a new law, which operated as to them within a brief period and they got stuck. I think this provision that we're talking about eliminating is an attempt to avoid that consequence.

Mr. Carter - But I don't think it does it.

Mr. Aalyson - If it doesn't then we ought to change it. I don't think we should just eliminate it and permit a law to become effective for a few months which might bind somebody with disastrous consequences because it did occur during that few month period.

Mrs. Rosenfield - I could think of cases where something is a criminal case between now and and it isn't before and it isn't after, but you broke the law during that two-month period, and then you are in trouble because in the short period of time

that it was a criminal act is when you got caught.

Mr. Carter - First of all, if the General Assembly passes this law, we have only said that the supplementary petition must be filed within 90 days after the period of six months. Now, let's suppose the General Assembly passes this within four months so that you now have five months to get your petition. So there is a time even with this language that it would be effective. Now I think the way we could straighten this out would be to say "if the supplementary petition must be signed and filed with the Secretary of State within 90 days following the term of six months or passage of the bill whichever occurs earlier. "

Mrs. Eriksson - But then you've got the question of the Governor's possible veto.

Mr. Carter - That's right.

Mrs. Eriksson - Another way to do it would be to say that any law passed by the General Assembly that was submitted by initiative petition doesn't take effect until 90 days after the 6 month period. That makes a different effective date for this one particular kind of law.

Mr. Carter - I think that would be the best way of doing it. Then the whole thing tracks and then we could stick with this last clause to protect this situation we've been describing.

Mr. Aalyson - Then do we need the last thing if we provide that it cannot become effective?

Mr. Carter - Yes, because now you got the time between the 90 days and the election.

Mrs. Eriksson - This will work just like a referendum, then.

Mrs. Sowle - As a practical matter, when we present this, if and when we present this proposal to the Commission and to the General Assembly are they going to say "90 days after 6 months, that's a long time"?

Mrs. Eriksson - But on the other hand, can it be an emergency if, after all, it's an initiated petition? If the General Assembly wants to pass this law as an emergency all somebody's got to do is introduce another bill. The General Assembly can pass exactly the same thing in a month if they want to by having another bill. You're only dealing with one particular kind of bill, that has been introduced as a result of the initiative petition.

Mr. Carter - So we don't tie the legislative hands.

Mrs. Eriksson - If they want to deal with that subject matter they can.

Mr. Aalyson - Even if they agree that the subject of the initiative petition ought to go quickly, some member can introduce it as another bill.

Mrs. Sowle - So then we get right back to the thing we're trying to prevent is possible anyway.

Mr. Carter - Yes, so in essence all this business is surplusage except for the psychological effect on the legislature.

Mrs. Sowle - Now, we have another aspect of the same kind of consideration. It says, then, any proposed law submitted to the electors approved by a majority of the electors shall take effect 30 days after the election. How that's an exception to the 90 days that would apply if passed by the General Assembly and this is simply going to apply sooner and there is no problem with it.

Mr. Aalyson - I wondered why it didn't become effective immediately, and in the course of consideration I came up with a reason, but I can't remember it.

Mr. Carter - Perhaps to give people time to adjust to the new law, if it's a traffic speed change, to change the signs.

Mrs. Rosenfield - I think you need a month in case it involves some kind of administrative change.

Mr. Aalyson - The next sentence is about conflicting proposed laws and I guess we've laid that to rest.

Mrs. Sowle - And then we retained the business about the Governor's veto.

Mr. Carter - Suppose that you have conflicting things on the ballot, one of which is a constitutional amendment and one is a law. You could theoretically pass a constitutional amendment that would make a law conflicting. I would think that the constitutional amendment would always control.

The committee broke for lunch and reconvened at 1:00. Mr. Nichols of the Secretary of State's office joined the committee for the afternoon's discussion. Section . . . . of Article II, the new section, was viewed favorably by the committee. Mr. Aalyson felt that the matter of a percentage of signers as opposed to a fixed number had not yet been resolved. Mr. Carter agreed and said that these drafts were not final but were a device to visualize areas of agreement.

Mrs. Sowle - Perhaps we ought to back up for a while and discuss questions we have for Mr. Nichols that we thought of at this morning's discussion.

Mrs. Eriksson - If we keep the indirect requiring a certain percentage to propose the law to the General Assembly and then another percentage to get the law on the ballot, if the General Assembly didn't act. The present language in that section reads, talking about the supplementary petition, "signed by not less than 3% of the electors in addition to those signing the original petition". What is you interpretation of that "in addition to" is? Do you conceive that to mean that the same person cannot sign both petitions?

Mr. Nichols - Yes, I think that's the only meaning it could have. When it comes to our office, and it's referred to the board of elections, that's part of the instructions given--that a comparison has to be made to see to it that the signers are different than those who signed it in the first place. It's an administrative problem.

Mrs. Eriksson - How can it possibly be accomplished? I don't see how it can be because of the time limit.

Mr. Nichols - This is one of the features of the present system that is undesirable because it is highly impossible to literally carry out the mandate of the section.

Mr. Carter - Assuming that we chose to continue the indirect initiative, if we were to delete that phrase, "in addition to those signing the original petition", would that eliminate this problem altogether?

Mr. Nichola - I think it would. I think the main thing that we've been concerned with is the timing. The phrasing of the ballot question of course, our position was that it should be handled by the ballot board the same as with amendments proposed by the General Assembly and I don't think that causes any problems. Our second main concern was that we be able to get the ballot language firmed up by the same kind of deadline as you have for an amendment proposed by the General Assembly and that would mean that you couldn't continue with the present system which can result in having an issue still hanging in the fire right down to about 40 days before the election. We want to eliminate that kind of a situation and I think that's the primary reason why we proposed dropping the second step. Because we felt that that was a handy way of eliminating the problem of running the issue up to 40 days before the election.

Mr. Carter - Suppose those problems were all straightened out. Does the Secretary of State have any strong feelings about eliminating the indirect initiative as a matter of principle?

Mr. Nichols - It's my impression that he would be neutral on it. It's not something he feels is an essential ingredient in a change in the section, nor is it something that he would actively oppose. He probably would only take a position on those portions that he feels are an essential part and that's addressing the administrative problems.

Mrs. Sowle - We had a couple of questions on the proposal on Article II, section 1b. We were discussing requiring the Secretary of State "forthwith", or a word to that effect, to transmit to the General Assembly, and eliminating the language "as soon as it convenes" because the General Assembly might well be in session at the time. And even if it isn't it could be transmitted to the General Assembly. But we wanted to know does the Secretary of State need some time there? Is the Secretary of State obligated to perform any function at that stage?

Mrs. Eriksson - Under the present Constitution, all you have is 10 days in there, which is really not time, it seems to me, for any signature checking.

Mr. Nichols - Right.

Mrs. Eriksson - Do you do anything to those petitions, or are you required to do anything to those petitions before you transmit it to the General Assembly?

Mr. Nichols - I don't think that it's really clear in the Constitution that it has to be done at that stage. When the thing goes before the General Assembly and the General Assembly failed to take action on it, and then petitions were gathered for the other 3%, then I think at that point you would need to do the petition checking for both them. I don't see any requirement in here that the petition checking should be done at that stage. I think that the 10 day provision makes it impossible really.

Mrs. Sowle - So if we put in some requirement about transmitting it at once, that wouldn't handicap the Secretary of State's operation, would it?

Mr. Nichols - I don't think it would, it's just that for the legislature's purpose they would have to assume that what appeared on the face of the petitions was in fact the 3% requirement and that presumption would stand until it was proved otherwise.

Mrs. Sowle - That answers our question, then. And you don't think that the Secretary of State would have any objections to our deleting the phrase "in addition to those signing the original petition"? It would certainly make your procedures less burdensome.

Mr. Nichols - It would make it less burdensome, and that precise point hasn't been discussed with him but I wouldn't foresee any objections we would have.

Mr. Carter - Based on his whole philosophy.

Mr. Aalyson - We felt that the chances of it being identically the same 3% was nil. You just don't get signatures that way, and so essentially there would be a good many duplications.

Mr. Nichols - There is inevitably going to be some duplication.

Mr. Carter - And that doesn't bother us particularly.

Mr. Nichols - No, that doesn't. Under the present system, that would invalidate some signatures but not the petition papers. And so I don't think it could cause any problems and it would simplify procedural matters if that phrase were deleted.

Mrs. Sowle - We're on the last page of the initiative and referendum drafts.

Mr. Carter - We talked about changing all those long words in the first sentence to "a summary of any initiative or referendum petition," and then the question came up, at least in my mind, whether we were satisfied with the use of the word "summary" and whether we shouldn't recognize this problem of identification of the issue on the petition?

Mrs. Eriksson - Don't you need both?

Mr. Carter - Yes, I think you need both, but that's my point. You know that we have the problem with the summary that the Secretary of State's pointed out to us. When you talk about a summary you get into all kinds of legal problems. And so, for legislative amendments, we used the language that the ballot question shall properly identify the substance of the proposal to be voted on. Now it seems to me the same thing is true in these petitions, and what we really want to do is to identify the substance, and we want to have a summary that is in English, hopefully, and that's where the ballot board comes in, and then the third thing, as Craig pointed out, is to have a full text, so that someone who is interested in seeing the realities of the situation for himself will have that available to him. Now that's the thrust of the discussion I thought we had at our last committee meeting.

Mrs. Sowle - Could we say shall prepare a title and summary, and then go on to say that the title shall identify . . .

Mr. Carter - Something of that sort would be good. I have some reluctance on this word "title" because I don't know what it means. It gets involved with titles of bills.

Mrs. Eriksson - That's right, and you see that's in a referendum. What Mr. Petro had was a referendum petition, and, of course, the title was the title of the bill that was being referred. So you really don't want to tell the ballot board to reword that because that's something that is passed by the General Assembly.

Mrs. Sowle - So title isn't the word we want.

Mr. Aalyson - What's the purpose of the summary and is there a difference between the summary and an explanatory title?

Mrs. Rosenfield - A title is a dozen words at most. A summary is a short paragraph.

Mr. Aalyson - Doing what? Amplifying upon the descriptive title?

Mrs. Rosenfield - For example, the ballot board. The title of this to me is to provide for a ballot board. The summary is something to the effect that this would provide for a board to explain ballot language and provides deadlines for challenges. Then the full text gives you everything you want. But this to me is the difference. But I don't think that the legal thing where it says "proposal to amend Article IV, Section 13" means anything to anyone.

Mr. Aalyson - Well, then we want an explanatory title rather than an official title. These are semantic problems more than anything else.

Mrs. Rosenfield - If you can remove the technical parts of it, that's what I want. From the several suggestions offered, the committee selected "identifying caption and summary explanation."

Mrs. Sowle - A problem I have is with the last sentence. If the Secretary of State was to make the certification and then they were to have the petition printed. It was my impression from our conversation at the last meeting that the certification was to be made after the petitions were printed.

Mrs. Eriksson - Yes, it was difficult to figure out how this would actually work, because there were two concerns. One was that the petition as printed should be certified, so that there would be no question that what the people put on that petition was what the Ballot Board told them to. The second thing was that the people should have a fixed number of days to get signatures. That would have to exclude the time for printing petitions because I don't know how we can estimate that. We can give the Ballot Board 15 days or 2 weeks to do its thing but I don't see how we can possibly say the amount of time it's going to take to get the petitions printed.

Mrs. Sowle - I thought that by having the Secretary of State certify after the printing of the petition, that way their time began to run then and their printing time wouldn't be counted in.

Mr. Aalyson - The problem with that is what if he has it printed and it's not right.

Mrs. Eriksson - Then they've spent maybe a couple thousand dollars getting petitions printed that aren't correct.

Mrs. Sowle - It says the Secretary of State shall certify a petition as to whether it is in proper form.

Mr. Aalyson - How about, if the Secretary of State finds that the proposed petition is in proper form?

Mrs. Eriksson - Well, it is a petition, though, when it's filed.

Mr. Carter - What you really want to say, I don't know whether you'd want to use these words, is that the Secretary of State approves the proof.

Mrs. Rosenfield - What he does is he gives preliminary approval to the proof and then he just runs over the final printed one to make sure they didn't change it at the printers.

Mr. Aalyson - It says that the Secretary of State shall examine the petition. What does petition mean? Does it mean a signed document or does it mean a piece of paper that says petition at the top?

Mrs. Rosenfield - It means a printed document, not signed, I don't think.

Mr. Nichols - I suppose you can use the term in either context.

Mrs. Sowle - It used to be that the Secretary of State printed them, and under the new legislation he doesn't. Does he nevertheless have to approve the final printed form?

Mrs. Eriksson - No.

Mr. Aalyson - Why are we having the petitioners print as opposed to the Secretary of State?

Mrs. Eriksson - Because the Secretary of State wants to get out of the printing business, for one thing.

Mrs. Sowle - Mr. Petro said about every time they had a few new people who would circulate they had to run to Columbus.

Mrs. Rosenfield - Well you could still have him print it, and then they could take charge once they were printed.

Mr. Nichols - It's a time factor for the circulators and also it's a personnel problem for the office. When these issues come in you've got to hire additional temporary personnel. And the circulators have to wait until these people have the papers prepared for them.

Mrs. Eriksson - And the petitioners have to pay for the printing of the petition anyway, so maybe they can get it done, or maybe they think they can get it done, cheaper and faster.

Mr. Carter - Let's see if we can identify the steps that are going to be taken. The first thing is that the petitioners are going to have to come to the Ohio Ballot Board with their proposal. Step 2 is that the Ohio Ballot Board is going to have to do its job with the language.

Mrs. Sowle - Which the Attorney General now does.

Mr. Carter - The next step is that this has to be returned to the Secretary of State and to the petitioners. Now then, it's up to the petitioners to prepare their formal petition.

Mr. Aalyson - In the form of the petition they want to use. I think then the Secretary of State should approve that, it should then be printed by them in precisely the same form as approved by the Secretary of State.

Mr. Carter - I see no reason why it would have to go back to the Secretary of State because it would be the petitioners' responsibility to make sure that that petition was in the form that was approved by the Secretary of State.

Mrs. Rosenfield - I see that getting a final approval really is a protection for the petitioners.

Mr. Carter - Yes, and I don't think that need be the case.

Mrs. Sowle - I agree with you.

Mr. Carter - It seems to me that if we give them 90 days from the time the ballot board gives the petitioners all the information they need, they have the burden of getting the petition filed in the 90 says. They have the printing under their control. Perhaps it should be more than 90 days, but from that time forward everything is in the control of the petitioners.

Mrs. Rosenfield - I really think they need 90 days to gather those signatures.

Mr. Carter - There's another significant date--the date the Secretary of State approves the form of the petition. We have two Secretary of State acts and I'm proposing to eliminate the second one altogether. The first thing is that the petitioners come to the Ballot Board with a proposal. The Ballot Board does its job. Then it delivers the information to the Secretary of State. And it ought to be required to deliver the required language also to the petitioners. Then the petitioners would have to prepare the form of their petition. And submit that to the Secretary of State's office for approval. He certifies that it is o.k.

Mr. Aalyson - Then it has to be printed in the form identical to that certified by the Secretary of State and then the time begins to run. That's OK, unless you want to extend the 90 days to 100 to give them time for printing.

Mrs. Eriksson - Mr. Petro said that it took about two weeks to get it through the Attorney General and about three weeks to get it printed. That printing was done by the Secretary of State.

Mr. Carter - Is there any problem starting the 90 days when the petitions are available to the petitioners?

Mr. Aalyson - None whatever.

Mr. Carter - The problem is defining when that date is. Conceptually, there is no problem.

Mr. Nichols - If you have to do the printing in that 90 days, you are eating up a large block of that time.

Mr. Carter - What we could do is require them to file a copy of the final form of the petition with the Secretary of State and have the time run from the time they file; don't require any action on the part of the Secretary of State.

Mr. Aalyson - It would then be available for comparison and if it was not proper, it could be challenged on those grounds. The Secretary of State would not have the burden of examining and certifying the final form.

The committee then proceeded to a discussion of other points in the Secretary of State's draft, including a definition of "electors" in each section--those who voted for Governor in the preceding election.

It was noted that this may not be necessary since it is so defined in section 1g.

Mrs. Sowle - We have to conform section 1c (referendum) to insure that the 90 day period begins to run at the right time.

Mr. Nichols - The fact that a bill goes into effect 90 days after it becomes law is what governs.

Mrs. Sowle - We have discussed changing that time for the indirect initiative.

Mr. Nichols - I think you would not get it through the legislature if you proposed making an effective date more than 90 days.

Mrs. Eriksson - Is there anything wrong with having a law passed by the General Assembly take effect even though it still might be placed on the ballot by referendum? This is the 90-day period that Mr. Petro was complaining about. It included his summary and his printing.

Mr. Carter - Haven't we solved many of his problems by the legislation that was passed? I find it reasonable to have a shorter time for a referendum than for an initiative. Referendum is on something already through the legislative process.

Mr. Nichols - It is so difficult to get such a large number of signatures in so short a time, especially if the summary and printing time come off the 90 days, and realizing that legislation shouldn't be delayed longer than 90 days, we chose instead to propose reducing the number of signatures required from 6% to 4%. We thought that might be a better approach than extending the number of days.

Mrs. Eriksson - An alternate would be to keep the 90 days but still make it possible to go ahead with a referendum petition. Have the time run the same as for an initiative.

Mrs. Sowle - Then you would have the result that a law might be in effect for a period of time and still be placed before the voters.

Mr. Aalyson - I don't have a problem with this one because if the General Assembly has done it of its own initiative, fine. The other one--I found somebody boxed in by the fact that the matter was started by him or by somebody else and the General Assembly amended it and then somebody gets trapped by the amendment which might only be in effect a short time.

Mrs. Rosenfield - The fact that you could have a law in effect for only a month and then, in effect, have it repealed--somebody still gets caught in that month. The legislature could make smoking marijuana a capital crime, or something like that, and then the law is in effect only a month and then somebody gets referendum petitions filed, but someone gets caught in that month.

Mr. Aalyson - But he is caught with knowledge--he has violated a law passed by the General Assembly that was initiated by the General Assembly as opposed to something brought up by initiative.

Mrs. Eriksson - And he has 90 days from the date of passage until that law becomes effective to learn about it.

Mr. Nichols - If a law could go into effect and still have the referendum procedure apply, it seems to me there is no reason to wait 90 days for any law to go into effect. Why not have most legislation go into effect immediately, or in 30 days?

Mrs. Eriksson - There is a wide variety among the states about when laws go into effect.

Mrs. Avey - You could stop the law going into effect if 1/2 or 3/4 of the signatures are filed in the 90 days and then give some extra days for the additional signatures.

Mrs. Sowle - Have we improved their situation any by specifying that the Ballot Board must do its job in 15 days? Probably not, because that's how long Mr. Petro said it took them to get the summary approved by the Attorney General anyway.

Mrs. Eriksson - If you did have laws go into effect immediately, you would eliminate many problems of effective dates, but you would also eliminate the emergency problem, and the necessity for the General Assembly to attach emergency clauses in situations other than the stated purposes of the public peace, health or safety.

Mr. Carter - And the courts won't get into that.

Mrs. Eriksson - The Ohio General Assembly does not use the emergency clause as frequently as some state legislatures.

Mrs. Sowle - Our city council does it all the time.

Mr. Aalyson - Does the history of the provision show that the 90-day period was set up with the idea that they didn't want the law to go into effect at all if there were a referendum?

Mrs. Eriksson - I think so. To delay it until the people voted on it.

Mr. Aalyson - To prevent the law from being effective until the people had an opportunity to file a referendum.

Mrs. Sowle - I have a problem with the idea of laws going into immediate effect. A law may require a lot of administrative work and a lot of changes before it can be put into effect.

Mrs. Eriksson - That's true, but this problem can also occur in legislation regardless of what period of time you use. It occurs in tax legislation or budget legislation

or any legislation where a particular date, such as January 1 or July 1 or October 1 is important. In those instances the General Assembly usually writes the appropriate date into the legislation.

Mr. Nichols - Even then, it is sometimes impossible to get the preliminary work done before the bill goes into effect. For example, the ethics law took effect January 1. By its terms, boards of elections were to make the financial disclosure form available to candidates when they obtained their petitions. But candidates obtained their petitions, circulated them and filed them before the forms were even available, because the commission wasn't appointed until after the first of January. But the bill had been passed before 90 days before it went into effect on January 1.

Mrs. Eriksson - And the Governor couldn't even legally make the appointments before then.

Mr. Nichols - It should have gone into effect right after it was passed if it was to go into effect this year.

Mrs. Sowle - What kind of a problem is this to petitioners in general? We heard from Mr. Petro. Are his problems typical? Is it extremely hard to get 6% of the signatures in 90 days? Is this typical or are there many groups that do succeed?

Mr. Nichols - I think he is typical. You can look at the record on how many referendum issues we've had--the last one, I think, was 1939. We've had some initiative issues since then but they have not been confined to the same time period. And they only need to get 3% in the 90 days.

Mrs. Sowle - Do you know how many have tried?

Mr. Nichols - No.

Mr. Aalyson - He indicated that only part of his problem was getting the 6%; the other was getting the petitions so that they could start getting signatures in that time period.

Mr. Carter - I really think the best solution is to go along with the Secretary of State and reduce the 6% to 4%. I see no chance of changing the 90-day period.

Mr. Aalyson - But Mr. Petro's real problem was not getting the number signed as having the time available after you've diminished it by the summary and whatnot.

Mr. Carter - Some of the "whatnot" is taken out by the new bill. The business of coming down to the Secretary of State's office and getting petitions each time they had a new circulator.

Mrs. Eriksson - We haven't done anything to alleviate the time it took to do the initial printing. The time necessary for the summary we are keeping essentially the same, and it will still come out of the 90 days. The new bill will eliminate the necessity to run back and forth to pick up petitions and get them to circulators. The people will have their own petitions printed and will have custody of them. When they get a call from someone willing to circulate they will simply mail him some petitions.

Mrs. Rosenfield - How close did they come to getting enough signatures?

Mrs. Eriksson - They didn't get even half.

Mrs. Rosenfield - If they didn't get half, and the number needed is reduced to 2/3, and they have control of their own petitions, perhaps we are giving them a fighting chance.

Mrs. Sowle - In my opinion, you ought to have a widespread feeling that the law is wrong. It will take a lot less time because you will have more people willing to circulate and sign petitions.

Mrs. Rosenfield - It still takes time, mechanically, to get signatures. Especially if you go from door to door.

Mr. Nichols - The time factor can be illustrated by the fact that people called our office from parts of the state remote from Elyria wanting to know what they could do to get the referendum issue going. And they were informed that there was already a group circulating referendum petitions, and we would provide the names and addresses of the people involved. But then they would have to contact them, and maybe they would find out that they didn't have any petitions available to them yet, and by the time they had petitions available to give them, the time was gone for circulating. So, you can't really minimize this problem that was eliminated by the legislation about having to wait for petitions to be made available from Columbus. I think they could have responded very immediately to those kinds of requests, and probably could have had a more widely circulated petition going.

Mr. Carter - That makes me feel more strongly that we should not make any major changes in the time.

There was general agreement.

Mrs. Sowle - How do you feel about the 4%?

Mr. Aalyson - I don't know that I have any objection to that.

Mr. Carter - Again, we are still going to reserve the question of the numbers and the percentages until later. Another problem in "c" is the use of the words "herein provided".

Mrs. Eriksson - I'll do some redrafting there. Also, I'm sure the Secretary of State is proposing to change the 60 days to 120 days.

Mr. Nichols - Yes.

Mrs. Eriksson - Section 1d is the things that are not subject to referendum. Do you want to continue the emergency provisions?

Mrs. Rosenfield - I had two questions on that section. One is in the first paragraph, "such emergency laws upon a yea and nay vote must receive the vote of 2/3 of all the members elected to each branch of the General Assembly." What about the ones who are appointed by their party? Are they legally called elected?

Mrs. Eriksson - Yes, they are now. That's one of the things we corrected in the proposal that was passed last May.

Mrs. Sowle - We're back to the word "branch" again. Change "branch" to House.

Mr. Carter - Why do you have that phrase in there at all, "elected to"? Why not just say "all members of each house of the General Assembly".

Mrs. Eriksson - That expression is used throughout the Constitution.

Mr. Aalyson - Is anybody bothered by the fact that the General Assembly can label as an emergency measure any measure if they choose to do so?

Mr. Carter - Yes, but what can be done about it?

Mr. Aalyson - It says that they shall state the reasons for such necessity. Reasons for such necessity are often stated as conclusions and I'm wondering if we should insert in there, "the reasons for and explanation of". They not only have to give the reason which is their conclusion but how they reached it.

Mr. Carter - If you don't have a court challenge, it's an exercise in futility.

Mr. Aalyson - If you had that language you might have a court challenge, is what I'm getting to.

Mrs. Sowle - I think the legislature ought to control its own procedures and ought to be its own judge of its own activities.

Mrs. Rosenfield - Under the section where it says these laws are not subject to referendum, of course, the initiative can be used to adopt, amend, or repeal any of them. Why didn't the anti-income tax people use these?

Mrs. Eriksson - If they wanted to get it on the ballot right away, the only way they could do it was by constitutional amendment because they couldn't have a referendum. But you could have an initiated initiative to repeal a tax. However, it would have to go to the legislature first.

Mr. Carter - There was another thing. Not only did they want to defeat this legislation, they wanted to make it impossible so it couldn't be done again.

Mrs. Sowle - Let's go on to section 1e.

Mr. Carter - I agree that section 1e should be repealed as superfluous and archaic.

Mrs. Sowle - The committee agrees to recommend repeal of 1e.

Mr. Carter - I have no problems with section 1f.

Mrs. Sowle - Neither do I.

Mrs. Eriksson - One question that could be raised is whether 1f should be extended to other than municipalities like counties or townships?

Mrs. Sowle - Dick, do you think the local government committee should take a look at this?

Mr. Carter - Yes.

Summary - Continued

Mrs. Sowle - Next is Section 1g.

Mr. Carter - Section 1g should be rewritten in the interest of clarity.

Mrs. Rosenfield - Why do petitions have to be signed in ink?

Mrs. Eriksson - They can be signed with indelible pencil. That might be added here. It is, I believe, in the statutes.

Mr. Aalyson - Why don't we go through this sentence by sentence?

Mrs. Sowle - "Any initiative, supplementary or referendum petition may be presented in separate parts, but each part shall contain a full and correct copy of the title and text of the law."

Mr. Aalyson - We've discussed the idea of having the solicitors have the text available, but not require it to be on the petition.

Mrs. Rosenfield - This was one of the objections Mr. Petro brought up. They had to have a summary on the front of it and the full text on the back, and everybody felt that they had to read all of both of them simply because it was there.

Mr. Aalyson - Each circulator could be required to have with him a full copy of the text as opposed to having it printed on the part petition.

Mrs. Rosenfield - So anybody who wants it can read it.

Mrs. Eriksson passed around a copy of the tax reform legislation petition. The committee noticed that it was extremely long.

Mr. Aalyson - By not requiring the printing of the full text on the petition, it would cut down on the expense. Anybody wanting to see the full text would know that if he wanted to, he could do it right then.

Mr. Carter - Would the circulator be required to communicate with the signer that he had this right?

Mr. Aalyson - We decided that it ought to be printed on the petition that the circulator has a copy of the full text. Then if he couldn't produce it, obviously the person is not going to sign if he wanted to read it, so he wouldn't get that signature.

Mr. Carter - All right, that's good. That means that we have to put that in the Constitution. But it should be, I agree. I think that it makes a lot of sense to have a similar situation in circulating a petition as you do when someone goes in to the ballot to vote. I don't see why you should have a tougher requirement to sign a petition than when you actually vote. The full text of anything is available for a voter, but not on the ballot.

Mrs. Rosenfield - The next sentence brings up a really interesting question that I had never thought of that Mr. Petro asked. But he said, my right to petition my government is a right guaranteed, and why is it dependent on my being an elector being registered to vote?

Mrs. Sowle - I agree, if you're talking about petitioning your government. But here you are petitioning to get a law before the voters.

Mr. Carter - There is a distinction.

Mr. Nichols - The phrase in the first amendment is petitioning the government for a redress of grievances, which I think embraces an entirely different concept than initiating or referring a law.

Mrs. Sowle - "Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence."

Mrs. Eriksson - That has been construed to mean that someone else can actually place the date and place of residence on it.

Mr. Aalyson - Let us change that and say, "there shall be placed on such petition . . ."

Mr. Carter - Again, in my interest of shortening things, couldn't we say "any petition," or "any such petition" instead of "any initiative, supplementary or referendum petition"?

Mr. Nichols - You can say "each petition shall contain the date of signing, the residence, address and signature of. . ."

Mrs. Sowle -"A signer residing outside of a municipality shall state the township and county in which he resides."

It was agreed to retain this requirement since it might be necessary for checking signatures by boards of elections.

Mr. Nichols - If a fellow lists his address as "Route Road" and he's talking about Lorain as opposed to Elyria, they're both in the same county, but if you looked for his name in Elyria you wouldn't find it because he lives on Route Road in Lorain. And they might invalidate that signature incorrectly.

Mr. Aalyson - Wouldn't his address be enough to clarify that? E.G., Route 1, Elyria?

Mrs. Rosenfield - A residence address isn't necessarily the address he's registered under, because he can't register from, for instance, a post office box.

Mr. Nichols - He should have something on there identifying which township he lives in so that you would be able to verify whether he is a qualified elector. Registrations are kept by precinct, because the lists have to be compiled and provided by the precinct officials And outside of a municipality, the precincts follow townships.

Mr. Aalyson - Perhaps we can combine the first sentence and the next.

Mrs. Sowle - Right, what ought to appear on the petition. And it shouldn't say a signer shall state, it should say "shall appear" or something like that. Then, "the resident of the municipality shall state in addition to the name of such municipality the street and number, if any, of his residence." "The names of all signers to such petition shall be written in ink". How about "shall be written indelibly"?

All agreed.

Mrs. Sowle - "Each signer for himself". I guess that's all right. "To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same." Does everybody know what each part of the petition is? Each copy of it?

Mrs. Eriksson - In the first sentence it says that each petition may be presented in separate parts, and each copy is a part petition, because it's only got space for 50 signatures on it. I would think it would read better if we said to each part petition.

Mrs. Rosenfield - This "affidavit" requires them to get all the notary seal. They get lots of them tossed out on these technicalities.

Mr. Aalyson - We talked about saying certification rather than affidavit.

It was agreed to eliminate the notary requirement.

Mr. Aalyson - "To each part petition shall be attached the certification"

Mr. Nichols - It seems to me it ought to say, "on each part petition shall appear . . . the certification of the person soliciting the signatures.

Mr. Aalyson - Is it desirable to limit certification of a part petition to one individual?

Mrs. Rosenfield - I think so, and you hold him personally responsible for that paper.

Mrs. Sowle -"The certification of the person soliciting the signatures, which certification shall contain a statement of the number of the signers on such part petition.

Mr. Nichols - This should be shortened. After talking about the person soliciting the signatures to the same, of the number of the signers, eliminate the whole line there.

Mrs. Eriksson - You don't have to say "Shall state" either. You can just say, "the number of the signers, and that . . ."

Mrs. Sowle - "made in the presence of the solicitor, and that to the best of his knowledge and belief, each signature on such part is the genuine signature of the person whose name it purports to be." I suppose that's good even though for the most part he won't know.

Mr. Nichols - That's a standard phrase in petitions sections in the Code, too.

Mrs. Rosenfield - It really is some kind of protection, I think.

Mrs. Sowle - "that he believes the persons who have signed it to be electors . . ."

Mr. Aalyson - That makes him ask them, I think.

Mrs. Sowle - "that they so sign such petition with knowledge of the contents thereof, that each signer signs the same on the date stated opposite his name, and that no other affidavit thereto shall be required."

Mr. Carter - I think that should be there. Otherwise the legislature could require another affidavit.

Mrs. Rosenfield - Maybe you want to take out "other" and say "no affidavit".

Mr. Aalyson - No, we want to retain the "other". In fact, we should say "No affidavit or other certification shall be required".

Mrs. Sowle - "Shall be presumed to be in all respects sufficient unless not later than 40 days before the election it shall be otherwise proved."

Mr. Carter - This gives people time to examine, challenge, and determine whether the petitioners have fulfilled the requirements.

Mrs. Rosenfield - But the 40 days before the election means that you aren't sure that thing will be certified for the ballot until 40 days before the election.

Mr. Nichols - Whenever you have a question on something like that, our position has been that it's better to certify it and have the court rule it off than to leave it off and find out at the last minute that the court wants you to put it on. Jim mentioned that perhaps a way could be found to firm up that ballot language much earlier, possibly 90 days before the election, that would be preferable to the 40 day time. I don't know the details of how you would approach it or whether you would feel that it doesn't really pose that serious a problem.

After discussion, it was agreed that if the Secretary of State's office feels they could work within this framework, perhaps it should not be changed.

Mrs. Sowle - "It shall be otherwise proved" By whom?

Mr. Aalyson - By anybody who wants to challenge it.

Mrs. Sowle - How are signatures checked?

Mrs. Eriksson - It is required by law that boards of elections check the signatures, not by the Constitution. The Secretary of State is recommending that we drop those ten additional days for more signatures.

Mrs. Sowle - So that if they fell short then, they would just fail.

Mr. Carter - The problem, I assume, for you, Roy, is that if they have ten additional days that gets it down to 30 days and that's getting to the point where it's very close.

Mrs. Rosenfield - And then to check those signatures.

Mr. Nichols - And the board of elections has many other things to be concerned with that close to the election, without having additional trouble.

Mr. Carter - I have no problem with conceptually saying it's up to the petitioners to have a sufficient margin to allow for normal shrinkage of signatures.

Mrs. Rosenfield - Usually when they file, they try to file at least 1½ times the number of required signatures.

Mr. Nichols - There is no other time permitted under Ohio law where you have the opportunity to supplement if you don't have enough. If you're a candidate for office, and you don't have enough signatures, you don't get on the ballot.

Mrs. Sowle - "No law or amendment to the Constitution submitted to the electors by initiative and supplementary petition . . ."

Mr. Aalyson - That's where I think we could say "no such petition".

Mrs. Sowle - "And receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional on account of the insufficiency of the petitions by which such submission of the same was procured".

Mr. Nichols - That's protecting against an attack on the validity of the petitions after the vote has already been taken.

Mrs. Eriksson - I think it would be much better the way he just stated it. Shall we try rewording that?

Mrs. Sowle - ". . . provided for in any of the sections of this article it shall be necessary to file from each of one half of the counties of the state petitions bearing the signatures of not less than one half of the designated percentage of the electors in each county"

Mr. Nichola - Jim Marsh had indicated when he was here previously that he felt this was unconstitutional. I think Ann pointed out that a candidate had a constitutional right to be a candidate but there was no federally protected right to initiative and referendum, so you didn't see the same constitutional issue. I think even the constitutional right to be a candidate is not clearly established. Jim and I discussed this earlier today and he is still of the opinion that it is unconstitutional because it weights votes from one county and is against the one man-one vote principle, and he feels that even though the right to referendum is not a constitutionally protected right, once you have undertaken to grant this right through the state constitution, you have to accord the privileges under it equally to everybody within the state. You don't have to do it but if you do it has to be an even-ended question.

Mr. Aalyson - I have it marked to be excised either as a matter of policy or because it may be unconstitutional.

Mrs. Sowle - How would members of the General Assembly feel?

Mr. Carter - You'll have a lot of opposition. I think you may have it not only from the General Assembly but from the Commission. If you can properly make the ground that it is unconstitutional, it would be easier. This is one of the areas that we have a little different view. I feel that it perhaps is not good public policy to have, for example, all the voters in Cuyahoga county put on a petition that is a matter of primarily local interest. On the other hand I recognize the validity of the argument that the voters of Cuyahoga county are just as important to the state of Ohio as the others are.

Mrs. Rosenfield - They can almost carry it themselves if it gets on the ballot.

Mrs. Sowle - If you regard the purpose of the petition as some indication of statewide voter interest in this and a chance that it would pass, enough interest that it ought to be voted upon, maybe the indication of a widespread voter interest is better served if it's throughout the state.

Mr. Aalyson - Are you talking about subject-matter geographically widespread or number of voters widespread?

Mrs. Sowle - Geography-wise because of this. If it is a local interest problem and everybody in Franklin county votes for it it may be futile to put it on if the rest of the state is going to say "Oh well, this is just Franklin county."

Mr. Aalyson - But they would not be likely to vote against and you would be depriving the people of Franklin county who may need that law.

Mrs. Sowle - I'm just exploring the idea, whether it is consistent with the purpose of the petition or not.

Mr. Nichols - I think that even though it may only require support in a limited area to put it on the ballot it's still going to require broader support for it to pass. In the case of candidacy you used to require signatures from a number of counties now the courts have stricken that down and said that that requirement is unconstitutional. But even though now a candidate could be placed on the ballot for governor or U. S. senator with signatures from Cuyahoga county alone, they don't do it. They come in to file their petitions and with great pride announce that they've got petitions from 86 counties or 88 counties, even if it's only a handful from some counties. I think you can count on it that an issue is going to enjoy wider support if somebody was working on its behalf everywhere but to say that they have to have a specified percentage of the petitions bearing the signatures of not less than one half of the designated percentage of the electors of that county, you're getting quite a bit of imbalance there and weighting the worth of some electors.

Mr. Aalyson - You talk about geographical spread. If you just run from Cleveland down through Cincinnati you would get the great majority of the state but if you don't have the rural counties, it could be lost. The rural counties might be perfectly happy to have them get it on but not be interested enough to sign a petition. They might not vote against it and be happy to have them get it. This is what bothers me.

Mr. Carter - I am persuaded that we ought to try to drop it out, but I would like to add that dropping this out then has a considerable effect on my feelings as to the numbers we are talking about. I'm concerned about the California situation where it is very easy to get something on the ballot. This provision has been one of the protections against special interests cluttering up the ballot. So if we drop this I'm going to be a little tougher on the other end. I would be willing to drop this. I am persuaded that this is a part of the old rural counties holding a disproportionate amount of power.

Mr. Aalyson - I'm not sure what this thing means when it says not less than one half of the designated percentage of the electors in such county.

Mr. Nichols - One half of the designated percentage in case of an amendment would mean 5%. You would have to have 10% over-all but that 10% over-all would have to include 5% of the qualified electors from at least 44 counties.

Mr. Carter - The best that we can say is that the Secretary of State's office has advised us that, in their judgment, it is unconstitutional.

Mrs. Sowle - "A true copy of all laws, or proposed laws, or proposed amendments to the Constitution together with an argument or explanation or a vote or an argument against the same shall be prepared." "The person or persons who prepare the argument or explanation, or both, against any law, section or item submitted to the electors by referendum petition, may be made in such petition and the persons who prepare the argument or explanation or both for any proposed law or proposed amendment to the Constitution may be named in the petition proposing the same."

Mr. Nichols - The way that our draft handled it was to separate arguments and explanations, requiring the Ballot Board to prepare an explanation and changing "may" to "shall" in the preparation of the argument so that it's now one of the affirmative duties of the petitioners, to prepare an argument on their side of the question and the General Assembly would provide by law for the preparation of arguments on the opposing side.

Mrs. Sowle - You're asking the persons to prepare the argument and the Ballot Board to prepare the explanation.

Mr. Nichols - The thought was that this is not a matter proposed by the General Assembly but proposed by a group of petitioners who have some interest in it and that they ought to be able to reserve the power to themselves to devise their own arguments. So we separated it and let the Ballot Board explain and let the petitioners argue and let the General Assembly provide for how opposing arguments would be presented.

Mrs. Sowle - You're leaving to the General Assembly in that second of those two sentences the specification of who makes the argument but are leaving the explanation to the Ballot Board.

Mr. Nichols - The explanation would not have to be a two-sided thing.

Mr. Aalyson - I think this is a very significant change that the Commission and the Secretary of State's office are recommending.

Mr. Carter - Our "voter education" amendment.

Mr. Aalyson - What do you call those individuals who start the petition? The petitioners then will prepare the arguments in favor, the General Assembly will provide for (this is in initiated laws) how arguments shall be prepared and the Ballot Board shall explain. In the referendum, the legislature shall provide argument for and the people who are against the law will prepare the arguments against. Is there any timing that needs to be specified?

Mrs. Eriksson - Do you want to put in here some words such as we put in the other proposal saying that an explanation may include its purpose and effects? Now that's new as far as legislative amendments are concerned.

Mrs. Sowle - I think that's good because really an explanation would be of the issue. You would have to explain what the question is.

Mr. Carter - You could have a very similar thing to this business of felons running for office. You can explain it that they can now run for office but the fact that the effects of it are not what they seem because of other laws. So unless they are allowed to talk about purpose and effects the explanation might not be at all suitable for the purposes, and proper exposure of the issue. I think it would be very well to have it in.

Mrs. Eriksson - Is there any feeling about the 300 words?

Mrs. Rosenfield - I don't like to see an absolute limit on it, but you don't really want much more than 300. Three hundred is a little more than a double spaced typewritten page.

Mr. Nichols - You've got to keep in mind that you're proposing a dissemination of information and there could be considerable expense to disseminating information if you have over-long arguments and explanation.

Mrs. Rosenfield - On the other hand do you want to close the door? Occasionally you may have something that is so complex that you can't do it in 300 words.

Mrs. Sowle - This is for newspaper publication, only.

Mrs. Eriksson - Or whatever use the General Assembly would want to make of it if we go the full Ballot Board route. I would assume that the way you're doing it now you could have each argument to be 300 words and the explanation would be 300 words-that's 900 total.

Mr. Nichols - It talks about publication for five consecutive weeks preceding the election.

Mrs. Sowle - We cut it to three. Do you agree with the reduction there?

It was agreed.

Mr. Aalyson - Who is responsible for getting these things published?

Mrs. Eriksson - The Secretary of State instructs the boards of elections.

Mr. Nichols - As far as the Constitution is concerned, it is not necessary to state it. It's covered by statute in the administration of the election laws. The Secretary of State certifies to the boards of elections the legal advertising that they are required to insert. He provides them a form which they return to him notifying hin which newspaper they're going to insert it in and verifying the weeks that he has instructed them to insert it. He identifies on his form which weeks and they have to sign it, acknowledging that they received it and that they arranged with the newspaper they name for that insertion, so I really don't think that detail needs to be in the Constitution.

Mrs. Sowle - It's hard to tell what happens from reading this language alone.

Mr. Carter - In the Secretary of State's recommendations they have added "The General Assembly shall provide by law for other dissemination of information in order to inform the electors concerned that such law, section, item, or proposed law or amendment to the Constitution be submitted." I am not sure that we have a parallel

situation here. You don't want to have the General Assembly out lobbying against something that involved in an initiative or referendum. We were talking before about constitutional amendments proposed by the General Assembly. I am not sure the same circumstances apply.

Mr. Nichols - I think you make a valid point. We were thinking in terms of explanations, rather than arguments, because of the fact that we had treated them separately above, and are having the Ballot Board prepare explanations but I see that the way it's treated there doesn't really specify that it's talking only about explanations of the Ballot Board.

Mr. Aalyson - I agree with Dick--that you wouldn't want the General Assembly out lobbying.

Mr. Carter - The same general approach would apply to your recommendation in the middle of the previous paragraph too. I think it would be well to leave the General Assembly out of it as far as other dissemination of information.

Mrs. Eriksson - Don't you think anybody ought to disseminate additional information?

Mr. Carter - Using state funds for it, that's the distinction. One of the major reasons, as you will recall, we wanted this in the constitutional amendment was so that the state will have the responsibility of educating the people on what this constitutional amendment is.

Mr. Nichols - What about distributing the explanations prepared by the Ballot Board?

Mr. Carter - That doesn't bother me at all, because the Ballot Board presumably is a public group, subject to public scrutiny.

Mr. Nichols - But it doesn't have control over funds that the General Assembly has.

Mrs. Eriksson - That gets back to the problem who is going to disseminate any information: You require publication. For these amendments or laws, as for General Assembly ones, publication in a newspaper does not reach very many people.

Mr. Carter - But on the other hand when you've got initiative petitions going--one of our big problems in constitutional amendments there's nobody pushing it, nobody back of it. Now in this case you've got a very different situation. You've got proponents that have gotten 100,000 and some signatures and it seems to me that it's entirely appropriate that they would carry the burden--proponents and opponents carrying the burden through whatever resources they have. But in the other case what we, in essence, did was to say that public funds could be used for education on an issue and that I don't think is what we want to have in here. I think it would be inappropriate.

Mrs. Sowle - "Unless otherwise provided by law, the Secretary of State shall place these things upon the ballot: the title of any such law or proposed law or proposed amendment to the Constitution to be submitted. Now we are talking about the election procedure.

Mrs. Rosenfield - Will somebody reassure me--I'm sure I'm not reading this right--unless otherwise provided by law, it sounds to me that the legislature could provide by law that they would not be placed on the ballot.

Mr. Carter - That sentence could be construed that way but I think in context with the whole thing it could not. Because we say starting out that you cannot deny the people the right of referendum or initiative.

Mrs. Eriksson - I'm sure it means that they could provide something other than the mechanism.

Mr. Nichols - They could alter the form or they could designate some other official to do it.

Mrs. Rosenfield - It could be somebody other than the Secretary of State.

Mrs. Eriksson - Do you want to dra the Ballot Board into this again and have the Ballot Board prepare ballot language? As we did before?

It was so agreed.

Mrs. Rosenfield - That same identifying caption would go on the petition, the ballot, the machine.

Mrs. Eriksson - That applies only to the Ballot Board preparing the summary.

Mr. Nichols - You didn't have any verbiage on ballot language.

Mrs. Eriksson - No, we didn't go that far and it seems to me that the summary might be still too long for the ballot. At the top of your page 5 is where the Secretary of State put it in. That was parallel to the other resolution.

Mrs. Sowle - I would think the whole thing could be parallel. "He shall also cause the ballot so to be printed as to permit an affirmative or negative vote." That's parallel to other provisions, isn't it? "The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing except as herein otherwise provided. Laws may be passed to facilitate their operation but in no way limiting such provisions or the powers herein reserved." I certainly think we ought to retain that.

Mrs. Rosenfield - We've taken the Attorney General out of the whole process, haven't we?

Mr. Aalyson - Unless otherwise provided by law, The Secretary of State shall cause to be placed: If we could reword that provision so that the title of any such proposed law or constitutional amendment shall be placed upon the ballot by the Secretary of State.

Mr. Carter - When we get to rewriting this with the Ballot Board I have a hunch this is all going to fall apart.

Mrs. Sowle - I would think it would be very desirable for the title as it was on the ballot to be the same as that which appears on the petitions.

Mrs. Eriksson - The question about this affirmative and negative vote-- would it be a question as to the Secretary of State perhaps separating something that he might consider to be more than one amendment? If you look on page 12 of the memorandum

these are questions which have really never been raised and I don't think that initiated laws or constitutional amendments have ever been challenged on the basis that it was more than one amendment.

Mr. Nichols - If they were I would think it would be stopped at the Attorney General.

Mrs. Eriksson - His job really is only to certify the summary. He isn't supposed to look at the form of the proposal itself. So we really don't know the answer to these questions.

Mrs. Sowle - Even as to whether these provisions apply.

Mr. Nichols - I think that when we discussed that when we were working up our draft we didn't change it. I'm not saying that it shouldn't be changed but I am explaining our understanding of it. We took each item separately. So that if you had two laws proposed by initiative or attacked by referendum they would obviously have to be submitted separately. Or if a referendum was against only a section of a law such as the pay raise. It wasn't a referendum on the entire bill--it was an attack on one section of it. If you had two different referendum petitions both hitting the same law or the two of them were hitting separate parts of the same law you would still have to submit them separately. But if you had one petition attacking one law I don't think that this would require you to separate the question just because that law did two things.

Mr. Carter - I think in the case of laws, that is probably correct. If a petition should happen to be for a couple of different things to the Constitution, the question is do we have a problem there? My feeling is that there isn't much we can do about that. Secondly, I think it's very unlikely that you would ever get a petition covering more than one area.

Mr. Nichola - This was not an initiated issue but one of the resolutions passed by the General Assembly about this time last year to go on the May ballot ended up having to be split up into questions 5 and 5a. The question initially came to our office as to whether we would split the question and the Secretary of State felt that it would be presumptous on his part to do so and suggested that the General Assembly should split the question if they wanted to. It was one of those situations where you could have a lawsuit no matter what you did because if you split it you would have a lawsuit and if you didn't you would have a lawsuit because it covered more than one subject. It went back to the General Assembly and there was a correction but there was a lawsuit over whether this session of the General Assembly could amend a resolution passed by the last session of the General Assembly. So you had a lawsuit. The one thing that was clear was that the Secretary of State would not on his own initiative split the question because it was the function of the General Assembly.

Mr. Carter - I don't think there's much we can do on that. Is it possible to get a redraft on all the things we discussed on section 1?

Mrs. Sowle - We're meeting the morning of the next Commission meeting. Dick, we were all talking about the possibility of getting someone to come in and talk about the practicalities of the initiative and referendum. Do you think this is the time for that or ought we to stay with our drafts a little longer?

Mr. Carter - I think we ought to go a little farther first. I think we ought to have a proposal and maybe that would be the time to send the proposal to a selected group of individuals with the explanations and then to get the feed back from them at that point. I think it would be helpful for anyone who tries to counsel with us to have that summary of what we have done.

The meeting was adjourned until 9:30 a.m. on March 14.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
March 14, 1974

Summary

The Elections and Suffrage Committee met on March 14 at 9:30 a.m. in the Commission offices in the Neil House. Attending the meeting were: Mrs. Sowle, Chairman, Craig Aalyson, Peg Rosenfield of the League of Women Voters, Roy Nichols of the Secretary of State's office, and staff members Ann Eriksson, Director and Brenda Avey.

Mr. Nichols informed the committee, regarding Section 1b of Article II, that although the Constitution does not indicate at what point the petition checking takes place, the section of the Code implementing the constitutional provision does require that the petition forms be transmitted to the boards 'forthwith' in Section 3519.15. He noted that there was very little time to check the signatures on the petition. Mrs. Eriksson observed that only 10 days was given in the Constitution between the filing and transmittal to the General Assembly, and she didn't believe that the constitution contemplated a complete check of the signatures in such a short period of time. In any case, the language the committee proposes to revise that section was viewed as consistent with the present statutory language.

Mrs. Eriksson: If the petition is to be held up until the signatures are checked, then that ought to be stated in the Constitution. The Constitution contemplates only that someone would come in and challenge the signatures, not that the Secretary of State is obliged to check them all, or the Boards of Elections.

Mr. Aalyson: I think the signatures ought to be prima facie valid. It's okay if the legislature wants them checked, but not to the detriment of the petitioners.

Mrs. Eriksson: Since you're giving the legislature 2 additional months for consideration, it seems to me the signature checking could be carried on simultaneously with legislative consideration of the proposal itself. If the signatures fail, it simply means that the people aren't going to have a right to file a supplementary petition.

Mrs. Sowle: There seems to be no problem with that, then. Shall we proceed through the redrafts? Start with section 1. You say, initiative and referendum as provided in the constitution. Should it be "in this constitution"?

(The change was agreed to).

Mrs. Sowle: I have a suggestion for a possible rephrasing of the first sentence in Section 1a, which might be clearer. "When an initiative petition proposing an amendment to the constitution, signed by ten percent of the electors, and certified as provided in Section 1g of this Article, is filed with the secretary of state, the secretary shall submit it for the approval or rejection" and so forth.'

Mrs. Eriksson: The more change you make in a section, the closer you get to saying, "We've just got to repeal this section and re-write it." And then you have a lot of people questioning your motives, whether you're making some subtle change that you don't want to talk about, and is that why you're repealing it.

Mrs. Sowle: As long as we are amending it, we might as well polish up the language a little bit. But I have no great feeling about it one way or the other. I would

suggest maybe we would submit it this way.

Mr. Aalyson: I prefer, always, to make the thing more clear, if possible, even if it means that it amounts to a repeal, and I'm in favor of modifying to the extent that it is necessary to get both clarity and content.

Mrs. Eriksson: The section now repeats the secretary of state, and there is no reason why we can't continue to do that.

Mrs. Sowle: The other small change that I made was instead of saying, in Section 1g of Article II of this constitution, I had, as provided in section 1g of this Article. Does that make any difference?

Mrs. Eriksson: It is shorter. The first time that you put a reference in, though, I would prefer to follow the bill drafting rules which always says,"Division..... of Section.....of the Revised Code." It's always stated that way.

The changes were agreed to.

Mr. Aalyson: In section 1b, the first paragraph, I wondered why, the reference to the full text having been set forth in the petition, was deleted.

Mrs. Eriksson: Because it ended up the last time with the agreement that the full text would not be printed in all of the petitions but rather would be available for the circulator to circulate, and that change has been made in section 1g. So I felt that it was necessary to take that out here.

Mrs. Sowle: I have reworded: "When an initiative petition proposing a law, signed by 3% of the electors and certified as provided in section 1g, is filed with the secretary of state, the secretary shall submit it forthwith to the General Assembly." It's just parallel to section 1g.

Mr. Aalyson: I really don't understand what the next paragraph says. It seems to me that we're trying to provide that if a proposed law, in original or amended form, becomes law, it shall be subject to the referendum. "If said proposed law becomes law as proposed, it shall be treated in all respects as though it originated in the General Assembly." was how I changed that paragraph to read.

Mr. Aalyson submitted copies of his proposal.

Mrs. Eriksson: Then you've solved my problem of whether you can then have a referendum on it if it was a tax levy.

Mr. Aalyson: I hoped to. I added, in a parenthetical statement, we have discussed previously the question of whether an initiated law should be subject to repeal by the General Assembly or whether there should be restrictions on that. And I thought that I should mention that here. But perhaps it should not belong in that paragraph.

Mrs. Eriksson: That's one of the unresolved questions.

Mr. Nichols questioned the meaning of the statement.

Mr. Aalyson: The General Assembly might want to step in and repeal an initiated law a year later. We felt that there should perhaps be a 3 or 5 year period, or

a period and a high percentage of votes.

Mrs. Eriksson: What about the effective date of such a law?

Mr. Aalyson: I wasn't sure what this new language about the effective date meant, and I'm hoping that I understood it. I don't believe we need the effective date language in view of suggested later changes. Paragraph 3 I've reworked very considerably. What are we trying to accomplish in paragraph 3? It appeared that we wanted to keep the initiative petitions in indirect form and to make provisions for the initiators to go beyond the legislators, if necessary. We wanted to prohibit an amended form of a proposed initiative petition from becoming law for a short period of time while the supplementary petition was being acted upon. And we wanted to extend the time before the election to 120 days.

Mrs. Eriksson: Another objective is to permit the amended law also to be subject to the referendum, or are you not going to allow that?

Mr. Aalyson: I think that that is not necessary, and I'll reach that later. My suggestion I hope accomplishes these objectives. That there will be the opportunity for a supplemental petition in case of failure of the proposed law to pass or in the event that there is an amendment by the legislature to the proposed law. I also wanted to accomplish withholding of the effective date of an amended form of the proposed law until the supplemental petition had been fully processed. If one were filed. It would have to be processed before an amended form of the law could become effective. I also wanted to embody the 120 day requirement, that is the election occur at least 120 days after the filing of the supplemental petition. That is the third paragraph, and I'll read it aloud to you. "If within 6 months from the time it is received by the General Assembly, it fails to become law or becomes law in an amended form, its submission to the electors by the secretary of state may be demanded by supplementary petition signed by not less than 3% of the electors, certified as provided in section 1g, and filed with the secretary of state within 90 days after it becomes law or fails to become law." If it fails to become law we have a 6 month period so it must be filed within 90 days of the date it fails to become law. It if becomes law in an amended form, it must be filed within 90 days of the date it becomes law in amended form.

Mrs. Sowle: Was that what we had agreed to before? I've got it with 90 days after the 6 months.

Mr. Aalyson: I'm intending to convey that they've got to act within 90 days after it becomes law or after it fails to become law. In either case, they've got 90 days.

Mrs. Sowle: I thought previously, our conclusion was that if it became law in an amended form, sometime during that 6 months, the 90 days would begin to run at the end of that 6 months.

Mr. Aalyson: There is no reason why it shouldn't, I suppose, except that I was trying to make a uniform period.

Mrs. Eriksson: My problem here is, when does it fail to become law?

Mr. Aalyson: They have 6 months to have it become law.

Mrs. Eriksson: It could fail to become law by a defeat. It might be subject to that interpretation, a defeat in the legislature. And yet such a defeat might or

might not be final. I think you need a fixed time instead of saying after it becomes law or after the expiration of the 6 months.

Mr. Aalyson: Then there can be a simple amendment, I think.

Mrs. Sowle: I worked on that a little bit. I broke it into two sentences. The first concerns the law becoming law as proposed. The second one says if it becomes law in an amended form, it shall go into effect 90 days after it is filed in the office of the secretary of state, or 90 days after 6 months from the date it is received by the General Assembly, which ever is later.

Mr. Aalyson: I'm not sure I understand how an issue fails to become law by being defeated.

Mrs. Eriksson: Lots of things are simply not adopted, because they are never acted upon. And that's what I contemplate with this, is the anticipation here. You see, the way it is now it talks about rejection and we eliminated that concept because we didn't want to have to determine when it was rejected.

Mr. Aalyson: What if we say, "if it is not adopted" rather than "fails to become law"?

Mr. Nichols: Does that change it?

Mrs. Eriksson: I still think that would include the concept that it might be defeated. Which we've included in our concept too, the failure to become law, except that we've fixed a time. We're saying that they've got 6 months.

Mr. Nichols: A bill that was voted down can always be reconsidered.

Mrs. Eriksson: Yes, and there is always the possibility that this can drag on for a long period of time, and that's why it seemed to me it was better to fix a period of 6 months and cut it off then and let the General Assembly do what it will.

Mr. Aalyson: Does this accomplish the objective, "and filed with the secretary of state within 90 days after the expiration of the 6 month period"?

Mrs. Eriksson: Yes.

Mr. Aalyson: I'd like to pursue this for just a moment. What you are trying to do is to give them an option of filing within 90 days after the adoption of the law,...

Mrs. Eriksson: No.

Mr. Aalyson: Perhaps someone would want to do this rather than waiting to the end of the 6 month period.

Mrs. Eriksson: Yes, but the reason I did it this way was to make the possibility of a referendum and the possibility of a supplementary petition track, so that you were not having two different time periods because that would be where you would get into the problem of a law possibly being in effect for a period of time and then being cut off.

Mrs. Sowle: If it becomes law as proposed in an amended form, it would go into effect 90 days after it is filed.

Mr. Aalyson: Well, we haven't come to that yet. In the second sentence of my proposal, "If a supplementary petition is so filed, the law in amended form shall not become effective unless the law proposed by the supplementary petition is rejected by the electors." If the legislature passes it in amended form, we want to avoid its becoming effective until the supplementary petition has been acted on.

Mr. Nichols: So in a sense, the supplementary petition is resulting in a referendum on the amended version.

Mr. Aalyson: Which is going to solve one of the problems of effective dates, I think.

Mrs. Rosenfield: Did we dispose of the problem of letting the people who circulate petitions amend the form, because that would be confusing as to which amended form you mean?

Mr. Aalyson: That's in the next paragraph. If the electors reject the supplementary petition, then the amended form law would become effective. There may need to be a change there as to say when, "and approval or rejection shall be at the next general election." My purpose in this paragraph was to prevent a short effective period for a law which might later be rejected by the electorate, so no one would be caught having to comply with something for a month or two months. I am a little bit unhappy with the word "unless". Perhaps the word "until" if used there would indicate that the law would become effective if the supplementary petition was rejected.

Mr. Nichols: How about, "the law in amended form shall not become effective if the law proposed by the supplementary petition is approved by the electors"?

Mrs. Rosenfield: Maybe you need 'if and until'.

Mrs. Eriksson: The present language is 'until and unless'.

Mr. Aalyson: Do you think that would be an improvement?

Mrs. Eriksson: No, in that context, I think "until" would mean that you were going to beat the electors over the head until they voted.

Mr. Aalyson: Do you think that the amended form would become effective automatically if the supplementary petition were rejected? What I have failed to do is provide for its becoming effective.

Mrs. Eriksson: How about something like this? "The law in amended form shall become effective only if the law proposed by supplementary petition is rejected by the electors."

Mr. Aalyson: That leaves me with the question of when it becomes effective?

Mrs. Eriksson: Right, and I think you would have to state that.

Mr. Nichols: It's normal effective date would have already passed. It seems to me that it would be effective immediately.

Mr. Aalyson: I think so.

Mrs. Eriksson: I think we should put it in though. Now what have you done about a referendum?

Mr. Aalyson: Let's suppose there is no supplementary petition filed, then, the amended form becomes law. Would there be any restriction on referendum to that in that situation? It's a bill passed by the legislature. Is it not automatically subject to the referendum?

Mrs. Eriksson: There could possibly be an interpretation that it was not subject to the referendum because you specify that the law as proposed is subject to the referendum.

Mr. Aalyson: I haven't said that except by indirection, of course. Let's leave that question open, and get back to it later. We leave open the question if there is no supplementary petition filed to an amended form, then where is the availability of the referendum. Let's suppose the situation that a supplementary petition fails, the amended form becomes law but it has been submitted to the electorate, so that the absence of a referendum provision does not seem to me to be a problem there.

Mrs. Eriksson: Except that what may have been submitted is a different version of it. What the people getting out the supplementary petition might do is not submit it as amended, but they might pick some other version. Because I think you've retained that when you say, "which form shall be either as first proposed or with any amendment or amendments which have been incorporated therein by either house or by both houses of the General Assembly."

Mrs. Sowle: What would the time provision be for a referendum, because normally you have 90 days after it becomes law. How would the time work?

Mrs. Eriksson: You actually have 90 days after it is filed with the secretary of state which makes it slightly different.

Mr. Aalyson: This is what bothers me. It says such law shall go into effect 90 days after it is filed in the office of the secretary of state, or 90 days after 6 months from the date it is received by the General Assembly, which ever is later. What if the General Assembly did nothing. Would it become law? Did we intend that?

Mrs. Eriksson: No, this is only talking about the proposed law becoming law. If it's passed by the General Assembly then this is intended to provide the effective date for such a law which is really an exception to the ordinary effective date. The reason I did that was because of the referendum possibility and the supplementary petition possibility.

Mrs. Sowle: One reason I broke up that second paragraph was because, if passed as proposed, then I though the 90 days after 6 months should not apply. I think it would apply in the way you had it drafted.

Mrs. Eriksson: "If passed as proposed" normally such a law would take effect 90 days after it was filed to allow for the referendum.

Mrs. Sowle: I felt that ought to be taken apart.

Mrs. Eriksson: You're right. If it's passed <u>as proposed</u>, then you couldn't have

a supplementary petition. Therefore, we need only be concerned about a referendum.

Mrs. Sowle: If it is not passed as proposed, say in amended form, then we don't need an alternative here, we need 90 days after 6 months.

Mr. Aalyson: Which has been accomplished by this language here, "the expiration of the 6 month period".

Mrs. Sowle: Then don't we just want to say 90 days after 6 months?

Mr. Nichols: For a referendum?

Mrs. Sowle: No, we don't want a referendum then.

Mrs. Eriksson: Don't you want to have both, though?

Mr. Aalyson: Do you really need a referendum in the event that you have a supplementary petition? If the supplementary petition changes the thing in some respects that have not already been changed by the legislature. Let's take some concrete cases. The legislature amends, which permits the filing of the supplementary petition. As we now have it, the supplementary petition can propose the law in the original form, or only in a form which embodies one of more of the amendments, by one or both houses. Is that correct?

Mrs. Eriksson: Yes.

Mr. Aalyson: Then they cannot put in their own amendment. My question is do we need the referendum because a supplementary petition can be filed with 3% of the electors and it takes four percent to get the referendum. Why would they ever use the referendum?

Mrs. Eriksson: There is no restriction on who can file a supplementary petition. There might very well be two groups: one group which really wants to take the amended version as passed to the voters and another group, maybe your original group, who want to take the original proposal or some lesser amended version. Do you think that the question would be raised that you could have only one supplementary petition on a proposal?

Mr. Aalyson: If it is then that doesn't involve the referendum question.

Mrs. Eriksson: Your permitting a referendum would permit two supplementary petitions, in effect. If someone was unhappy with the way the supplementary people were taking it to the voters then by using a referendum they could take it as amended by the General Assembly.

Mrs. Sowle: It had been my understanding that you could have any number of supplementary petitions.

Mrs. Eriksson: We never really talked about whether we would have more than one supplementary petition.

Mr. Nichols: The only possibility of having more than one is if it's possible to have the supplementary petition propose a law in a form other than the law was proposed by the initial petitions.

Mr. Aalyson: There could be several possibilities. If there were an amended form passed, somebody could try to get the original form in. Somebody could come in with one amendment, somebody with two amendments.

Mr. Nichols: If you allow the supplementary petition to propose the law in a form other than the first initiative petition then it's conceivable that you would have several groups filing conflicting supplementary petitions.

Mrs. Eriksson: Do you see any problem with putting several on?

Mr. Nichols: Yes. I see problems if they are conflicting. And if the supplementary petitions had to propose the law in the same form as the first initiative petition you would eliminate that problem because even if you had more than one group, they could only propose the law in one form, or else they would have to start over.

Mrs. Sowle: But at the present time they don't have to propose it in just that way.

Mrs. Eriksson: No. You see, at the present time, they can make a selection of which form they want to put it on. Whether it can be more than one group, of course, is what we're talking about. But at the present time you could have a referendum going at the same time on that law. The Constitution contemplates that you could have conflicting versions on the ballot at the same time.

Mr. Nichols: In that case, you would have to determine which one passed by the more substantial majority, but if the supplementary petition submits the issue in the same form as originally proposed, there is no need whatever, for a referendum to be provided for. If the supplementary petition submits the law in a form other than it was originally proposed, I could see why you would want to permit a referendum.

Mr. Aalyson: I have no objection to permitting the referendum. I wonder whether we need it, since the supplementary petition, or more than one, in effect, accomplishes the same purpose. There's no restriction on the number set forth, and it says all you have to do is get 3% of the electors.

Mrs. Eriksson: That's the kind of think we can include in our comments - that we understand that there's no reason why you couldn't have more than one supplementary petition and therefore it's not necessary to provide for a referendum.

Mr. Aalyson: Because the same purpose can be accomplished with a smaller percentage of the electors.

Mrs. Sowle: Is it possible in the language to indicate that? To say 'supplementary petition or petitions', something like that?

(Everyone agreed to that kind of a change).

Mr. Aalyson: It could be stated, "its submission to the electors by the secretary of state may be demanded by supplementary petition or petitions." We define as we amend it somewhat, if it goes into effect 90 days.

Mrs. Eriksson: You don't have to worry about the 6 months with the original proposal because there's no right to a supplementary petition. So all you're worried about is referendum.

Mr. Aalyson: And then on the supplementary petition it's 90 days after the expiration of the 6 month period.

Mrs. Eriksson: If you can have more than one supplementary petition, then we don't need to worry about an effective date for an amended version for referendum purposes. We do, I think, have to think about when it becomes effective, and I think we might put the word "immediately" in there to make that clear. That if the supplementary petition is rejected by the voters, then I think we should say that the law passed by the General Assembly becomes effective immediately.

Mr. Aalyson: If the supplementary petition is so filed, the law in amended form shall become immediately effective only if the law proposed by supplementary petition is rejected by the electors. One thing bothers me about that. We have provided elsewhere, I believe, that if the electors adopt the form proposed by supplementary petition it shall become effective 30 days thereafter, and this is to give people time to prepare. Shouldn't we allow a similar preparation time before the effective date?

Mrs. Eriksson: Make it effective 30 days after the election.

Mrs. Sowle: I think I'm worried about symmetry here. I'm wondering if we can't do exactly what you're wanting to do here simply by the rewording of the second paragraph?

It was agreed another draft would be prepared.

Mrs. Sowle: Perhaps it can be done something like this: in the second paragraph, my suggestion is, "if it becomes law in amended form, it shall go into effect 90 days after 6 months from the date it is received by the General Assembly." And then the next paragraph would take care of what can happen in that 90 days.

Mrs. Eriksson: I think Craig has made this a much cleaner procedure by saying that we are going to skip the possibility of a referendum on that amended version because of the multiple possibilities of supplementary petitions.

Mr. Aalyson: If it's passed in an amended form it becomes effective 30 days after the election if there is a supplementary petition filed.

Mrs. Sowle: I really do think that takes care of that language and we are now down to the third paragraph.

Mr. Aalyson: I put a period after the word "assembly" in, "has been passed by the General Assembly.", because I didn't feel that we needed the referendum in view of the supplementary petition. It's a cheaper way to do it in the form of number of votes. I thought no one would be foolish enought to go to the referendum rather than the supplementary petition. Is there a situation where someone would want to do something he couldn't do under the method I've proposed?

Mrs. Eriksson: A referendum could attack only one section or one item, whereas a supplementary petition could not.

Mr. Aalyson: Should we add to the end of my proposal, "all laws enacted pursuant to this section shall be subject to the referendum"? Then there would be no question.

Mrs. Rosenfield: You do always have the option of starting all over with an initiative to repeal.

Mr. Aalyson: But that requires, perhaps, more votes than a referendum would.

Mrs. Sowle: You've got a proposed law, an initiative petition which goes to the General Assembly. The General Assembly passes an amended law, an amended version of the proposed law. Now, as I understand it, you want to do two things. First of all, the people who originally initiated this want to take their original proposal to the electors so they have a supplementary petition and that goes to the voters. Now, it was my understanding that what you wanted to do would be to say to the voter, "Let's get rid of what the General Assembly passed."

Mrs. Rosenfield: But you also may not want what the supplementary petition says.

Mrs. Eriksson: Then you just vote no on both.

Mrs. Sowle: What I'm saying is now we have two supplementary petitions: a group that goes and says, "I want my original proposal." and another group that goes and takes out a supplementary petition that says, "I want the voters to vote on whether the law passed by the General Assembly is good." Now, why can't you do that by supplementary petition?

Mr. Aalyson: You can. The person who wanted to get rid of the whole thing.... suppose there was no supplementary petition asking that the original proposal be adopted. Peg says, what if I want to get rid of both the original proposal and the amended form.

Mrs. Sowle: Yes, now I'm telling you how to do it. You'd have one supplementary petition on the proposed law. . . .

Mr. Aalyson: You would, instead of using a referendum, file a supplementary petition bringing in the whole thing and voting against that.

Mrs. Sowle: What do you mean by "the whole thing"? Do you mean what the General Assembly passed?

Mrs. Rosenfield: How can you challenge that?

Mrs. Sowle: It's my understanding that if the General Assembly passes an amended form of the proposal that you can take that amended form passed by the General Assembly to the electorate by supplementary petition.

Mrs. Eriksson: Right, and if it's passed as proposed, you have to have the referendum under this language.

Mr. Nichols: Especially considering that many voters might not realize the consequence of not filing an additional supplementary petition. And while it's true that if the do understand the process, they would prefer the 3% of an additional supplementary petition to the 4% of a referendum, it may be that they discover the true nature of the situation too late to do that, and they might still have to write a referendum. Would it help to have a hypothetical issue? Supposing you had a group of minute-men type petitioners who circulate petitions to propose a state law for uniform conscription for the state militia at the age of 18. It goes to the legislature and you also have a very unusual legislature, that goes for

the conscription idea, but not uniform. It wants a selective conscription idea. And so you have two conscription ideas. And your voter is opposed to conscription in any form. How is he going to vote?

Mrs. Sowle: I think you can do it all by supplementary petition. The original proposal is uniform. The General Assembly passes a selective form. One group goes and by supplementary petition challenges what the General Assembly has passed. Another group takes the supplementary petition in the original form, and you've got two proposals before the electors without any referendum.

Mr. Aalyson: What if one of them passes? And the object of the voter is to get rid of the whole thing.

Mrs. Eriksson: So you vote no on both. Go around telling people to vote no on both.

Mrs. Sowle: So you encourage the electorate to vote no on both. She may fail, but if she can get everybody to get with her, she votes them both down. It says here, "the proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first proposed or with any amendment or amendments which have been incorporated therein by either house or by both houses of the General Assembly." That's the sentence that does it.

Mr. Nichols: Wouldn't it be simpler to say that if the General Assembly passes it in an amended form it's subject to referendum. Or you could have a supplementary petition to place it on the ballot in its original form rather than in amended form. But you would only have the possibility of one supplementary petition proposal that way. You could not have the possibility of conflicting supplementary petition proposals.

Mr. Aalyson: I don't think that's desirable.

Mrs. Eriksson: I agree that we don't need to have a referendum on the amended version.

Mr. Aalyson: But is there any distaste for the idea of permitting it? In other words, is there any reason not to say, "any law enacted pursuant to this section shall be subect, or is subject, to the referendum".

Mrs. Sowle: There is one advantage to the referendum and that is if you want to attack just one section or item.

Mrs. Eriksson: That's where we may be denying someone their rights.

Mr. Aalyson: Is there any reason why we should not say, "any law passed pursuant to the provisions of this section is subject to the referendum as provided in section 1c"?

Mrs. Sowle: Are you talking about the law the General Assembly would pass after the first petition?

Mr. Aalyson: I don't think it makes any difference. Is there any reason for not providing for the referendum for the original proposed law passed in proposed form or in amended form? Nobody may ever want to use it, but it might be desirable to have it there if someone wanted to use it. The question becomes should we permit its use or should we say they don't need it.

Mrs. Eriksson: Then we have to struggle with the effective date question again. If you're going to permit the referendum on the amended version.

Mr. Aalyson: We could just change that to 90 days. And fill it out by that device. I don't know whether we need the referendum. Peg seems to think we should, and I'm not so sure she hasn't persuaded me somewhat.

Mrs. Eriksson: In the situation Peg raised, you don't need it, but if you wanted to pass on a section or an item in an appropriation act, on an amended version of an initiated law passed by the General Assembly, the only way you could do that would be by referendum. Because the supplementary petition can only deal with a whole law.

Mr. Aalyson: If the legislature passed an amended form, one could attack each item by attacking that amendment.

Mrs. Eriksson: No, because what you do in a supplementary petition is you put the whole law on the ballot. Now, if your whole law originally was only for an appropriation, which is possible, then in a supplementary petition you could attack it the way the General Assembly passed it. But if your law was for a number of appropriation items, and the General Assembly altered only 1 or 2 of those, then the only way you could go to the ballot on a supplementary petition would be by putting the whole law before the voters. On a referendum petition you can attack only one item. You see, a law has to be the whole thing.

Mrs. Sowle: But couldn't you just rewrite the whole law with that in it in a supplementary petition?

Mr. Nichols: Supposing an initiative proposal would be to increase the pay for state employees. And the General Assembly amended it to include elected officials. And the person thought that perhaps a pay increase for some elected officials was justified but he opposed a legislative pay increase. He wants to attack one of the items of the amendment that they attached.

Mrs. Eriksson: Yes. You could do it by rewriting the whole thing including what you want to and then change the portion the General Assembly changed. You could do that by supplementary petition, but suppose somebody else wants to attack not one of the portions that the General Assembly changed, but one of the original portions.

Mr. Nichols: They could only do that by referendum.

Mrs. Eriksson: They couldn't do that by supplementary petition, because the supplementary petition can only be the original proposal or with an amendment or amendments adopted by the General Assembly.

Mrs. Sowle: Right, so we don't want to eliminate the referendum.

Mr. Aalyson: Is there some reason why this isn't subject to the referendum?

Mrs. Eriksson: It would only be by indirection because you've only said if its adopted as proposed, it is subject, and because there would be all kinds of questions about effective dates if you had an amended version.

Mr. Aalyson: Well, if we add a provision permitting the referendum, do we have to change the 30 day effective date?

Mrs. Sowle: My suggestion at that point would be to make it clear that if the General Assembly passed a bill it's subject to the referendum but not this subsequent thing because we've already postponed the effective date of this. If we tack another 90 days on it, this bill is never going to see the light of day. I think at some point, the law ought to become effective.

Mrs. Eriksson: The effective date that I'm worried about is not that effective date. It doesn't seem to me that you need to alter that 30. But rather the effective date of the amended version of the law passed by the General Assembly.

Mr. Aalyson: That's the 30 day effective date we have here.

Mrs. Eriksson: But that's only for a supplementary petition if it is filed. How do you know that initially? The General Assembly passes this amended version of the law. Now, the people getting out a supplementary petition have 90 days from the expiration of the 6 month period.

Mr. Aalyson: Maybe we should give the referendum 90 days from the 6 month period. Then the final paragraph would be that any law enacted pursuant to this section shall be subject to the referendum filed within 90 days of the expiration of the 6 month period.

Mrs. Rosenfield: Maybe it's perfectly legitimate to require 4% instead of 3% if they want to use the referendum on this, because now you are talking about something that has been passed by the General Assembly and should be subject to the same.

Mr. Aalyson: If there is a referendum and it passes and there is a supplementary petition and it passes, where do we stand?

Mrs. Eriksson: That's dealt with in section 1e - the highest number of votes.

Mrs. Sowle: Let's look at that for a minute - I had a question there. It says, "if conflicting laws are approved at the same election by a majority of those voting thereon, the one receiving the highest number of affirmative votes shall be the law." What if the law is voted down by the referendum by a larger vote than a similar amendment is approved?

Mrs. Eriksson: If the voters reject it you can't worry about whether they knew what they were doing. When you have a referendum on a law passed by the General Assembly, you don't put it in terms of, "We're going to repeal this law". You put it in terms of "this is what the General Assembly passed. Are you for it or against it?" You put the law itself on the ballot, not the repeal of the law.

Mrs. Sowle: Now, let's say then, you've got that law on the ballot and people disapprove it by 60% of the electorate. Now you've got an amendment to the law by supplementary petition same election, and that is approved by 51%. Then the amended form goes into effect.

Mr. Nichols: There is no conflict there. The referendum merely blocks the law that was passed from going into effect. It doesn't say that a similar law cannot be approved.

Mr. Aalyson: The purpose of the referendum as applied to this section is to avoid the law passed by the legislature's going into effect even if the supplementary petition fails.

Mr. Nichols: What the referendum really does is delay the effectiveness of the bill until after the people have voted on it. And if they vote it down it never goes into effect at all.

Mr. Aalyson: It's to prevent the chance happening that the supplementary petition would fail and the other law would go into effect.

Mrs. Eriksson: If you really feel that strongly about it, get everything on the ballot at the same time. Of course, the legislature might come gack at the next session and pass it all over again, but you can't do anything about that, except by constitutional amendment. You can never pass a law saying that the legislature shall not alter this law.

Mr. Aalyson: And another purpose of the referendum would permit the attack of a section or item of a law, in that as well as its entirety.

Mrs. Eriksson: In that respect, we may want to modify le. I did not include that concept in le because it's not in the present constitution, which does not deal with the question of a conflict if you had both a referendum and a supplementary petition on at the same time. And by doing it this way, it was my intention that you would contemplate such a possibility. But then we might have to put in here, conflicting laws, sections, or items of laws. In order to make it clear that we anticipate that you might have a referendum on a section or item at the same time that you had a conflicting initiative proposal.

Mr. Aalyson: Referendum and supplementary petition will rarely, if ever, be in conflict, because they accomplish different purposes.

Mrs. Eriksson: Whether they will be or not is something that I don't think we can ever put in the constitution. You can't predict it. There may be a conflict and there may not. But the courts have dealt with this conflict in the past, when constitutional amendments have been adopted in the past which appeared to conflict because they dealt with the same thing in the constitution.

Mrs. Sowle: I think that takes us through paragraphs 3 and 4. I have one question on the fourth paragraph of 1b (A). Both you and Craig have the language, if the proposal so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect, and so forth. Should that say, "it shall become law"? Just to be consistent with how we've used that term before.

Mrs. Eriksson: Then we'll say, "it becomes law".

Mrs. Sowle: And goes into effect?

Mrs. Eriksson: Or "shall go into effect". It doesn't really matter there but what you want is a statement of what the law is.

Mrs. Sowle: Are we now on section 1b(B)? The only question I had about that was again to suggest it be parallel to my previous wording changes. I had, "provided in section 1g, is filed with the secretary of state, the secretary shall....." But it's no substantive change at all. I don't have any comment on section 1b(C).

Mr. Aalyson: Should the legislature be permitted to repeal an initiated law? More particularly, in the direct initiative. Apparently we are going to discuss that at a later time.

Mrs. Eriksson: I suggest you might postpone that for a later discussion because Dick Carter had some thoughts on that. Now, in 1b(C), after I got through 1g, I realized that this language, "Ballots shall be so printed as to permit an affirmative or negative vote upon each law submitted to the electors" is in 1g. The Secretary of State's proposal had suggested taking that language out in 1b and substituting, the "no law proposed by initiative petition shall contain more than one subject, which shall be clearly expressed in its title." I'm not convinced that the two things are inconsistent, but I would suggest taking the language about ballots out here because it's in 1g and when we get to 1g we can discuss it there.

Mr. Nichols: I think the substitute sentence is designed to put the burden on the petitioners to confine their proposals to one subject rather than putting the burden on the secretary of state to split the question.

Mrs. Eriksson: I think that that's a good proposal to put that in here. This is the law that applies to bills passed by the General Assembly, that no bill shall contain more than one subject. And the Secretary of State is proposing that that be put in here so that it applies to laws proposed by the people as well.

Mrs. Sowle: Does the language in "d" do the same thing?

Mrs. Eriksson: The question that has come up is whether that language in "d" would be interpreted to mean limitations imposed upon the process of enacting laws as well as substantive limitations. That question has never been raised in a court in Ohio and therefore the answer to it is unknown.

Mr. Nichols: It's a point that raises the possibility of judicial review, and I would assume that putting it in "d" here would raise the possibility of issuing an injunction before an election, wouldn't it?

Mrs. Sowle: Would the Supreme Court consider the constitutionality of a proposed law before it goes into effect? Is that what you're suggesting?

Mrs. Eriksson: I'm not sure whether it would issue an injunction ahead of time. I'm not sure about that, but it would permit them to examine it afterwards. It would provide the grounds for a challenge on the constitutionality. I'm not sure it would be ahead of the election.

Mr. Nichols: If it's a limit on their power to enact, I think it raises the possiblity of an injunction before the election.

Mrs. Eriksson: But that the court could always reject if they wanted to, and say they will only deal with constitutionality as they've done in the past after the thing is law. Just as they would with the General Assembly laws. In any event, it's language that's presently in the constitution.

Mr. Nichols: The courts do deal with proposed constitutional amendments to the constitution before an election on substantive grounds, such as containing more than one subject,

Mrs. Eriksson: Yes, but not whether it would be unconstitutional in the sense of violating another substantive item.

Mrs. Sowle: We've reached Article II, section 1c.

Mr. Aalyson: In the first few words, "a referendum petition may order" it seemed to me that should say, may be used to order, or can order, rather than "may".

Mrs. Rosenfield: Or "orders", that's what it does.

Mrs. Eriksson: I think probably it would be better simply to reword this sentence completely so that it follows the same format that the others do. That would require rewording of the first and second sentences here.

Mrs. Sowle: I don't understand what the first sentence does. Can you have a referendum only on a law appropriating money?

Mrs. Eriksson: No.

Mrs. Sowle: Does "appropriating money" modify "any item in any law"? Is that the only part of that sentence that appropriating money pertains to?

Mrs. Eriksson: Yes.

Mrs. Sowle: That is not at all clear from the language of this. I didn't think the referendum was limited in that way, but it's very unclear to me what this sentence meant.

Mr. Nichols: I think it means rejection of a law or section or a law, or of an item of an appropriation law.

Mrs. Eriksson: If that is unclear to anyone else, that needs to be reworded or punctuated.

Mrs. Sowle: My only other comment is to put the word "secretary" in instead of "he shall transmit". I don't think any of us have raised an objection to the 120 days. That's one of the few changes in here. Then, of course, we have to go back to all of these percentages. We agreed to reduce the percentage here from 6% to 4%. Although we will do a subsequent redraft of that. I've been ignoring the first two pages in the redrafts, the comments.

Mrs. Eriksson: Yes, and one question would be the question of a special election for constitutional amendments.

The committee talked about it for constitutional amendments in the sense that there was really no great urgency about them.

Mr. Aalyson: That was my feeling. It gives them some time to think about it. Without arguing the issue, I tend to feel that we could leave the constitutional amendment at least for the next general election.

Mrs. Rosenfield: And it hasn't had the discussion in the legislature that the law has had.

Mr. Nichols: But in your initiated proposals you have inserted a phrase that would permit a special election.

Mr. Aalyson: That is for proposals of law.

Mr. Nichols: But you did not confine the special election to coincide with the primary election. We would probably prefer to see it left general.

Mrs. Rosenfield: I don't like special elections. They somehow strike me as being unfair.

Mrs. Eriksson: The discussion on that was if people were proposing a special election, they would have to have thought through the cost to the state and that that would be a good argument against it. Of course, if you are going to permit it, that means that the money is going to have to be spent even if people vote it down. Therefore, there is no opportunity for changing your mind about it.

Mr. Aalyson: I don't recall any discussion that led us to include a special election for an initiated law.

Mr. Nichols: If you permit a special election without limiting it to coincide with a regularly scheduled election, you have the possibility of precincts being open for that purpose only, which could involve considerable expense.

Mrs. Eriksson: The discussion was that in the case of the indirect law, the people have really no control. It's not as with a constitutional amendment where someone proposing it simply starts it and then goes out and gets the signatures and he can do that within his own time frame, but for a law, you can't. And you would miss the general election on your law, because you're giving the General Assembly 6 months to act.

Mr. Nichols: You're giving them the option, though, of having a direct initiative by gathering a larger number of signatures.

Mrs. Eriksson: Right, so that would be a reason, perhaps, for taking out the special election for direct initiative, because if they want to get that on this November, and they go for it directly.

Mr. Aalyson: Here though we are assuming that the legislature will approve our suggestion of a direct initiative. I like the idea that the special election should coincide with another election, though.

Mrs. Rosenfield: It isn't difficult to make it coincide either with the primary.

Mr. Nichols: Your 120 days before your November elections are going to put you back to early July and your 6 month provision is going to run you through June with the General Assembly, so only where you have an initiated law proposed at the beginning of the legislative session would you be able to be sure that your period in which the legislature could act would expire before the deadline for filing petitions.

Mrs. Rosenfield: If you make the special election coincide with two elections, rather than having to be a general election, it means that if you miss it you don't have to wait another whole year. You could run into those elections in odd-numbered years where some precincts wouldn't be open where they don't have a municipal primary but at least it isn't every precinct in the state.

Mr. Nichols: If you start initiating the proposal in March or April, you better start heading for the 6% and by-pass the legislature or you're never going to get it on the general election ballot that year.

Mrs. Eriksson: We would permit it to be carried over until the next year. We don't care whether it's this year or not. The only question is whether the people should have a right to get it on sooner than waiting until a year from November.

Mrs. Rosenfield: And it wouldn't be bad if they had to wait til the following May or June.

Mr. Nichols: I think it would be well to restrict it to a general election or a primary election in an even-numbered year. That way you could be certain that it's going on the ballot at a time when the polls are going to be opened anyway. If you have a special election permitted on a date specified by the petitioners, you're giving them the power to impose a great burden on the state to pay for a special election. In May of 1973, we estimated that about 26% of the precincts in the state were open solely for the vote on the state constitutional amendment issues. And 70% would be open at the primary, anyway. If you decide to drop the language about the even-numbered year but still confine it to the times of the primary and general election date, at least you would avoid the possibility of opening up all the precincts solely for that purpose.

Mr. Aalyson: I'd rather tend to favor allowing it at a general election or a primary election without restricting it to a given year because I think they should have the opportunity to get it in within the 6 or 9 month period.

Mrs. Rosenfield: Yes, except you can't say primary election.

Mr. Aalyson: How about, "or regularly scheduled election"?

Mr. Nichols: You can't do that because the only time a primary election is regularly scheduled is in an even-numbered year. You would have to specify a general election in any year or the Tuesday after the first Monday in May (or June). The problem is if in the constitution you specify the date then you are tying the legislature's hands in changing the primary date, which they are inclined to do.

Mrs. Eriksson: We won't say at a primary election. We'll say at a special election to be held on the date of the primary, which will mean that they will be required to have the polls open on the date every place.

Mrs. Rosenfield: Actually, every time you have state issues you have a special election. It just coincides with the date of the primary of general election.

Mr. Nichols: Any election on issues is a special election regardless of when it is held.

Mrs. Sowle: I thought we ought to talk about section 1b, sub-paragraph 2. There seemed to be agreement with the Secretary of State's proposition with the referendum to keep the 90 days but reduce the number of signatures.

Mrs. Eriksson: After all that discussion about permitting the people more time to get their signatures, we still haven't done that.

Mr. Aalyson: Even today.

Mr. Nichols: But if you are reducing the number of signatures they have to obtain within that period, you are still lessening the burden on them.

Mrs. Eriksson: And this was the Secretary of State's proposal for the referendum. Don't change the 90 days, change the percentage from 6% to 4%, and what I'm saying here is change the 3% to 2% or 1% but don't change the 90 days.

Mrs. Sowle: In other words, you are questioning this 6 months plus 90 days?

Mrs. Eriksson: I'm questioning the 90 days because they have to get the signatures in that time. We talked at the last time about having the 90 days start to run from some other time.

Mrs. Rosenfield: We wanted to make it so that they really have the full 90 days to get the signatures.

Mrs. Eriksson: If you are going to have referendum and supplementary petitions all going at the same time, you've got to keep the same time period or else you are going to have some laws in effect for a period of time and then have them go out of effect.

Mrs. Sowle: So instead of our considering what to do about the printing and the approval of the language, let's reduce the number. I think that makes just as much sense for this as for the referendum.

Everyone agreed.

Mrs. Eriksson: If you're worried about that, as we noted before, Mr. Petro's problem was a referendum problem. Maybe getting 3% in 90 days is already a lesser burden, but all the committee discussion was about supplementary petition signing.

Mr. Nichols: I think our original proposal was to have the 6% reduced to 4%, not only on referendum petitions but on initiative petitions as well. Of course, our proposal was eliminating the indirect. I see you are keeping the 6% if you go direct, and reducing it to 4% if you use the indirect method.

Mrs. Eriksson: They really didn't reach a decision on that yet.

Mrs. Sowle: We did agree that the idea of reducing it made sense but we decided that we wouldn't deal with some of these questions until we had gone through all of the procedures.

Mr. Nichols: I think it would make sense if you are keeping two possibilities on initiated laws, the indirect and direct, to have a higher requirement for the direct. As long as you are going along with the concept of going both ways.

Mr. Aalyson: I think I buy this idea of a lesser percentage. I don't know if it should be 1% or 2%, but I like the idea of lessening it.

Mrs. Sowle: We ought to keep that in mind when we do return to subsequent discussion. Should a special election be permitted for direct as for indirect initiative? If we permit it for referendum, should we permit it for direct initiative?

Mrs. Eriksson: You're permitting it for the indirect initiative. We haven't discussed it as far as referendum is concerned, but it wasn't discussed in conjunction with the direct initiative, only in conjunction with the indirect.

Mr. Aalyson: Personally, I don't see any reason to differentiate.

Mrs. Eriksson: Your direct is going to be the same as with a constitutional amend-

ment that the people are going to able to control better.

Mr. Aalyson: I think they should be able to get it before the electors at the earliest possible opportunity consistent with the expense to the state.

Mrs. Eriksson: We can use the same language in both of those sections.

Mrs. Sowle: And then wouldn't that also go for the referendum to be consistent? Or are there different problems there?

Mrs. Eriksson: If you are going to have a supplementary and a referendum petition going at the same time, you really would want to have the possibility that the conflicting laws would be on at the same time. You're also opening the possibility that the people might not want it to go on at the same time, that they'd rather have it go on at a separate time, but I guess that's the possibility that you would have to permit. If you are going to have a referendum and a supplementary petition on the same issue, you'd want to have it so that they could go on the ballot at the same time. If people want to have the conflict, then you ought to let them have the conflict. If they want to avoid the conflict, I think you ought to let them avoid the conflict, too, by not petitioning for a special election.

Mr. Aalyson: It should be permissive then.

Mrs. Eriksson: Right, and for the referendum as well as for the initiative.

Mrs. Sowle: I have no more questions, except the problem of deciding what is a tax levy. Is that a problem in the constitution?

Mrs. Eriksson: Yes.

Mrs. Sowle: But you apparently don't think that we could solve that.

Mrs. Eriksson: I don't see how, on the other hand, I thought if anybody had any ideas, we might entertain them.

Mrs. Sowle: Does anyone else have any questions on the drafts?

No one did.

The meeting adjourned until April 3 at 10 a.m. at which time the redrafts for Article II, sections 1-1g will be discussed again.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
April 3, 1974

Summary (Part I)
Section 7 of Article V

The Elections and Suffrage Committee met on April 3, 1974 at 10 a.m. in the Commission offices in the Neil House. The meeting was attended by committee members Katie Sowle, Chairman, and Craig Aalyson; Peg Rosenfield of the League of Women Voters; James Marsh, Assistant Secretary of State, Roy Nichol's of the Secretary of State's office; and Professor Howard Fink. Also present were staff members Ann Eriksson, Director, and Brenda Avey.

Mrs. Sowle stated that the committee would reconsider the bedsheet ballot language in light of testimony at the Commission meeting.

Mrs. Sowle: It would seem to me that the objectives of the committee would not be served by the language of Mr. Lavelle's proposal - it's very legislative type of language. Although I think we do want the proposal to permit what he is suggesting.

All agreed that the language was too specific but that the final proposal should permit what the Lavelle proposal sought to do.

Mr. Nichols noted that statutes would have to be changed, as well as the constitution, in order to permit less than all delegates to be elected.

Mrs. Sowle: The Secretary of State's proposal, I feel, accomplishes pretty much what our proposal accomplishes, but it goes into greater detail. It mandates one approach, does it not, and our proposal doesn't.

Mr. Nichols: Yes, our position is that if the proposal can be placed on the November ballot, then a general proposal would be acceptable because we could have statutory implementation initiated in January. But if the proposal were not to go on the ballot until May of 1975 it's very unrealistic to expect that the statutory implementation would be in effect before the 1976 primary season is upon us. So one of the general approaches would be acceptable if we could get it on the ballot this year.

Mrs. Sowle: We have to consider that because we would hope to have the Secretary of State's cooperation.

Mr. Nichols: I don't think he's going to oppose any resolution that would take the requirement for the bedsheet ballot out of the constitution. We're just pointing out that it will still not eliminate the problem of the bedsheet ballot unless the constitution is amended in time to have the legislation introduced to effectuate it.

It was agreed that an effort would be made to secure Commission approval in April and have it introduced after the legislative recess on May 8.

Mr. Aalyson: I don't recall any strong feeling urged during our previous meetings with regard to retaining that portion of the language which would make this optional. I personally am rather inclined toward limiting the ballot to the name of the presidential candidates.

Mr. Nichols: That would be in line with S.J.R. 5.

Mrs. Sowle: Ann, do you have any comments about the desirability of mandated or optional?

Mrs. Eriksson: My original reaction was that if you're going to mandate that only the candidate's name appear on the ballot, then there's not much point in putting it in terms of electing delegates. But there seems to be enough feeling now that that is acceptable to everyone and it may be important to retain the idea of electing delegates.

Mr. Aalyson: Do you think there is any feeling for an option anywhere?

Mrs. Eriksson: No, I really don't.

Mrs. Sowle: Do you have any observations, Mr. Fink?

Mr. Fink: Yes, I think I have more insight into the politics of this thing than I did when I was here the last time. I can't speak for the Democrats, but I don't think they will support it. I've been looking at the national proposal for the selection of delegates in the 1976 convention, talking to people, and I don't think the Democrats are sure now that they want the national candidates' names to appear on the ballot and not the delegates' names - suprising as that may sound. Let me read to you a proposal approved by the Democratic National Committee. It was drafted, I think, to deal with states like Ohio. I'm in some dispute with them about the meaning of this language. It says, "In such primaries, -that is, in states electing delegates in primaries, -where votes are also cast for individual delegate candidates, the votes for such individual delegate candidates shall constitute a fair reflection of the division of preferences provided that this delegate shall be elected from districts no larger than a congressional district." Now, what this language does is make an exception to the general rule that was adopted, of proportional representation. So that ordinarily, there must be proportional representation of votes cast, so that in 1972, a candidate in a congressional district might have gotten 49% of the votes in each congressional district and not gotten any delegates to the national convention. The general rule would change that, and say that ordinarily there ought to be proportional representation at all stages of the selection process. Then they added this amendment here, which I think is directed to states like Ohio, Pennsylvania, New York and California, which elect delegates with their names on the ballot. Which would seem to give an out to proportional representation when delegates are voted for directly, that would not exist if the national candidate was the only man on the ballot. There is sufficient confusion about this, and I haven't talked to anyone on this, that the Democrats would not favor a proposal that would mandate the candidate's name and not the delegate's name on the ballot. It just won't pass, and if it doesn't pass now, it isn't going to be on the ballot in time. Generally speaking, I think they would like to wait until after this mini-convention which is going to take place next December, because the mini-convention might try to amend these Democratic rules, and then it's arguable whether they have the power to do this. Therefore, I don't think a proposal that would now mandate that the delegates' names not appear on the ballot would have any chance of passage in the legislature.

Mrs. Eriksson: Of course, this only says, "if the state provides for the election of delegates".

Mr. Fink: This may be. The whole point is, I think, that the only thing that is going to pass now is something that gives the legislature the power to make this flexible enough to conform to whatever rules come out of the mini-convention.

Mrs. Eriksson: If that's the case, then it may be that you want to stick with the optional language, which, then, under the theory that if it passes in November, the Secretary of State can work with the legislature next year. Perhaps, the Secretary of State, then, would not be opposed to that.

Mr. Fink: So it would take a fixed formula out of the constitution, give the legislature the option. For instance, it may well be that the rule will call for the possibility of candidates running unpledged. There is nothing in this proposal of the Secretary of State that would allow the candidates to run unpledged, yet the Democratic rules ordinarily provide for that option when they say, "at all stages of the delegate selection process, the delegation shall be allocated in a fashion that fairly reflects the express presidential preferences, uncommitted, or no presidential preference status of the primary voters." A proposal that requires you to vote for a presidential candidate rather than delegates, doesn't permit for uncommitted delegates to be elected, and therefore, that would be inconsistent with a seeming import of a rule. The rule is so unclear, and it may be clarified by later amendments, but I don't think the legislature is going to agree to mandating one selection process now. And if you want to take out the proposal that exists now, because of time pressures, I think what you want to substitute is something which gives the legislature as much latitude as possible in passing legislation that will conform to the Democratic rules. Maybe the Republican rules will change, for all we know, although it's doubtful whether they will before 1976.

Mrs. Eriksson: Then, perhaps the thing to do is to go back to the committee language and say, "who may be identified on the primary ballot solely by their choice of candidate..." leaving the option in.

Mr. Fink: I don't think the language I proposed and the language of the committee's proposal are really too different. They could certainly be merged together. In my last sentence, "The names of delegates to such conventions need not appear on the ballot if the General Assembly adopts some other method of effectuating the vote of the electors," I was concerned about making sure that if, say, proportional representation was required, or if uncommitted delegates are to be elected, that the legislature has the flexibility for effectuating the vote of the people which may be translated directly to delegates, or proportionally to delegates, or some other thing that maybe we can't even conceive of at this point.

Mrs. Sowle: One of the things that we were trying to permit was proportional representation. We feel that the more general language does permit proportional representation and uncommitted delegates and all the rest.

Mr. Nichols noted that the Secretary of State's office had offered here Mr. Fink's language as an amendment to S.J.R. 5.

Mr. Nichols: Our theory was that it might make it move a little faster and increase the possibility of its being placed on the November ballot instead of next May's ballot.

Mrs. Sowle: Are we fairly well agreed at this point that we ought to go with optional language, in other words "may" instead of "shall" concerning the appearance of candidates' names on the primary ballot?

Mr. Aalyson: I think that since "may" is flexible, then it's fine. I have a personal preference for the other, but not one that I would urge.

Mrs. Sowle: I think that what we've heard so far makes me think that we ought to go with optional language, and those practical considerations seem to me to be pretty consistent with the fundamental objectives that we've been using, mainly, the maximum amount of flexibility in the constitutional provision.

Mr. Nichols: We still have not had any response to indicate that even the optional language is acceptable, so we don't know whether it would move anyway.

Mr. Fink: Will there be hearings on that? I think if there were hearings, that would give people the opportunity to get something into the record that would explain it. I think that what it is now is that people are fearful of any change because there are so many variables involved here - they're not responding to anything.

Mr. Nichols: We've tried a couple of different amendments to S.J.R. 5 and we haven't received a reaction and so I think that probably it's going to take an initiative from someone other than our office before we're really going to find out whether there is an interest in moving the issue forward.

Mr. Fink: When I talked to Jim Marsh after the meeting, he said that he didn't see why we couldn't work it out so that everyone could agree. If there were that kind of agreement, I don't see why it wouldn't sail through.

Mr. Aalyson: I think we've already attempted to alert the parties and perhaps through them the leadership in the General Assembly, that we're trying to draft something which will suit everyone, if possible.

Mrs. Sowle: Well, shall we look at the language? Compare Mr. Fink's proposal with the Committee proposal. It looks to me as if the first portion of it says the same thing, it just says it with different words.

Mr. Fink: Except that your version mandates the legislature to provide for either the presidential preference primary or election of delegates and mine is permissive.

Mrs. Sowle: I think the purpose of our using the word "shall" was that the first thing we decided upon as a committee was that, although we wanted to change the provision, the one thing we wanted to retain was the concept of the direct primary, a constitutional mandate for a direct primary. But that direct primary didn't have to be a vote for delegates. So the "shall", I think, retains the concept of a constitutional mandate for a primary. Now we would have to abandon that objective to go from "shall" to "may".

Mrs. Eriksson: Dick is, I believe, opposed to abandoning that objective.

Mr. Aalyson: I am too.

Mr. Fink: I think that the word "shall" would assure the voters that they weren't giving up something that they otherwise would have. It would be better to do it that way.

Mrs. Sowle: I did discuss this with Mr. Lavelle when we first had something to discuss, and it was his opinion that you would never be able to pass, as a practicle matter, a virtual repeal of the requirement for the direct primary, and so that's embodied in the proposal. Mr. Marsh, do you have any comments on that approach?

Mr. Marsh: No, we're perfectly agreeable to that approach.

Mr. Fink: I think the voters just might not vote for something that they think is giving away a protection that they have.

Mrs. Sowle: Then we go on to, "the general assembly shall provide". So far they are the same. Then the next thing seems to me different language, "provide by law the opportunity for the electors to vote for their choice of candidate". Mr. Fink's proposal says, "may provide for the electors to choose candidates".

Mr. Fink: Obviously what the general assembly does is providing something by law and they can't do anything but provide by law, so I think that "provide by law" is superfluous. And "the opportunity", I think, is superfluous too. What the general assembly is doing is legislating, but if you want to leave in "opportunity", I wouldn't object to that.

Mrs. Eriksson: I don't have strong feelings about, "the opportunity". I'm not sure that I wouldn't want to retain the words "by law" there.

Mr. Fink: You think that signals legislation?

Mrs. Eriksson: Yes, to distinguish between laws and resolutions. The words "the opportunity" maybe are superfluous...

Mr. Fink: Do you agree Jim?

Mr. Marsh: Yes.

Mr. Fink: It ties it up a little more, that they have to pass legislation.

Mrs. Sowle: This is the dilemna we get into, once we pass the question, "Should we advocate repeal?" And if we say no, we're not going to advocate repeal, then we get into this kind of a predicament.

Mr. Fink: Yes, because obviously in a sense this is repeal. If you put it in the hands of the legislature and they don't act, in effect you have repealed. But I don't believe that the people are going to pass anything that simply says repeal.

Mrs. Rosenfield: As a matter of practical fact, our legislature usually has done what they are mandated to do.

Mrs. Sowle: And I expect on this issue that they will.

Mr. Fink: And there will be real party cooperation on this. It is in the interests of both parties to have a process whereby the national delegates can be chosen.

Mr. Marsh: It's getting the formula on paper that's going to present the problem.

Mr. Fink: They would have done it the last time except for the constitutional provision.

Mr. Marsh: There were people last time who felt that there was considerable advantage to having the delegates on the ballot, and I think that we may have some of these people again.

Mr. Fink: I was saying that earlier, Jim, that if you look at the new proposed rules that the Democrats have passed, they do talk about an exception to the rule of proportional representation if the delegates are chosen directly, so the Democrats are probably not going to want to tie their hands now to saying that the delegates shall not be chosen directly. If you drafted this for political reasons, and may want to have delegates chosen directly at the congressional district level, not at-large, and so you could probably accommodate this on the ballot. You would probably have 8 or 10 candidates.

Mr. Marsh: I'd like to comment on the words "the opportunity" before we leave that issue. It appears to me that if you take out those words, that it can be construed that the remaining language means that the electors must vote.

Mr. Nichols: Mr. Fink's language says, "to choose".

(Everyone agreed to change the wording to "choose candidates".)

Mrs. Sowle: Then we have, "to choose candidates for nomination" and then we have another change. I think we all agree with you very much that we ought to include president and vice-president. Dick suggested "for national office" and your language is "for the office of president of the United States and vice-president of the United States".

Mrs. Eriksson: You would probably not want to specify vice-president in here now. At the present time the vice-president's name does not appear on the ballot and I don't know that we're contemplating it, and this way would sound as though it had to be mandatory, that in Ohio we were going to start putting the vice-president on the ballot.

Mr. Fink: That's right, if we change "may" to "shall".

Mrs. Eriksson: Dick's suggestion was that we use the words "national office" and that struck me as being a little ambiguous because "national office" might be construed to include senators and congressmen. Brenda suggested this language, "For all national offices to which candidates are selected at national conventions."

Mr. Nichols: Doesn't that mandate the same thing as the vice-president? The vice-president is chosen at a national convention.

Mr. Aalyson: You could have "either, or".

Mr. Marsh: Do you want to get tied to mandating a presidential preference primary, which is really what you're doing, for president and vice-president? You're not only mandating that the general assembly provide for the election of delegates, but you're also mandating that they provide a preferential primary election for president and vice-president.

Mrs. Eriksson: I was going back to our proposal which then goes on to say, "which vote may be either directly..."

Mr. Marsh: I think that the legislature could always provide a preferential primary if they want to, but I would think that there may be some people for one reason or another who don't want a preferential primary, and who, therefore, would oppose the amendment on just that basis.

Mrs. Eriksson: I'm inclined to think that we ought to go back to the committee's language here.

Mr. Aalyson: How about, "candidates for either the office of president of the United States or vice-president of the United States"?

Mr. Nichols: If you want to mandate a primary for president and permit one for vice-president, it may be necessary to do some repitition.

Mrs. Sowle: Is there anything in this provision that would prevent the general assembly from passing statutes allowing the choice of the vice-president?

Mr. Fink: Possibly, by saying, under the doctrine of "expressio unius est exclusio alteria" - that saying one thing presumes the exclusion of other things.

Mrs. Sowle: Would that apply in the constitution with the plenary powers of the general assembly?

Mr. Fink: It might be so argued that the constitution didn't have to have this language at all. Once it has language on president, it implied that that was to be the only office that would be chosen by direct primary.

Mrs. Rosenfield: Why can't you repeat the phrase again, "shall provide by law the opportunity to vote for president and may provide by law for the office of vice-president"?

Mr. Nichols: If you want to mandate for president and permit for vice-president, I don't see how it can be done without reptition.

Mr. Marsh: I would like to throw out that we eliminate the mandating for either and just keep it to delegates. I think it's going to be awfully hard to sell a preferential primary to the general assembly. There are sound political reasons why a party would not want one, because if you have a preferential primary and choose candidate 'a', and then you go to the convention and nominate candidate 'b', then you just undercut 'b's position in your state. I think if we could eliminate that and say, "The general assembly may provide for the electors to choose candidates for delegates to national party conventions", they've always got the authority to provide a preferential primary if they want to enact a statute. There's nothing in the constitution which would prohibit it.

Mr. Fink: I think you're right, although that would then go back to the point of saying that this would be the effectual elimination of the direct primary in the sense that the 1912 constitution says that the name of the presidential candidate shall appear as well as the name of the delegates.

Mr. Marsh: Then leave it at, "The general assembly may provide for the electors to choose candidates for nomination for the office of president of the United States" or "to choose president or vice-president", which is your direct primary, and "shall provide for the election of delegates to national party conventions". Make the "shall" mandatory for delegates and permissive for president and vice-president.

Mr. Fink: "The general assembly shall provide by law for the electors to choose delegates to national party conventions, and may provide for the preference of the electors with regard to national candidates.

Mrs. Sowle: You're still mandating a vote for delegates there and that's what we want to change.

Mr. Nichols: No, we're mandating that the general assembly provide for the manner of selecting delegates.

Mrs. Sowle: Who may be identified on the ballot solely by their choice of candidates.

Mr. Fink: Why don't we try to write something out and see how it sounds.

Mrs. Eriksson: But then you're going to require the election of delegates. Is there a possibility that either party is not going to want that?

Mr. Marsh: I don't think that's going to require the election of all delegates. It requires that the general assembly provide a procedure whereby delegates are elected, but I wouldn't think that they would have to provide for the election of all delegates.

Mr. Fink: Of course, we could accomplish this by going back to "may" in the first line, and leaving it entirely optional to the legislature whether to effectuate this by choice of delegates, a preferential primary, a direct primary - there are so many things that could change the way the presidential or vice-presidential candidates of either party are chosen.

Mr. Marsh: I'm not really alarmed at a permissive approach to the whole thing.

Mrs. Sowle: We are making a great change in that first part of it. Why not simply say, "The general assembly shall provide by law for the electors to choose delegates to a national convention who may be identified on the primary ballot solely by their choice of candidate." Eliminate that first clause completely. So we're still mandating the way you send delegates to a convention. You're permitting it to be by choice of candidates.

Mr. Marsh: And they could always draft a statute to have a preferential primary.

Mrs. Sowle: "The general assembly shall provide by law for the electors to choose delegates to a national convention who may be identified on the primary ballot solely by their choice of candidate." That's already in here, it just skips most of the first clause.

Mr. Fink: You could define it a little more, when you say their choice of candidates. I think you might want to say, "who may be identified solely by their choice of candidates for nomination for the office of president of the United States. I still think we ought to add "and vice-president of the United States."

Mrs. Rosenfield: You could say, "president of the United States or vice-president of the United States, or both."

Mrs. Eriksson: You don't want to permit them to indicate only their choice for vice-president of the United States.

Mr. Nichols: You could say president or president and vice-president.

Mr. Fink: You don't want to tie them down to identification by presidential candidates because I think the Democratic rules will provide for uncommitted delegates to run for office.

Mr. Aalyson: "May" takes care of that.

Mr. Fink: I would want to nail it down a little more to tie in something that's in the second sentence. I would rather say, "The names of delegates to such conventions need not appear on the ballot if the general assembly provides for some other method of effectuating the vote of the electors." That would take account of proportional representation, uncommitted delegates, delegates running on an issue rather than on a presidential candidate's name.

Mrs. Sowle: I agree that this makes that clear, but don't you think that the same thing is permitted by my language?

Mr. Fink: If you use language that says "may", I think you run into the danger of the legislature understanding "may" as "shall" and not being able to do more than is in that clause or differently than is in that clause. Because we agree that you don't have to have that clause at all, the constitution doesn't need that, the legislature could legislate on it without it in the constitution. The constitutional language is more a restriction rather than a grant of power. The legislature has the power without the constitutional language. Therefore, if the language of the constitution is a restriction, you don't want to make it more restrictive than you intended it to be.

Mrs. Sowle: The only thing mandated is that the electors shall be able to choose delegates. It doesn't say anything more. Proportional representation is choosing delegates, by district is choosing delegates, and so forth, it seems to me.

Mrs. Rosenfield: What happens if you read down the first part of yours and then switch down to the second part of Mr. Fink's?

Mrs. Sowle: "The general assembly shall provide by law for the electors to choose delegates to a national convention."

Mrs. Rosenfield: "The names of the delegates to such conventions need not appear on the ballot if the general assembly provides for some other method of effectuating the vote of the electors." Does that do the same thing?

Mr. Marsh: Would that eliminate the right of the party to appoint some delegates?

Mr. Aalyson: We can always add that.

Mrs. Eriksson: What we're really concerned about is a national party convention which is going to nominate president and vice-president. Perhaps we should identify what kind of a national party convention we're talking about.

Mr. Fink: There may be national conventions that don't nominate candidates for president.

Mrs. Rosenfield: These restrictions only apply to the one nominating president and vice-president.

Mr. Nichols: You could say "a nominating convention".

Mr. Fink: Or, "national conventions which will nominate..." If we had national primaries and conventions only drafted platforms, would this language preclude Ohio from taking part?

Mr. Marsh: No. I think that the state would have the authority to provide by statute for a direct primary for president. Or it might be mandated by federal law.

Mr. Fink: "A convention at which candidates for president of the United States and vice-president will be nominated."

Mrs. Avey: What if vice-presidents aren't nominated?

Mr. Fink: Yes, that's a question. Why not say, "candidates for president of the United States and other national office"?

Mrs. Rosenfield: They're not going to start nominating senators.

Mr. Fink: No, but they might nominate secretary of state, they might separate the justice department from the executive branch.

Mrs. Eriksson: "The general assembly shall provide by law for the electors to choose delegates to a national party convention at which candidates for president of the United States and other national offices are nominated."

Mrs. Avey: What if no other national officers are nominated? Can that phrase be interpreted to require both?

Mr. Aalyson: "Or other national offices". I'm not sure whether I like that. And I think we should change one other word in there, from "a national convention" to "any national convention".

(That change was agreed to.)

Mr. Fink: It may very well be a run-off primary where two potential candidates are chosen and then the convention would choose from between those two. That's another possibility.

Mrs. Eriksson: What you're doing here now is mandating an election of delegates. Now, you may go on to say that the delegate's names don't have to appear on the ballot, but suppose there comes a time when you don't want to elect delegates?

Mr. Fink: But there may come a time, as Jim is saying, when you don't want to have a direct voter voice in the nominee of president of the United States.

Mr. Aalyson: This gives you a choice.

Mrs. Sowle: But does it?

Mr. Fink: No it doesn't, because as Jim points out the first sentence of your proposal mandates that the electors ultimately nominate the presidential candidate. Whether they do it directly or indirectly, they're still choosing the presidential candidate. That would not be consistent with a party rule that said all we want is delegates selected, uncommitted.

Mrs. Sowle: The committee proposal requires committed delegates, doesn't it?

Mrs. Rosenfield: Committed to the candidate.

Mr. Fink: It either requires committed delegates or by law a requirement of voting

in a certain way, whether they're committed to that candidate or not. This is one of the bad things that happened at the last national convention to both parties. There were some delegates who were there because by law they were told to vote for one person and in fact they were supporting another person.

Mrs. Eriksson: Of course, this doesn't really require a commitment. You indicate on the ballot the choice, but we've no language in here that binds them which is what some of the problems stem from.

Mr. Fink: Could the legislature pass language that binds them?

Mrs. Eriksson: Yes, probably.

Mrs. Rosenfield: This wouldn't provide for the problem you were talking about earlier - the person who wants to go committed to an issue, not to a candidate. He will vote for any candidate who will support his issue.

Mrs. Sowle: Maybe we can build into this an option for either choosing candidates for nominating for the presidency or for choosing delegates.

Mr. Fink: How about if you just said, "The general assembly shall provide for the electors to choose delegates to national party conventions. The names of delegates need not appear on the ballot if the general assembly provides for some other method of effectuating the vote of the electors."

Mrs. Sowle: Isn't that pretty much the same as this? You're still mandating a choice of delegates.

Mr. Fink: You're still mandating a choice of delegates, but not mandating how the vote of the people is translated to a vote for president of the United States. You're leaving the alternative completely up to the legislature in the second sentence.

Mr. Aalyson: Isn't that getting away from the idea, as embodied in the provision in the 1912 convention, that the electors should be able to indicate their choice for the candidate for president?

Mrs. Sowle: Now, was that the idea of the 1912 provision?

Mr. Aalyson: I thought it was. It was to avoid bossism, was it not? Of having someone foisted upon them. They wanted to be able to indicate what their preference was.

Mrs. Sowle: Yes, but they locked it in to a choice of delegates to the convention.

Mr. Aalyson: I'm not sure that that was a good idea, but that was the idea, and I think the thing we've been struggling with all along was whether we want to retain the original concept - that the voters should be entitled to express their preference. Not a binding preference, but a preference.

Mrs. Rosenfield: We're trying to do two things at once, aren't we? We're trying to retain that protection for the voter and at the same time we're trying to write it flexibly enough to get rid of that. And you really can't have it both ways.

Mrs. Sowle: It seems to me the one thing this does not do is that the electors can

choose either the candidates or the delegates, and I'm not sure that it would be that hard to build that into this. But they must be able to do one or the other. Is that right?

Mr. Fink: Except that if you want people to be able to run uncommitted, that's inconsistent with the direct primary.

Mrs. Sowle: What I'm saying is that if we mandated either a vote for candidates or a vote for delegates, then the vote for delegates is the uncommitted delegates.

Mr. Fink: No, it isn't necessarily. What you're saying is that the voters have to choose the presidential candidate - whether they choose him directly by designating him on the ballot, or by delegates pledged to him, they are still choosing the presidential candidate.

Mr. Aalyson: We don't want that.

Mrs. Sowle: Maybe we're trying to mandate that the general assembly has to do one thing or the other. Either let the voter vote for candidates at a presidential preference primary or directly for delegates uncommitted.

Mrs. Rosenfield: They cannot go back to the state convention system.

Mr. Fink: That makes sense to me. Does that make sense to you, Jim?

Mr. Marsh: What would happen if a party wants to do a combination of the two?

Mrs. Eriksson: Right, and what happens to the favorite sons?

Mr. Marsh: I think that there will be a substantial desire on the part of some candidates, and the Democratic party, particularly, to send delegates to the convention who were not elected, just by virtue of holding the office of U.S. senator or governor, or whatever.

Mr. Aalyson: But we can always add that. We've got to get the basic thing.

Mr. Fink: Perhaps you should transfer the notion of directness from directness in choice of the presidential candidates to directness in the choice of delegates. And the 1912 convention was to avoid a state convention, or the parties sending people to the national convention, then mandating that electors shall choose delegates is the most important factor.

Mrs. Sowle: But that's what got us to the bedsheet ballot.

Mr. Fink: No, because if you look at the second sentence, they can choose delegates either by voting for their names or by voting for presidential candidates, and automatically translate that to a certain number of delegates who will go to the convention for nomination for the presidency. In some countries what they do is have a list of delegates, or a list of parliamentary candidates, and then there is proportional representation in proportion to the number of votes that party gets. Then they go down the list, if we get 50% of the votes, we get 50% of our delegates in order of the names that are on the list. If we get 70% of the votes, then 70% of those delegates whose names are on the list, who are not on the ballot, will be chosen.

Mrs. Sowle: That get's back to my original proposal, that the general assembly shall provide by law for the electors to choose delegates who may be identified solely by their choice of candidate. But the objection to this was it prohibits just the presidential primary without choosing delegates.

Mr. Fink: Therefore, I suggest that I read out of the language that you have here on page 2 of this draft - let's try this again. "The general assembly shall provide for the electors to choose delegates to national party conventions. The names of delegates need not appear on the ballot if the general assembly provides for some other method of effectuating the votes of the electors."

Mrs. Sowle: I think that does exactly what this does, doesn't it?

Mr. Fink: Maybe I ought to add there, "provide for some other method of effectuating the vote of the electors for candidates for president of the United States".

Mrs. Sowle: I think we ought to repeal it.

Mr. Aalyson: I thought we decided we couldn't repeal it.

Mrs. Sowle: Right, but I'm beginning to think that we can't write an ultimately flexible provision.

Mrs. Eriksson: What was your second sentence, Katie?

Mrs. Sowle: "The general assembly shall provide by law for the electors to choose delegates to any national nominating convention.....who may be identified on the primary ballot solely by their choice of candidates for nomination for the office of president, etc., or vice-president."

Mr. Fink: I think that goes a long way to doing it. If we could fix that language up. Why don't we try doing that word by word.

Mrs. Eriksson: "The General Assembly shall provide by law for the electors to choose delegates to any national party convention at which candidates for president of the United States or other national offices are nominated." If the president or other national office is not nominated at a national party convention, the general assembly is under no obligation to provide for election of delegates to that convention. Only if that is the circumstance of the convention. Now, a new sentence, "The names of such delegates need not appear on the ballot..." Is the condition to be that there is some opportunity for the voters to express their preference for candidates? Okay. If we say that, that takes care of providing that the voters can express their preference. But that doesn't permit the uncommitted.

Mr. Fink: "The names of delegates to such convention need not appear on the ballot if the general assembly provides for some method...".

Mr. Marsh: Why not add another sentence, if you want to get into the preference primary, and say, "The general assembly may provide for a preferential election for the selection of candidates for president or vice-president, or other national offices."

Mr. Fink: I think my proposal does all of those things. "The names of the delegates need not appear on the ballot if the general assembly provides for some other method of effectuating the vote of the electors." What are the other methods of

effectuating the vote of the electors? It may be an indirect preferential primary, it may be that delegates would run under issue labels, it may be that they would run in some other fashion - all these are methods of effectuating the vote of the electors.

Mrs. Rosenfield: Does this provide for having candidates running under their own names?

Mr. Fink: Yes, that's just another alternative.

Mrs. Rosenfield: If you run in a congressional district under your own name then you don't have a bedsheet ballot.

Mr. Marsh: Unless you have 200 candidates running.

Mr. Fink: And you may well if you have 5 or 6 presidential hopefuls each fielding a slate of delegates. I'm not sure you're going to be able to get them all on the ballot, even at the congressional district level. How many names do you think you can get on a voting machine?

Mr. Marsh: There are serious limitations with voting machines even in the congressional districts.

Mr. Fink: Because they couldn't take 40 names, could they?

Mr. Marsh: No. There will be statutory problems.

Mr. Fink: We want something so foolproof now that we can sell it to the legislature without tying their hands.

Mr. Marsh: If this is passed in November, we'll have to face it in January when the general assembly reconvenes.

Mrs. Eriksson: "The general assembly shall provide by law for electors to choose delegates to any national party convention at which candidates for president of the United States or other national offices are nominated. The names of such delegates need not appear on the ballot..." Now yours was, "if the general assembly adopts some other method of effectuating the vote of the electors." The problem there is that in conjunction with this first sentence, that wouldn't work out, because other method of effectuating the vote of the electors would still mean they would be identified on the ballot by presidential choice. Why don't we just say, "The names of such delegates may appear on the ballot solely by choice of presidential candidate." That leaves it completely to the legislature.

Mr. Nichols: That's awkward language.

Mr. Aalyson: "If the names of delegates"?

Mr. Marsh: How about, "The names of delegates need not appear on the ballot."

Mr. Aalyson: And then maybe we need another sentence.

Mrs. Rosenfield: You need a qualification there. If the names don't appear, you want some other way for the voters to express their choice.

Mr. Aalyson: Let's stop right there, and maybe add something.

Mrs. Eriksson: "The names of such delegates need not appear on the ballot."

Mr. Fink: A period may be right because the first sentence mandates that the general assembly provide for the choice of the delegates. So they've got to provide for a choice, but the names of the delegates don't necessarily have to appear on the ballot. The general assembly couldn't do away with the choice of the people of delegates but it might be done without having their names appearing on the ballot.

Mr. Marsh: And then leave it to the statutory...

Mr. Fink: Of finding a consistency between these two sentences. The consistency has got to be a means of doing it.

Mrs. Eriksson: But we don't have anything in here which is going to get the names of the presidential candidates on the ballot.

Mr. Aalyson: Or prevent it.

Mrs. Eriksson: Right, but the question is it goes back to Katie's original proposition - what were they trying to do in 1912? Were they trying to give the voters an opportunity to express a presidential preference?

Mr. Marsh: You've already required that they give the voters an opportunity to express by mandating the election.

Mrs. Eriksson: But that's only delegates to the convention.

Mr. Fink: You're back to where we started, Jim, and you're raising a question. You're saying that this provides for a direct presidential preference primary, the way it is now. The question is, isn't that what the 1912 constitution required?

Mr. Marsh: I think the 1912 constitution required election of delegates to the convention with first choice of delegates expressed on the ballot.

Mr. Fink: So the essence was the choice of delegates. The essence was not the direct choice of presidential candidate.

Mr. Marsh: Historically it's worked out that way in Ohio, except in 1972.

Mrs. Eriksson: How about, if we say, instead of names of delegates, we say the names of candidates for delegate?

Mr. Marsh: Why not just have a period there and also say that the general assembly may provide for an expression of a preference for president.

Mr. Fink: I think that's good - add that as the third sentence - "The general assembly may also provide by law for the expression of a preference on the part of the elector for nomination for president of the U.S. or other national office."

Mrs. Eriksson: And you think that the general assembly could combine those two and provide that the names of the presidential candidates would be the sole method of identifying the names of the delegates, if they wanted to do that? "The general assembly shall provide by law for electors to choose delegates to any national

party convention at which candidates for president of the United States or other national offices are nominated. The names of candidates for delegate need not appear on the ballot. The general assembly may also provide by law for the electors to express their preference for candidates for president of the United States or other national office." That's a little wordy but I'm not sure that we can do it any other way. Maybe we should add to the first sentence, "choose not less than a majority of delegates to any national convention".

Mrs. Sowle: What I would suggest as the maximum flexibility is alternative provisions either for the election of delegates or presidential preference primary. There is both. There you've mandated the selection of delegates, at least a majority of them, and I think the maximum flexibility would be put in the alternative.

Mr. Fink: How about adding to the third sentence, "either through the election of such national delegates or by some other manner."

Mrs. Sowle: But in the first place you've mandated that there be delegates elected.

Mr. Fink: Yes, but the third part is not mandatory because you've allowed the voter to have a direct input into the preference and it might be accomplished by the delegate pledging himself to a certain national candidate. I think you need to separate these ideas.

Mrs. Sowle: The only thing wrong with this is that it mandates the presidential preference primary.

Mr. Marsh: I think we need to express this in terms of major party also, because you've got minor parties that aren't well enough based to do this sort of thing, and they should be permitted to select their candidates.

Mrs. Eriksson: We haven't mandated it. We've only mandated it if they have a national convention.

Mr. Marsh: The American Independent Party had a national convention that did not choose to elect delegates, and I'm not sure that it would be constitutional to require them to.

Mrs. Eriksson: Then we get back to the whole question of whether you can constitutionally mandate it in the first place. Then we're back to 1912 when they did mandate it.

Mr. Fink: Why aren't you back to just putting "may" instead of"shall"?

Mr. Marsh: Why don't you just stick in "major" before "party" and I would think that there at least you're limiting this kind of requirement,

Mr. Fink: Has "major" been defined in the Constitution?

Mrs. Eriksson: No, it has been defined in the Code. But Jim, how can you mandate this for one party but not another?

Mr. Fink: It ought to be flexible enough so that it could take account of exceptions.

Mrs. Avey: It seems to me that you're trying to anticipate all of the possibilities and include them in this provision. I don't see why you just can't have a statement of principle in there that the popular will shall be expressed in this matter, or that the general assembly shall provide the means by which the popular will shall be expressed in the selection of candidates for national office.

Mrs. Sowle: That mandates a presidential preference primary.

Mr. Nichols: You have a preference primary now because your vote for delegate is a vote for a delegate who has expressed his preference, so you're having an indirect preference primary now. But it's not in proportion necessarily to the preference of the voters, because you have some at-large and some by district.

Mrs. Eriksson: If we only provide for a presidential preference primary, without saying anything about delegates to the convention, then we're back to what they objected to in 1912.

Mrs. Rosenfield: If you mandate that the general assembly shall provide for the expression of the will of the people, then they can hassle it out in the legislature.

Mr. Nichols: The danger of such a general principle seems to me is that you could have the same situation prior to 1912 where you have a preference primary that has no bearing on who is chosen to go to the convention.

Mrs. Avey: But that wouldn't be carrying out the popular will to the actual selection of candidates. What I'm trying to say is that the people ought to have the right to have some say in who the two choices in the November election are going to be, and the only chance they have to express their desire is in the primary. So what is desired is that the General Assembly provide the means by which people are going to have their say.

Mrs. Sowle: But that doesn't provide for the parties saying that the voters should vote for an uncommitted delegate. It seems to me that what we now want, what's come out of this discussion is we want either a presidential preference primary or a vote for delegates to the convention.

Mr. Fink: Right, and if they're going to do it by the convention method, then the people ought to select a majority of the delegates, and not the party, because that gives the party a double shot at this - they select the delegates and then they have a convention where their selection of delegates selects the nominee.

Mrs. Sowle: I'm not sure what this does not permit.

Mr. Fink: Well, I think the way Ann has it, in three sentences, provides for the possibility of a national primary, a non-binding preference primary, a binding preference primary, selection by national convention,or not selection by national convention. If the don't do it in a national convention, then the first sentence would not apply.

Mr. Nichols: You don't want a preference primary that's unconnected with the selection of delegates in some way, would you?

Mr. Fink: You might.

Mr. Fink: I don't think either party in Ohio is particularly going to want that.

Mr. Nichols: The kind of preference primary that we have now is the case where you are selecting delegates who have declared their preference. The same thing would be true if the delegates names did not appear on the ballot. You're expression of your preference for president is indicating what delegate goes to the convention. But you would not want a preference primary, I wouldn't think, if there was no way that that preference would translate itself into at least a portion of the convention delegates.

Mr. Fink: Some states do have that.

Mr. Nichols: Some states do have that but it would seem undesirable. Indiana has it and McCarthy and Kennedy fought out the primary and the delegation went to Governor Brannigan.

Mrs. Eriksson: So maybe we ought to modify that third sentence which says that "The general assembly may also provide by law for the electors to express their preference for candidates for president of the United States or other national office..." then we would want to say provided that such expression shall somehow be connected with the election of delegates.

Mr. Nichols: I think that when you were working with that language, "not less than a majority of the delegates" that is in line with the theory that most of the delegates should be chosen by the people, even if their names do not appear on the ballot, that the delegates should be chosen with respect to their choice for president. But using a phrase like "not less than a majority of the delegates" permits the party to choose at least a portion of the delegates on some basis unrelated to their preference for presidential candidate.

Mr. Fink: What we're looking for is a means where the voter votes for presidential candidates and that is translated to delegates. I think we've reached the point where we've got too many variables in our heads. It would be good to have a few choices down on paper. Would it be possible to discuss them at a meeting a week from today?

The committee agreed to meet on Wednesday, April 10 at 9 a.m. at the Commission offices in the Neil House to discuss the suggested language for this provision.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
April 3, 1974

Summary (Part 2)

The Elections and Suffrage Committee met on April 3 at the Commission Offices in the Neil House. Present for the discussion of the Initiative and Referendum were committee members, Katie Sowle, Chairman and Craig Aalyson; Peg Rosenfield of the League of Women Voters, Roy Nichols of the Secretary of State's office; and staff members Ann Eriksson and Brenda Avey.

Section 1 of Article II as presented, was agreed to.

Copies of Mr. Aalyson's proposal on Section 1a were distributed.

Mr. Aalyson - When an initiative petition proposing an amendment to this constitution and having printed across the top thereof "Petition for an Amendment to the Constitution to be submitted Directly to the Voters" is signed by ten per cent of the electors, certified as provided in Section 1g of this article, and filed with the secretary of state, the secretary shall submit the proposed amendment to the electors at the next succeeding general election occurring subsequent to one hundred twenty days after the filing of such petition." Such amendment, if approved by a majority of the electors voting thereon, shall take effect thirty days after approved and shall be published by the secretary of state. I favor keeping the 120 day clause rather than removing it to Section 1g, and the reason for that is that I hate, as a lawyer, to keep jumping, trying to leaf through, and finding out what I'm supposed to be doing by referring to another section, if I can put it in that section without unduly burdening it.

Mrs. Eriksson - One difference that Mr. Carter made which I see you have incorporated is changing the word "electors" in the heading on the petition to "voters." He said that he made that change deliberately because he thought it was presenting a petition to someone who would understand the word "voter" better than "elector."

Mr. Aalyson - I agree with that. Now, the thing that I did that he didn't do was to retain the thirty day effective date, and I didn't know why he didn't.

Mrs. Eriksson - A constitutional amendment submitted by the General Assembly is effective immediately. I am unable to see why, if the people were submitting it, it should be effective at a different time. A constitutional amendment is not like a law in that you really need lead time for administration. Dick was adopting that suggestion in removing the thirty day provision. However, I suggested to him that if you are going to change it, you probably ought to provide for immediate effectiveness simply because it is provided for in the section for legislative constitutional amendments, and I think the omission of it here might leave a problem of construction. Jim, do you have any reason to think that there is any virtue to thirty days?

Mr. Marsh - No. I think probably the reason the thirty day business was in there to begin with was because you have a practical problem with these things. Usually it takes almost 30 days to have a canvass and to know what the vote is on an issue. If you have something that takes effect immediately on the election day, the election comes and then the issue is - do you have a binding law or don't you?

Mr. Aalyson - Well, we're talking about a constitutional amendment as opposed to law now.

Mr. Marsh - A binding provision in the constitution can have the same effect as a law. For example, the amendment on the general assembly, there was a question as to whether or not, before the official canvass, they could organize the general assembly, and what have you, but I think that they did it anyway.

Mr. Nichols - To take the judicial pay raise on the ballot last fall as an example, by its terms the resolution was effective immediately after passage, and the pay raise bill would cause salaries to go up on November 16, and the official canvass didn't take place until November 20. Auditors were calling in constantly asking whether they could regard this issue as having passed and grant the pay increase, or whether they had to wait for the official canvass. That's the kind of question that can come up.

Mrs. Eriksson - If the thirty-day provision is desirable, then it must also be desirable for legislative amendments.

Mr. Marsh - I would think that the reason they didn't have it for legislative amendments was that they thought the general assembly was smart enough to anticipate those problems. I don't really see any problems, however. We don't really care one way or the other.

Mrs. Eriksson - I can't really see that there should be any difference, and it seems to me that maybe that is a problem that you have to live with.

Mr. Nichols - The examples we gave were legislatively initiated amendments.

Mrs. Sowle - Can't the legislature specify when its constitutional amendments will be effective?

Mrs. Eriksson - Providing it gets on the ballot that way.

Mrs. Sowle - If we put in here "immediately", we'll have the same situation they faced with the income tax, where the court said they can't specify that it will take effect January 1st. Should the constitution permit the petition to set the effective date?

Mrs. Eriksson - The amendment itself is effective immediately but you could always write within the amendment, just as you do in a law, that beginning January 1, 1975, no more income tax shall be collected. Now that amendment is effective immediately but what it says is that on January 1, you're going to do something or not do something. So that really isn't a problem if you want to postpone it and if you draft it carefully enough, I don't think.

It was agreed to make amendments effective immediately, using language to parallel section 1 of Article XVI.

Mrs. Sowle - That takes care of section 1a.

Mrs. Eriksson - Except for agreement on where to put the 120 days. If it goes in 1g, you'd have to word it differently if you were going to permit a special election only for some and not for all. Mr. Carter liked the idea of specifying a special election, as long as it's held on the primary day, and thinks that idea should be applicable to a constitutional amendment as well as for the things that you had agreed to, which were for a direct and indirect initiative and for a referendum.

Mr. Aalyson - We agreed that the imperative quality of a law time-wise might be different from a constitutional amendment and that's why we left it.

Mrs. Eriksson - Dick said he thought that the same reasoning might apply if the people got all the signatures, but they were going to miss the November election, there was no reason why they should have to wait a whole year to get the issue on the ballot.

Mr. Aalyson - I agree with that.

Mrs. Eriksson - Do you prefer to keep it in this section?

Mr. Aalyson - I prefer to keep it for the reasons stated, which is that I don't like to have to refer to another section to try and find out what I'm trying to do.

Mr. Nichols - The main problem with the previous language was that it would have allowed the petitioners to specify the date of the special election, and they might choose something that didn't coincide with either the general or primary.

Mrs. Sowle - I agree that the 120 days and the special election ought to be included in this section.

Mrs. Rosenfield - "In the next succeeding general election or special election which falls on the same day as the primary election."

Mr. Marsh - I think you ought to specify the first Tuesday after the first Monday in May, because we have municipal primaries that occur in September.

Mr. Nichols - What if the legislature changes the primary date?

Mrs. Rosenfield - Tie it to the primary date for statewide elections.

Mr. Marsh - That would only be the even year primary.

Mrs. Rosenfield - You can do it on the same date in the odd year. Whatever the month is, whether it's May or June or September or August, it's the same date every year - first Tuesday after the first Monday.

Mr. Nichols - It does raise a problem in the odd-numbered year, but probably you can infer that if it's a day that primaries are held in most parts of the state that the issue can be put on the ballot at that time.

The new language to be included in section 1a that was agreed to was "general election and special election falling on the same date as the primary".

Mrs. Sowle - The next is section 1b, about initiative petition proposing a law, indirect and direct. Dick's proposal retains the direct initiative, doesn't it? He had some reservations about that, as to whether he thought we could get Commission and General Assembly agreement.

Mr. Aalyson distributed a proposed redraft of section 1b.

Mrs. Sowle - "When an initiative petition proposing a law to the general assembly . ."

Mr. Aalyson - This I parrotted from Dick because it very quickly shows you that it's indirect instead of direct.

Mrs. Sowle - So you have "proposing a law to the general assembly . . ." and then at the end of the sentence; "transmit it forthwith to the general assembly". I wonder if that's necessary.

Mr. Aalyson - I felt that we should show early on that we are talking about an indirect initiative.

Mrs. Eriksson - You've also incorporated his idea of including what's at the top of the petition early in the sentence.

Mr. Aalyson - I tried to make the various sections parallel and in chronological order. I have the 3% and the certification all in that one paragraph.

Mrs. Eriksson - Let us say, "as provided in section 1g of Article II of this constitution."

Mr. Aalyson - I don't object to that.

Mrs. Sowle - Going on to the second paragraph: "If the proposed law becomes law as proposed, it shall be treated in all respects as though it originated in the general assembly."

Mrs. Eriksson - I went over this with Dick and pointed out what we were doing by saying it this way. He agreed. He had one suggestion--instead of saying "becomes law" in this instance, perhaps we should say "if the proposed law is passed by the general assembly as proposed, it shall be treated in all respects as though it originated in the general assembly." "Becomes law" could imply that you went through the whole initiative process and put it to the ballot.

Mrs. Rosenfield - And you mean here if the general assembly passes it as proposed

Mrs. Sowle - How about "if the proposed law is <u>enacted</u> . . ." I prefer that. Then, in the third paragraph, "if the proposed law is amended and passed by the general assembly," and Ann has "if the proposed law is amended by the general assembly and becomes law."

Mrs. Eriksson - Then you'd want to change that to "amended and enacted."

Mrs. Sowle - I had "is enacted by the general assembly in an amended form."

Mrs. Eriksson - That was our original language.

Mr. Aalyson - I just thought that was a little cumbersome.

Mrs. Eriksson - Yes. And then "if the proposed law is amended and enacted by the general assembly, it shall be treated in all respects as though it originated in the general assembly, unless it is subjected to a supplementary petition as provided in this section, in which case it shall become law only if the supplementary petition fails."

Mrs. Sowle - That's very clear.

Mr. Nichols - Is the word "fails" a good word?

Mrs. Rosenfield - It has to cover two things--it can fail in not getting enough signatures to get on the ballot, or it can fail in getting on the ballot and not be approved by the voters.

Mrs. Sowle - Draft #3 says "except that if a supplementary petition" and yours is "unless it is subjected to." I rather like Draft #3, but this is just a difference in language.

Mr. Nichols - I think the lengthier verbiage in the third draft is more precise. A supplementary petition might fail because you didn't get enough signatures on the supplementary petition to place the issue on the ballot.

Mrs. Rosenfield - But then it wouldn't be subject to supplementary petition.

Mrs. Eriksson - I think that would be a question of interpretation, as to what you meant by subject to a supplementary petition.

Mrs. Rosenfield - Whereas your wording, Ann, doesn't leave any ambiguity there.

Mr. Aalyson - I agree.

Mrs. Rosenfield - We would say, "If the proposed law is amended and enacted by the general assembly" and then switch over to the third draft.

All agreed to that change.

Mrs. Sowle - The next sentence reads "If, within six months from the time is is received by the general assembly, the proposed law does not become law or if it becomes law in an amended form, its submission to the electors may be demanded by a supplementary petition signed by ..... per cent of the electors, certified as provided in Section 1g of this Article, and filed with the secretary of state within ninety days after the expiration of the six-month period, if the proposed law did not become law, or within ninety days after the law as amended is filed in the office of the secretary of state, if it becomes law within the six month period." I suggest making it two sentences. The first sentence deals with the proposed law which doesn't become law within six months, and the second one if it becomes law in an amended form. It reads like this: "If within six months from the time it is received by the general assembly the proposed law does not become law, its submission to the electors may be demanded by supplementary petitions signed by..... per cent of the electors, certified as provided in Section 1g of this Article, and filed with the secretary of state within 90 days after the expiration of the 6 month period." Then the next sentence is "If within six months from the time it is received by the general assembly, the proposed law becomes law in an amended form, its submission to the electors may be demanded by supplementary petition signed by..... per cent of the electors, certified as provided in Section 1g of this Article, and filed with the secretary of state within 90 days after the law, as amended, is filed in the office of the secretary of state."

Mr. Aalyson - I like that better, even though it repeats some language.

Mrs. Eriksson's - May I suggest that you incorporate Dick's proposal that you specify

that this has printed across the top thereof "supplementary petition for a law". Then it's clearly called a supplementary petition.

Mrs. Sowle - What if the law proposed in the supplementary petition is in an amended form from the way in which it was originally submitted to the electors in the first petition? Is this confusing or misleading? It says, "supplementary petition for a law first proposed by petition to the general assembly but not enacted by it." Does that apply to the amended form appearing on a supplmentary petition?

Mrs. Eriksson - Perhaps it should be reworded--something like, "supplementary petition for a law which has been considered by the general assembly."

Mrs. Sowle - But not enacted by it.

Mrs. Eriksson - But maybe it was. Maybe it was enacted in an amended form.

Mr. Nichols - Then we've got a question as to what constitutes consideration. Does that mean that it came to a vote?

Mrs. Eriksson - No. We've used the word "consideration" in our legislative article now, where we changed "first reading" to "consideration".

Mrs. Sowle - Maybe as it stands, it would not be misleading if the supplementary petition proposes it in a different way than the first petition did.

Mr. Aalyson - I don't like this either, "supplementary petition for a law first considered by the general assembly."

Mrs. Sowle - I guess that the part that bothers me is "first proposed by petition".

Mr. Aalyson - "First submitted to the general assembly"? That ties in with that first paragraph.

Mrs. Eriksson - But it still implies that you're giving the people the same version that you submitted to the general assembly. Maybe we should say just "supplementary petition for a law";

Mrs. Sowle - I left it out of mine, but I agree that if you're going to have it on all the others, then it ought to be on this.

Mr. Aalyson - I think that the whole import of this language is a red flag. "First submitted to the general assembly but not enacted by it." I don't like that.

Mr. Nichols - I don't see how being"considered" alters the implication that this was the form in which it was considered by the general assembly.

Mrs. Sowle - The general assembly would, in fact, have had to consider the form in which the supplementary petition appears. What I take issue with is "first proposed by petition", because if it's in an amended form in the supplementary petition it's not the way it was presented to the general assembly in the first petition. But it had to be considered by the general assembly in the form contained in the supplementary petition.

Mr. Aalyson - Perhaps "first considered" doesn't raise any real problem.

Mrs. Sowle - How about, "supplementary petition for a law considered by the general assembly but not enacted by it"?

Mr. Aalyson - I don't like "not enacted by them" because that tends to influence.

Mrs. Eriksson - Besides, it may have been enacted in an amended form. We need language that would apply to both situations.

Mrs. Sowle - In the amended form, if you say, considered by the general assembly but not enacted by it" that's true because this form was not enacted by the general assembly. The form contained in the supplementary petition was not enacted by the general assembly. Something else may have been, but not what's contained in the supplementary petition. What if the supplementary petition is used in place of a referendum? Then it has been enacted by the general assembly.

Mrs. Eriksson - But then the people are going back to some other version of it. If they like what the general assembly did, they're not going to do anything.

Mrs. Sowle - It's my understanding that you can use this route for a referendum, in effect. So that you could take what the general assembly passed, get your required per cent, and put it before the voters, and campaign for them to vote it down. That would be using it as a referendum.

Mr. Aalyson - Yes.

Mrs. Sowle - So then this heading would be misleading, because the general assembly might have, in fact, enacted it.

Mr. Nichols - You could not put it on in the form that the general assembly passed it, though. You're not saying that?

Mrs. Sowle - Yes, I am.

Mr. Aalyson - Put it on the ballot and treat it as a referendum, in fact, but with a smaller percentage needed to get it on the ballot.

Mrs. Sowle - Say you had your first petition. The general assembly enacted it in an amended form, which you don't like. Instead of going the referendum route, you get your signatures for this supplementary petition and try to get the voters to vote it down.

Mrs. Eriksson - It would seem to me to be very unlikely that anyone would do that because if that was the case, it would be that those persons would want their original version.

Mr. Nichols - They would be defeating both proposals, and if they tried to submit the supplementary petition in the form they originally proposed, then at least they would have the option of one of the forms surviving.

Mrs. Sowle - A group who might do this might be a third group opposed to the whole idea.

Mr. Aalyson - How about "supplementary petition under the provisions of 1b(a) of Article II of the Constitution"? Are we trying to tell the voter something, or are we simply trying to get a caption for this thing?

Mrs. Eriksson - I think we're trying to get a caption for a supplementary petition.

Mr. Nichols - I think the caption should identify what it is.

Mrs. Eriksson - What we're trying to tell him is that this is something the general assembly has had before it. Not trying to tell him in great detail what the general assembly did with it.

Mr. Aalyson - How about "supplementary petition for a law first considered by the general assembly"?

Mrs. Eriksson - I don't think that would be bad because I think that would properly describe the legislative process.

Mrs. Sowle - I think that's accurate, because it has to have been before the general assembly and it doesn't say it was first proposed by petition.

Mr. Nichols - I agree that "but not enacted by" sounds editorial.

The language agreed to was "A supplementary petition for a law first considered by the general assembly."

Mrs. Sowle - And in the first sentence, it would be "supplementary petition for a law first proposed by petition to the general assembly."

Mrs. Eriksson - I think we can use that same caption for both of them.

Mrs. Sowle - Are we agreed about breaking that into two sentences?

That change was agreed to.

Mrs. Sowle - Craig has, "The secretary of state shall submit the law in the form demanded in the supplementary petition, which may be either as first proposed or with any amendments which have been incorporated therein by either house of the general assembly . . ."

Mr. Aalyson - This is the same as the third draft.

Mrs. Eriksson - You could simply say that the supplementary petition may demand submission of the law either as first proposed or with any amendment or amendments which have been incorporated by either house or by both houses of the general assembly.

Mrs. Sowle - "at the next succeeding general election or special election which falls on the date of a primary election, whichever is earlier."

Mr. Aalyson - Do we need "whichever is earlier"? I put that in because I figured the people who wanted it would want to be assured that it would be submitted at the earliest possible opportunity.

Mrs. Sowle - You're forcing them to do it at the earlier of the two, are you not?

Mr. Aalyson - Do you think the language compels it to go at the next election without adding "whichever is earlier"?

Mr. Nichols - Without that phrase the inference may be that it will go on the ballot at the next succeeding general election unless the petition specifies that it's to go on the ballot at a special election held at the time of the primary.

Mrs. Rosenfield - Why can't you make it, "the next succeeding general election or special election which falls on the date of the primary election occurring subsequent to 120 days"?

Mrs. Sowle - So that mandates the special election if that's earlier.

Mr. Aalyson - I'm not certain that I want to do it. It's conceivable that the initiators themselves might want to delay.

Mrs. Rosenfield - I don't think they should be allowed to.

Mr. Aalyson - I kind of agree and I don't think they would want to if they're after this thing.

Mr. Nichols - All of the polling places are open in November anyway. It's more expensive to conduct a statewide vote on issues in May because many precincts may be open only for that purpose. But the change would be consistent with the section on amendments proposed by the general assembly which permits them to be submitted at a special election date also.

Mrs. Rosenfield raised the question of whether "which" should be "that."

Mrs. Sowle - At the end of that sentence, Craig says, "if the supplementary petition is approved by a majority of the electors voting thereon, it shall become effective 30 days after the election. If it is rejected by a majority of the electors voting thereon, the amended law passed by the general assembly becomes effective thirty days after the election."

Mr. Aalyson - We should change "passed" to "enacted."

Mrs. Sowle - Going back to the third draft in the third paragraph, it says, "the law passed shall take effect only if the law proposed by supplementary petition is rejected by the majority of the electors voting thereon."

Mr. Aalyson - It doesn't say when, though. We decided that with regard to laws there should be a 30 day waiting period to give people the opportunity to prepare for their becoming effective.

Mrs. Sowle - Does this take care of it, "treated in all respects as though it originated in the general assembly"? Those originating in the general assembly, do they wait 30 days?

Mr. Nichols - Ninety days after it passed the general assembly and was filed is long gone by the time this election has taken place. So why do you need thirty days at that point? The thing has probably been passed 4 or 5 months previously.

Mr. Aalyson - I don't suppose you do need that, except this is a personal feeling.

If the thing is in a state of flux, you should give people who might be affected by it the opportunity to prepare for its effects. And they don't really know until the supplementary petition has been voted upon, and so I say give them thirty days to make their preparations in which to comply. I've moved the thirty day effective provision up to division (a) so as not to have to hop-scotch from either section to section or division to division, or paragraph to paragraph, if possible.

Mrs. Sowle - I still don't think Ann's covers the taking effect of the law passed by the general assembly and the thirty day provision for that. It concerns a law submitted to the electors.

Mr. Nichols - I got the impression from your argument, Craig, that you would recommend the thirty day period on a referendum issue, also.

Mr. Aalyson - Exactly. I think that if those who might be affected by the law are uncertain, that they should be given a period following the date that it is actually enacted or practically enacted in order to prepare for its effects.

Mr. Nichols - So this won't be inconsistent with the referendum because you're going to do the same thing.

Mr. Aalyson - Yes. The argument, as I see it, is, until the election no one is sure whether the law is going to be effective or it is not. And in many instances, at least thirty days, I think, would be needed to permit them to prepare to comply with the law once it does become effective.

Mrs. Eriksson - I see no problems if it is to go in the referendum section also.

Mr. Aalyson - It could be something less than 30 days if someone is worried about that additional period of time, but I think that the people who are going to be affected ought to have an opportunity to prepare for the effects.

Mrs. Sowle - That makes sense to me. Without the 30 day provision, this has been the case with referendum. Has there been any difficulty with it?

Mrs. Eriksson - We've had so few referenda, you see. We haven't had any since 1939 so I don't know that anyone's memory could go back to the time when there was a referendum and anyway, they've all been unsuccessful. They nearly all rejected the law passed by the general assembly so that the law hasn't gone into effect.

Mrs. Sowle - That takes care of section 1b (A) then, I believe.

Mr. Aalyson - In 1b (B), I provide for the printing of the title, same as Dick's and the other provision.

Mrs. Sowle - "petition for a law to be submitted directly to the voters". Craig, you have a question about the time period?

Mr. Aalyson - Do we want to specify a time period there before the election? It probably should be uniform, and I think it would be the same as we had previously, the 120 days till the next general or special election. It should be uniform.

Mrs. Sowle - So we would include the 120 days and we would include the special election. So really it's just rearrangement to make it parallel. Are there differences

in (C)?

Mr. Aalyson - I suggest the same as the draft except for the 30 day effective provision as included in division (A), and I stated my reason for that.

Mrs. Sowle - Okay, so that would be moved. "No law proposed by initiative petition shall contain more than one subject which shall be clearly expressed in its title." And then we don't have the next sentence in because that's the thirty day provision. But then you would have, "No law proposed by initiative petition and approved by the electors is subject to the veto by the governor."

Mr. Aalyson - Do we want to include a provision restricting repeal by the legislature within a specified time for the direct initiative?

Mrs. Eriksson - Mr. Carter feels that putting a provision like that in the constitution would be inadvisable. He's really opposed to restricting the legislature in that fashion and also he feels it would be very difficult to get the whole thing through the general assembly if that were included.

Mr. Aalyson - I think, as a practical matter, the legislature would be somewhat reluctant to immediately turn around and repeal a law which had been passed in this fashion.

Mrs. Eriksson - He feels that if a law were passed by initiative, the general assembly would be very reluctant to tamper with it and he feels that this is protection enough.

Mrs. Sowle - political restraint.

Mr. Aalyson - I agree, but we had talked about it, that's why I raised it.

Mr. Nichols - Making a law a permanent fixture for a period of years is almost like making it part of the constitution.

Mrs. Rosenfield - If there were any restriction, I would rather see it in the form of an extraordinary majority for a fixed number of years. So within 3 or 5 years they would have to pass it by 2/3 of each house.

Mrs. Sowle - If the voters are concerned about something like that, I would think that they would go for a constitutional amendment, and they would have that option.

Mrs. Rosenfield - I think you can defend it because I have the feeling that if people feel strongly enough about something that they get an initiative or referendum of any kind and it passes, and then the legislature turns around and thwarts them, that legislature is going to find itself unelected next time.

Mr. Aalyson - The initiators of the original petition would probably come right back in with a referendum on the bill repealing the initiated law.

It was agreed to omit the provision.

Mrs. Eriksson - Everybody agreed to (D). Now, before we finish with this one, because this is also going to affect perhaps the referendum section, perhaps you want to hear Mr. Carter's thoughts on the percentage, because that's an unresolved question in this draft also. He understands the reasons why you had agreed to the reducing the number

of signatures. He feels, however, that he would oppose reducing the number of signatures, even in the referendum situation. He feels that also would be very difficult to get through the general assembly. He also feels that by eliminating the requirement for the spread among the counties, which he agrees to, that is sufficient concession to the difficulty of obtaining the required number of signatures within the 90 day period. And he thinks that that in itself may be difficult enough to get through the general assembly, and that coupling that with a reduction in the number of signatures would be very difficult.

Mrs. Sowle - Craig, what's your reaction to that?

Mr. Aalyson - Dick and I are opposed philosophically on this type of thing. I accept his argument about getting it through the general assembly, and that sort of thing. Our philosophical differences, I think, relate only to the percentage itself. And so my suggestion would be that we leave the matter for discussion at the full Commission and see what consensus would be there, because that's going to determine it ultimately anyhow. I think that would be the place to hash it out rather than try to make two separate suggestions here or try to have one of us persuade the other to his view which I think is highly doubtful.

Mrs. Eriksson - You would perhaps present the matter to the Commission with blank spaces?

Mr. Aalyson - Yes, but with an explanation to the Commission that there is a difference of opinion within the committee. Unless the Chairman wishes to vote in favor of one of the other of our positions.

Mrs. Sowle - I don't think, with such a small committee, that I'd be willing to do that. We could, however, submit it with the current percentages, with an explanation. We could do it either way. It seems to me that if we present it with the percentages that are in the constitution now, at least what the commission has before it is this. Because the percentages are related, for example, it makes sense to me if the direct initiative is 6% and the indirect is 3 and 3 and the referendum is 6, you can see some pattern in it.

Mrs. Eriksson - It's presently 6% for referendum, you discussed reducing that 6% to 4%, but I do not believe Dick agrees to that.

Mr. Aalyson - We haven't yet decided whether we should have a percentage or a flat number.

Mr. Nichols - When our office made the proposals that we submitted originally, you'll recall that we recommended lowering all of the percentages on constitutional amendments initiated laws, and eliminating the indirect, and reducing the percentage on referendum. I think that the argument for keeping the percentages relatively high on initiating laws are probably easier to see than on the referendum. And on the referendum, the time limitation is the principal argument for reducing the percentage requirement. I think that past history with these efforts has shown that it is extremely difficult to get them on the ballot. And I don't think it's really just the 44 county requirement, but that the fact that they simply haven't been able to come up with the number of signatures equal to the percentage required, so they haven't even reached the point of determining whether they met the 44 county requirement. They didn't even get that far because they didn't have their 6%. So on the referendum issue it would

seem more important to reduce the percentage than on any of the other petition variations.

Mrs. Rosenfield - The direct initiative ones have no time limitations.

Mrs. Eriksson - A supplementary petition on the initiative has. But you're only dealing with 3%.

Mrs. Rosenfield - And that's a significant difference from 6%. That may really be the key number.

Mr. Aalyson - As long as we're talking generally, one thing that bothers me about the concept of having a percentage as opposed to a given number of signatures is that equally persuasive issues might come up in different years, and yet one would have a greater burden than the other because there had been a greater vote cast for governor, and the greater vote cast for governor might have been simply a spin-off of a presidential election, where more people are voting, or something like that.

Mrs. Rosenfield - Governors are no longer elected in presidential years in Ohio.

Mr. Aalyson - Or, again, there might be some compelling reason for getting out to vote other than voting for the governor whose spin-off would affect a subsequent initiative.

Mrs. Rosenfield - You could have an extraordinarily high vote if you had an extraordinary tight governor's race.

Mr. Nichols - Or, a good example would be in 1958 when the right to work issue was on the ballot, and a lot of people voted who were primarily concerned with that issue rather than the contest for governor.

Mr. Aalyson - And it might be something just as simple as a very bad day weatherwise as opposed to a nice sunny day. The percentage difference could amount to several thousands of signatures.

Mr. Nichols - And the turnout does fluctuate. For example, in 1966, Governor Rhodes had a much higher percentage and a much larger plurality than he had in 1962, but his actual raw vote was lower because the turn-out was so much lower. And therefore, the percentage you would have to meet to get an issue on the ballot in 1967 or 1968 would have been much lower than it would have been earlier in the decade.

Mrs. Sowle - I think it makes some sense to have a specified number, but how do you arrive at it?

Mr. Aalyson - I don't know. I think it has some advantages that the percentages did not have, and maybe it has some disadvantages too.

Mrs. Rosenfield - You could average the figures for over 40 years and show what a percentage of that, get a nice round number, and use it.

Mr. Aalyson - It's something to think about. We haven't toyed with that yet, but it is in line with your desire to submit something, and if we're going to submit it I'm kind of opposed to leaving blanks.

Mrs. Sowle - That's true. I think at this point, I'm inclined to submit it to the Commission, if we go with percentages, with current percentages, because we have to vote up or down. I don't feel strongly about this. It's not that much of a philosophical question to me. I don't want a California situation, but I don't want it real hard either.

Mr. Aalyson - When you say "present percentages" what do you mean?

Mrs. Sowle - The percentages now in the constitution, except that I think I might be willing to go down to four per cent in the referendum. I haven't worked that all out myself. But I think we ought to go with something that the Commission can vote up or down, no matter how we treat it during the discussion for the Commission. But in the meantime, so that we can decide how we present it to the Commission, should we ask the Secretary of State's office for figures for gubernatorial elections over a period of time?

Mr. Nichols agreed to supply the figures.

Mr. Nichols - We agree with Mr. Carter's position that it should not be made so easy that the ballot is flooded, but on the other hand, right now it's so difficult that they can't get a referendum on the ballot at all. So it should be made easier than it now is. We get quite a number of phone calls in our office and an occasional letter from people asking about referendum procedures. Very few of them actually undertake to start the process because they find out what it entails, and they decide to give up before they've even started.

Mrs. Sowle - I also think that we're going to have to consider that the legislature is going to be very unsympathetic to liberalizing the referendum percentage.

Mr. Nichols - Especially if it's reduced too far.

Mr. Aalyson - I think that's so. On the other hand, I hope that they are big enough to consider that they appointed this Commission and this subcommittee indirectly and we've given it some thought.

Mrs. Sowle - That's right. And I think they will. I don't think it's going to be too hard to see the county change, if we can present a good argument and I think we can, that there is a question of the constitutionality, although there are arguments on both sides of that question. But the other might be more difficult. Shall we take up numbers and percentages at the meeting before our Commission meeting, because Dick is sure to be there, and we ought to get his thoughts on that?

Mrs. Eriksson - Then, I think everything else in section 1b is resolved.

Mrs. Sowle - So we are at 1c.

Mr. Aalyson distributed a draft.

Mr. Aalyson - You should retain Ann's first sentence. Then: "If during such 90 day period a petition having printed across the top thereof . . . is signed by four per cent of the electors, certified as provided in Section 1g of this Article, and filed with the secretary of state, the secretary shall submit it to the electors" and again I say "within a specified time period?" and I think it should be there. The same time period as previously. The 120 days. Before we get on to something else, I'v

got "Referendum Petition Proposing the Rejection of Law Passed by the General Assembly".

Mrs. Eriksson - You might want to say, "Law, Section or Item".

Mr. Aalyson - My personal feeling was that that was redundant.

Mrs. Sowle - Yours is a little shorter than Dick's. Although I like "referendum petition".

Mr. Aalyson - Mine is the same as Dick's except for the word "referendum".

Mrs. Sowle - Except that he has "for rejection of law".

Mr. Aalyson - Yes, I have "proposing the rejection". Should it be "passed" or "considered"?

Mrs. Sowle - Or enacted?

"Enacted" was accepted.

Mr. Aalyson - So we have "Referendum Petition for a Law Enacted by the General Assembly". Now we go down to the end of the parenthetical expression which we've decided would include the period of time. I've tried to put together Ann's and Dick's suggestions: "Such referendum petition may propose the rejection of such law, one or more sections of such law, or one or more items of any such law appropriating money. No law, section, or item so submitted shall go into effect until and unless approved by a majority of those voting upon it."

Mrs. Sowle - This is mainly a question of the order, isn't it?

Mr. Aalyson - There may be something needed there. That may not be quite adequate, "no law, section or item so submitted shall go into effect".

Mrs. Eriksson - That's alright. That's essentially what it is now, and that last part too. Dick has made all that one sentence.

All preferred splitting the sentence into two.

Mrs. Eriksson - I don't think we have any problems there. The only thing is the 4% or 6%.

Mrs. Sowle - And it is parallel with the drafting of the other portions of the Article, putting in the 120 days. We're going to Ann's provision on time. In that section I have a very minor question. It says, "the petition is filed with the secretary of state within 90 days after any such law has been filed in the office of the secretary of state."

Mrs. Eriksson - There is no difference.

Mrs. Rosenfield - It might be useful to use the same phraseology because it does seem to imply some subtle difference.

Mrs. Eriksson - That is simply the language of the present constitution.

Mr. Aalyson - I don't have that language, and I don't think it's necessary. I've attempted to eliminate that.

Mrs. Sowle - "The secretary shall submit it to the electors . . ." That's where Ann comes in with "within 90 days . . . in the office of".

Mrs. Eriksson - Both Dick and Craig have incorporated that concept at the beginning of the sentence by saying "if during such 90 day period" and they've eliminated that redundancy. We can take out "the office." Both in this one and in the direct initiative and in the constitutional amendment provision, my original drafting had put this word "it" in here in places where I now find that it refers to the petition rather than to the constitutional amendment or the law which is what is submitted to the people. So I think we are going to have to specify, not "submit it" but "submit the law". And the same thing is true in the others.

The changes were agreed to.

Mrs. Eriksson - Before you get to 1e, I didn't redo 1d because the only change you had made in 1d, if you recall, (that's the section that says what's not subject to the referendum) was to change the word "mentioned" to "included", at the end of that section, and Dick Carter had suggested exactly the same thing.

Mrs. Sowle - Looking at Craig's draft of 1e, "If conflicting matters are approved at the same election by a majority of the electors voting thereon, the one receiving the highest number of affirmative votes shall prevail. Mr. Carter has "those voting thereon".

Mr. Aalyson - It seems to me that that applies to anything which is conflicting, whether it's supplementary petition, referendum, whatever you have.

Mrs. Rosenfield - Could you have a conflicting constitutional amendment and law on?

Mr. Aalyson - The constitutional amendment always prevails.

Mrs. Rosenfield - And this doesn't muddy that up?

Mr. Aalyson - That's a good question, but I don't think so. The rule is that the constitution always prevails.

Mrs. Eriksson - It seems to me that you ought to keep the constitutional amendments and the laws separate, and then let the court decide. If there is some conflict between a law and a constitutional amendment that was approved, let the court say that the constitutional amendment prevails. Rather than having to look to the highest number of votes.

Mr. Aalyson - "If conflicting matters of law are approved"?

Mrs. Eriksson - Then say, if conflicting constitutional amendments are approved. In other words, rather than trying to cover them all by one . . .

Mrs. Rosenfield.- You've got to cover them in two pieces.

Mr. Nichols - That's what the third draft does.

Mrs. Sowle - Dick says "conflicting matters of law".

Mrs. Eriksson - I had it originally only "if conflicting laws". And then we discussed the fact that if you were submitting a section or an item in an appropriation act, it might not be covered. I think his use of "matters of law" would cover everything.

Mrs. Sowle - That seems to me to cover it.

Mr. Nichols - I can certainly foresee that it might require litigation to determine whether a conflict is actually there.

Mr. Aalyson - That's always going to be the case.

Mrs. Eriksson - I don't think we could possibly eliminate that. And I don't think we want to automatically provide for that, anyway.

Mr. Nichols - Is there any reason why, in the first paragraph of the third draft, it ends by saying "shall be the amdnement to the constitution" and at the end of the second paragraph, it says "becomes law"? instead of "shall become law"?

Mrs. Eriksson - No, they should be the same, I think.

Mrs. Sowle - What about Craig's language "shall prevail"?

Mr. Nichols - It's not as precise as saying "shall become law".

Mr. Aalyson - "Shall be the amendment to the constitution" and "shall become the law"?

Mrs. Sowle - Are you talking about the first paragraph? How about "becomes the amendment"?

Mrs. Rosenfield - I think "shall be the amendment" is really clear.

Mrs. Sowle - I'm eliminating "shall" because you don't have "shall" in the second paragraph.

Mrs. Eriksson - Why don't you just say, "Is the amendment to the constitution" and "is the law"? That would stick with our present tense rule. Because when you say "becomes law" it sounds as if it's some future act.

That change was agreed to.

Mrs. Sowle - We're up to section 1g.

Mr. Aalyson handed out his redraft.

Mr. Aalyson - The asterisk refers to a paragraph on the second page which I thought might best precede everything that's said in here and that refers to the style of the laws. That would be the paragraph that's on page 2. It says, "The style of all laws submitted by initiative petition shall be: 'Be it enacted by the people of the State of Ohio,' and of all constitutional amendments 'Be it resolved by the people of the State of Ohio." I didn't change the language - I just changed the location.

Mrs. Sowle - That's already in the constitution?

Mrs. Eriksson - Yes, that's in the constitution now. I think it's at the very end now, or someplace very close to the end.

It was agreed to place the style language first.

Mrs. Sowle - "Whoever seeks to file an initiative, supplementary, or referendum petition shall first file with the secretary of state and the Ohio ballot board."

Mrs. Eriksson - Mr. Carter improved the draft by eliminating my second sentence.

Mrs. Sowle - "A copy of the full text of the law, . . ." She says "law, section or item in any law or constitutional amendment" and you say "proposal".

Mrs. Rosenfield - I like "proposal". It covers everything.

Mr. Aalyson - ". . . to be contained in such petition".

Mrs. Sowle - How do you feel about "proposal" instead of "law, section, or item of any law or constitutional amendment"?

Mr. Aalyson - Everything has to be either a law, section, or an item, does it not?

Mr. Nichols - Or a constitutional amendment. Yes.

Mrs. Rosenfield - It's a general description of all those four specific kinds of things. Does that cover it?

Mrs. Eriksson - Yes.

Mrs. Sowle - Then "together with a list containing the names and addresses of not fewer than three nor more than five electors, one of whom shall be an initiator and designated as chairman, constituting a committee to represent the petitioners in all matters relating to the petition."

Mr. Aalyson - That contains a little bit of new material and moves it up from farther on. It requires that one of those persons who is representing the committee be an initiator, and requires that an initiator be designated as chairman. Now the reason I did that is that the board has to submit its proposal to the secretary of state and it said the "initiators". I'm designating someone to whom the board can send this. It will be the chairman of this committee, and it pins down for the board what they've got to do. There may be two or three initiators of a petition.

Mrs. Sowle - Aren't they all initiators?

Mrs. Rosenfield - They're all initiators, but can't you just define that the chairman is the initiator for the purposes of having someone to deal with?

Mrs. Eriksson - If you say, "not fewer than three nor more than five", it's not really a burden to say "one of whom shall be designated as chairman". Call them all initiators.

Mr. Aalyson - But does it have to be an initiator in the present language?

Mrs. Eriksson - The present language doesn't say, really, what an initiator is.

Mr. Aalyson - I feel that it should be one of those persons who's initiating who should be the chairman of the committee.

Mr. Nichols - You really think it essential to spell all of that out in the constitution?

Mr. Aalyson - Yes, if you're going to make the ballot board responsible in the constitution for submitting copies of what they propose to the secretary of state and the initiators. Then I think you've got to tell them who they are going to send it to.

Mrs. Eriksson - What we're doing here is taking the statutory language that presently requires that it be done by the attorney general and putting it in the constitution.

Mrs. Sowle - And having the ballot board do it instead of the attorney general.

Mr. Aalyson - The way you have it set up, Ann, on page 3 providing for this representative committee, seems to me permits the designation of 3 to 5 electors, none of whom had anything to do with this petition.

Mrs. Eriksson - Yes. I like your suggested language. I think all three or five ought to be initiators, and one of them chairman.

It was so agreed.

Mrs. Eriksson - And I don't think we need to say "a list containing." Why don't we just say "together with the names and addresses of not fewer than three nor more than five electors . . ."

Mr. Aalyson - Signers?

Mrs. Eriksson - Maybe we want to keep that they are electors. Give this privilege only to electors.

Mr. Aalyson - Of course, only electors can sign, if we say signers. . .?

Mr. Nichols - You're equating signers with initiators, not with petition signers.

Mrs. Eriksson - I think we have to say what we mean by initiators.

Mr. Aalyson - To me, an initiator means one of those persons who is responsible for getting this proposal together.

Mrs. Eriksson - At the present time, it can be interpreted that way. It's not in the constitution. "Together with the names and addresses of not fewer than three nor more than five electors who shall be initiators, and one of whom shall be designated as chairman". Do we need a chairman?

Mr. Aalyson - I think we do, because later on you provide for the ballot board to send it to the chairman, and say the chairman shall be responsible for preparing the petition.

Mrs. Rosenfield - You really need one person in charge.

Mr. Aalyson - . . ."the names and addresses of not fewer than three nor more than

five electors," who shall be initiators, and one of whom shall be designated as the chairman.

Mrs. Rosenfield - We've got too many things in a sentence, I think.

Mr. Aalyson - Such electors shall constitute . . . a committee to represent the petitioners.

Mrs. Sowle - So as it stands, "with the names and addresses of not fewer than three nor more than five electors, who shall be initiators, and one of whom shall be designated as chairman. Such electors shall constitute a committee to represent the petitioners in all matters relaring to the petition."

Mr. Aalyson - "The board shall, within fifteen days after it receives the text, prepare an identifying caption and a fair and truthful summary of the proposal and submit them to the secretary of state and to the chairman of the committee." I left out the requirement that there be a request that the board do that. I didn't see any reason why they should have to submit a request separately from the filing of the petition.

Mrs. Eriksson - You're right, if you give the duty to the board to do that, it's not necessary to say request.

Mr. Aalyson - I say the committee shall prepare the petition. It could be the chairman. I don't know that it makes a difference. "The committee shall prepare the petition which shall contain a true copy of the caption and summary prepared by the ballot board, and shall file a copy of the petition with the secretary of state before solicitation of signatures to the petition.

Mrs. Sowle - May I ask something about that original procedure. As it stands now, do the initiators have to submit a summary to the attorney general, which he approves?

Mrs. Eriksson - Yes.

Mrs. Sowle - Now, we're not doing that here.

Mrs. Eriksson - No, and there's one big difference. That petition to the attorney general now has to contain 100 signatures, and we've not specified that here. This says that only five people can get it started.

Mr. Aalyson - I don't think we need 100 people. I think that getting 100 signatures on anything is essentially no burden at all. Why require it: if it's a vain effort, it doesn't mean anything?

Mrs. Sowle - That presently is by law, not by constitution.

Mr. Nichols - Is it your goal in drafting this to completely eliminate the statutory provisions concerning initiative and referendum?

Mrs. Eriksson - No, there would still be provisions having to do with the secretary of state sending the petitions to county boards of elections. Those provisions would still be valid.

Mr. Nichols - In other words, this is aiming at that precise requirement. You're not

trying to take everything out of Chapter 3519. and put those features that you want to keep in the constitution and eliminate the rest.

Mrs. Eriksson - What we're really trying to do here is eliminate the attorney general's part in it, which we feel may constitute an additional burden. Those things which are in 3519, which have to do with the mechanics of the secretary of state's office, I don't think we're making any attempt to eliminate.

Mr. Aalyson - Except that he doesn't have to prepare the petition any longer.

Mr. Nichols - That's already been changed.

Mr. Aalyson - "Any petition may be presented in separate parts, but each part shall be identical to the copy filed with the secretary of state."

Mrs. Sowle - I thought that you had suggested at one point that we begin using the term "part petition," or is this not where you would do that?

Mr. Aalyson - We use "part petition" later.

Mrs. Eriksson - This is a description of what later is called a part petition.

Mr. Aalyson - "The petition need not contain the full text of the proposal, but if it does not, each solicitor of signatures to the petition shall carry a true copy of the full text while soliciting, and the petition shall state immediately following the summary . . . ."

Mrs. Sowle - "The solicitor of your signature has a true copy of the full text of the proposal summarized in this petition. If you wish to read the full text, please ask the solicitor."

Mrs. Eriksson - Oh yes, I think Craig's is much clearer and simpler.

Mrs. Sowle - I like that. I think it's very good.

Mr. Aalyson - "Each signer of any petition must be an elector of the state and shall sign his own name indelibly on the part petition." I think I go along here for a while without making any changes. "There shall be placed on such petition after the name the date of signing and the signer's address."

Mrs. Sowle - You used "address" in place of "residence."

Mr. Aalyson - For a signer residing outside of a municipality, the address shall be designated as the township and county in which he resides. For a resident of a municipality, the address shall be designated as the name of the municipality and the street and number, if any, of his residence." "On each part petition shall appear the certification of the person soliciting the signatures to the same, stating the number of the signers of such part petition, that each of the signatures was made in the presence of the solicitor, that to the best of his knowledge and belief each signature is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, and that each signer signed the same on the date stated opposite his name. No affidavit or other certification thereto shall be required." I think that's the same as the third draft.

Mr. Aalyson - "As soon as a certified petition containing a proposal to be submitted to the electors is filed with the secretary of state, he shall transmit it to the Ohio ballot board . . ."

Mrs. Sowle - How about "the secretary" instead of "he"?

Mr. Aalyson -Okay, I think that just remains the same up until the next paragraph. You did not have a paragraph, Ann. Dick suggested one and I agree.

Mr. Aalyson - I said "The committee representing the petitioners rather than" the committee named in a referendum petition because we've already provided that there will be a committee in any type of petition. "The committee representing the petitioners shall prepare the argument supporting the proposal contained in the petition. The general assembly may provide for the preparation of opposing arguments.

Mrs. Eriksson - If the proposal contained in the petition is a law passed by the general assembly that you want to submit to the voters for their approval or rejection, the committee doesn't want to support that proposal.

Mr. Aalyson - I started to say "supporting their viewpoint", but that didn't sound right.

Mrs. Rosenfield - How about "supporting their position"?

Mrs. Sowle - And the way you submit a referendum is good because if the proposal on a referendum would be "we propose to reject it" you'd have what you had on the income tax. You wouldn't know what you were voting yes or no on.

Mrs. Eriksson - In other words, you have a law on the ballot that says "Every dog shall have a collar". If you vote yes, the dog must have a collar.

Mr. Nichols - But it still will be possible, to have a question stated in such a way that the voter will be looking at the substantive features instead of the nature of it, as to whether it's an initiated law, a referendum, or a constitutional amendment, and he still could conceivably, no matter how clearly you state it, he still could vote yes when he means no.

Mr. Aalyson - "The committee representing the petitioners shall prepare the arguments supporting their position"? Would that solve it? And then the general assembly may provide for the preparation of opposing arguments.

Mrs. Rosenfield - Which probably means that they'll ask the ballot board to do it.

Mr. Nichols - If Issue #3 passes on May 7, we're preparing implementing legislation which, hopefully, will be introduced on May 8 and could be enacted in time to be effective for use in August for issues going on the November ballot, presuming the ballot board would be functioning. On those arguments, this bill would propose that the general assembly would, or the leadership of the general assembly, would designate members of the general assembly who voted in support of a resolution to draft arguments on behalf of it, and members who voted against it, to draft arguments opposing it. And if there were no members voting against it, then the ballot board would have to provide for arguments against the proposal. This is still in the rough stages, it's not prepared for introduction yet, but it's one of the options being looked at. Now, you've got a different problem when you're dealing with an initiated

law--it's simple to say the initiators prepare the arguments for the initiated proposal, but it would seem more appropriate to have the ballot board prepare arguments on the other side. But I think it may be well to leave it for the general assembly so that it could be decided other than the constitution what would be the best way to prepare opposing arguments. The general assembly may prefer to draft the arguments itself depending on the nature of the petition, whether it's a referendum petition or an initiative petition, and they may choose to defer the decision to the ballot board in one instance, and reserve the right to itself the right to prepare the arguments in other instances.

Mrs. Eriksson - Dick said that he is opposed to the idea that in a referendum the general assembly could spend state money to defend its law, whereas the people taking the referendum to the people do not have that kind of resource.

Mrs. Sowle - Is that any different from the general assembly spending state money to promote a constitutional amendment proposed by the general assembly?

Mr. Nichols - I don't see the problem in either case, because, if you're going to require publication or dissemination of information, if you're going to include a requirement that arguments on both sides be published, you're spending state funds to announce the arguments written by the general assembly and to announce the arguments written by the initiators. I don't see where the general assembly is getting the advantage there.

Mrs. Sowle - I think here you have to look to the use to which the arguments are put. The only use to which they are put is publication in the newspaper and both arguments are published in the newspaper.

Mrs. Eriksson - Yes, except that the general assembly can provide by law for other dissemination of information.

Mrs. Sowle - But could it provide by law for just the publication of its own arguments?

Mrs. Eriksson - No, because it says, "together with the ballot language, explanation, and arguments." In here we do not include the provision that the general assembly can provide for other dissemination, as we did in the case of constitutional amendments.

Mrs. Sowle - And there it says the general assembly shall provide.

Mrs. Eriksson - So you wouldn't have that here. What you do have is the state paying for the publication of the arguments, but it would have to be both sides.

Mr. Aalyson - Some ramifications of Dick's argument, it seems to me, come into play when you do permit the general assembly to provide for preparation of arguments opposed to what the petitioners are trying to do. The general assembly might and can very easily perhaps secure a lot more talent than can the initiators of the petition, and maybe his argument isn't all bad.

Mrs. Eriksson - They're limited to a 300 word argument, so if the initiators of a referendum petition have anough talent to get 180,000 signatures . . . they'd have enough talent to write 300 words.

Mr. Aalyson - I'm thinking of the general assembly handing it to the Legislative

Service Commission which is skilled in doing this type of thing. But I don't know that they would be any more skilled in presenting an argument . . . Then I again suggest, "The committee representing the petitioners shall prepare the arguments supporting their position. The general assembly may provide for the preparation of opposing arguments."

Mr. Nichols - I think it's a good approach because it leaves it subject to legislation, and it could be changed more easily than if it were included in the constitution as to how the opposing arguments were to be prepared.

Mrs. Sowle - You're keeping the explanation to 300 words.

Mr. Aalyson - I think we reached that conclusion last meeting. I think the rest of it is exactly the same.

Mrs. Sowle - The paragraph beginning, "The secretary of state shall cause . . ." are there any changes in that?

Mr. Aalyson - "The secretary of state shall cause to be placed upon the ballot the caption and ballot language prepared by the ballot board for any proposal to be submitted. He shall also cause the ballots so to be printed as to merit an affirmative or negative vote upon each law, section of law, or proposed amendment to the constitution."

Mrs. Sowle - What about an idea in a law . . . You dropped a line.

Mr. Aalyson - Before I reduced all that verbiage to the word "proposal". Would that be a propos here?

Mrs. Eriksson - I don't see any reason not to change it here. "on each proposal".

Mr. Aalyson - In the case of a referendum petition, the question shall be stated . . ." That's Dick's I guess.

Mrs. Eriksson - I don't think that's necessary.

Mr. Nichols - I don't think it is either. I think it's already required.

Mrs. Eriksson - I think that is simply a repeat of saying an affirmative or negative vote upon each proposal. Again, in a referendum, the proposal before the voter is the law.

Mr. Nichols - Yes, and if the question were stated in any other way, I think that recourse to court would promptly correct it anyway.

Mr. Aalyson - The next sentence is open to question depending on whether we change to an average number and whatnot. I don't know that I've changed anything there. I left out the word "the" before "initiative and referendum". It should be "The initiative and referendum provisions of this constitution shall be self-executing . . . I made no other changes.

The meeting adjourned until April 10 at 9:00 a.m.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
April 10, 1974

Summary

The Elections and Suffrage Committee met on April 10 at 9:00 a.m. in the Commission offices in the Neil House. Present at the meeting were committee members Katie Sowle, Chairman, and Craig Aalyson; James Marsh, Assistant Secretary of State; Roy Nichols of the Secretary of State's office; Liz Brownell of the League of Women Voters; and Howard Fink, Professor of Law at Ohio State University. Staff members Ann Eriksson, Director, and Brenda Avey attended.

Section 7 of Article V

Three new drafts on selection of delegates (Section 7 of Article V) were distributed. Variation "E" was proposed by Brenda, one was prepared by Mr. Aalyson, and one was prepared by the Secretary of State's office.

Mr. Marsh - I think essentially we are worrying about the same thing, the fact that we haven't provided for uncommitted delegates, when we require that delegates be indicated on the ballot by their preference for president. This is something we would like to avoid if possible. It would be desirable to permit people to appear on the ballot designated by the issue that they support.

Mr. Fink - It wouldn't be inconsistent to not have their names appear on the ballot and still have uncommitted delegates.

Mr. Marsh - We were attempting to adjust the language to permit candidates to be identified in some way other than by the name of the candidate for national office that they might happen to support.

Mr. Marsh noted that his and Mr. Aalyson's draft were very similar.

Mrs. Eriksson - Now that you have gone back, basically, to the present constitutional idea which is that you elect delegates, you can stick more closely to the way the section is now written. In the second sentence, instead of saying they "may be identified solely by their preference for candidate", you simply say that they "may be identified as provided by law."

Mr. Marsh - That gives more flexibility.

Mrs. Eriksson - Right. We discussed trying to identify delegates by issue, and I believe that would be difficult to put in the constitution, and it would be hard, also, to provide legislation as to how you would write those issues for the ballot. But I think if you just say "may be identified in the manner provided by law" you've left it completely open.

Mrs. Sowle - Is there general agreement on that?

Mr. Fink - "The candidates need not be separately identified on the ballot and may be identified in the manner provided by law".

Mrs. Sowle - Craig's says, "The ballot designation of candidates for delegate shall be as provided by law." They both do the same thing.

Mr. Nichols - Jim's language is more explicit.

Mrs. Sowle - Does that mean you take language out of 2a?

Mrs. Eriksson - I still think we need to have an exception written in 2a. Although if you use this specific language from 2a here, I think it would be difficult for a court to say that you're still bound by 2a.

Mr. Nichols - If there's a deliberate statement of the exception then it's obvious what they can do.

Mr. Fink - If there is another method of effectuating the vote besides from having the delegate's name appear on the ballot, it should be clear that it isn't only when they're tied to a presidential candidate. Your next sentence here says "identification is solely by their preference of candidates for the offices to which candidates are nominated . . ." So you think that is sufficient to state the alternative that there are other ways of identifying delegates, their names on the ballot, besides having the names of their choice for president?

Mr. Marsh - I think it is. I think the purpose of that sentence is to provide for the written consent of the names of candidates for national office if they appear on the ballot but certainly doesn't require that the delegates' choice appear.

Mrs. Eriksson - I think that clearly provides for some other method of identification of candidates for delegate.

Mr. Nichols - The key word is "if," and that whole first half of the sentence is unnecessary under the old section because it was assumed that the delegate was chosen according to his preference for president.

Mrs. Sowle - Yes. This last sentence in the "Eriksson Draft" bothered me a little bit because I could see some people wanting to have a kind of presidential preference primary without the consent of the candidates - under certain conditions. Jim's requires the consent of the candidate only if identification of delegates is tied to it. So that makes sense to me because that's the current situation, isn't it?

Mr. Nichols - Which would mean that you could have an election of delegates and a nonbinding preference primary. You could have both if you wanted, but in the election of delegates, the consent of the candidate for national office would have to be obtained if his name is on the ballot.

Mrs. Sowle - This is what we have now.

Mr. Fink - Yes, as it is now the candidates' names cannot be used without the permission of the candidate in the election of delegates.

Mrs. Eriksson - Now, the delegate has to state his choice. Of course, theoretically it would be possible for the general assembly to provide for a presidential primary completely apart from the election of delegates.

Mrs. Sowle - And I'm not advocating the desirability of doing that. I'm just trying to keep our provision as nonrestrictive as possible.

Mr. Fink - Does your process end with recommending one set of language to the general assembly? Is it possible for you to have a first choice, and state what the problems are, and say that there might be alternative ways of stating this? To show the

legislature that if they want to accomplish a slightly different purpose in a constitutional amendment they would adopt language "b"?

It was noted that the Commission makes a single recommendation although the report would indicate alternates studied.

Mrs. Eriksson - The legislature can always amend, but strategically, if there is any possibility of getting it on the November ballot, there needs to be substantial agreement by May 8th. There's one thing, of course, that none of these drafts do, and that is to make any kind of requirement that the delegate selection reflects the presidential choice, if that's the way the names are carried out, in any way. Brenda thought you might like to look at some language that would do that, and that's what her variation "e" attempts to do. It says, "if the general assembly provides for a preference primary". The prior sentence would say that the general assembly may also, in addition to requiring election of delegates, and then if they do that, then the election of the delegates must reflect the preferences.

Mr. Nichols - So you would be precluding a tandem situation where you have a preference primary and a delegate selection primary.

Mrs. Eriksson - If you have the preference primary, then it would have to be reflected in the choice of delegates. I think her language would not preclude the possibility that you might have some delegates tied to an issue, uncommitted to a presidential candidate.

Mr. Fink - Except for this language, "if the general assembly provides for such preference primary, they shall provide by law for the selection of delegates to reflect, as nearly as possible, the preference of the voters for candidates for national office" mandates proportional representation. Because if it is reflected as near as may be, then if you had a primary that was tied to congressional districts, you would have to have proportional representation of the districts--the very thing that the Democratic draft intends to preclude.

Mrs. Eriksson - Except that you might have some delegates on there who were not committed.

Mr. Fink - Yes, but if we're talking about the political viability of getting this through the legislature, if it seems to be at odds with the very thing that the Gilligan administration has attempted to prevent, I don't think it will pass.

Mrs. Avey - In looking through the summary, it didn't seem to me that this question was resolved that you definitely didn't want some translation of the vote, or that you definitely did want it. I just thought you should have a definite yes or no on that issue in view of the fact that none of the drafts before you permit that.

Mr. Marsh - I would think that the General Assembly always has the authority to provide for a preference primary if they want to. It would probably be well if the constitution did not limit the general assembly by keeping this as general as we can.

Mrs. Avey - The thing that surprised me was that delegates were not bound in any way in Ohio, whereas in most states they were bound or required to pledge themselves to the candidate who appeared as their preference on the ballot--not by the constitution,

but by statute. We don't even have that.

Mr. Fink - What the Secretary of State's proposal leaves out is some method of effectuating the vote of the people--turning them into binding instructions to the delegates.

Mr. Marsh - I think there you're getting into something we can do by statute if we want to. But I would think there would be situations where you wouldn't really want your delegates to be bound. I think it's silly for delegates to go to a convention and be duty-bound to cast their votes for persons who are no longer in contention.

Mr. Aalyson - And then if you bind them, you would then have to say when they would be unbound. I think you're putting a statutory type of thing in the constitution, if you do that.

Mr. Fink - I agree on that. All I would suggest is that there be some language to say that this law, which identifies them, shall also provide for the effectuation of the vote of the people.

Mr. Marsh - Getting the consent of the candidate for national office, he would certainly choose people who would go to the convention and represent his interests, I think.

Mrs. Sowle - The present arrangement, which is reflected in your last sentence, here. seems to me to do that rather nicely. In other words, you have to have the consent of the candidate if you're going to run as a candidate for delegate under the name of McGovern. McGovern has to consent that you do that. It seems to me that that's enough. How the legislature can change that to make a vote binding, but it seems to me, if McGovern has consented to my candidacy for delegate, that there is enough tie-in. The legislature could, I assume pass a law that delegates would be bound, if they wanted to go that route.

Mr. Nichols - I think it's vitally important to keep the provision in the constitution requiring the consent of the candidate, because I think back to the 1968 New Hampshire primary when Lyndon Johnson defeated in the preference primary Eugene McCarthy about 58% to 42%, but he had a proliferation of delegates pledged to him. McCarthy was careful to have only one delegate in each district, and he walked out of that primary with 20 out of 24 of his delegates--having really lost the preferential primary and took away almost all of the delegates. That certainly would be an undesirable result. The consent of the candidate is a vital part, I think to be left in our provision.

Mr. Fink - But certainly nothing in this language precludes the legislature from mandating a nonbinding presidential preference primary if they want to, not keyed to delegates.

Mr. Marsh - I think this deals with the election of delegates. In fact, I'm wondering if we've provided for the situation where there can be a proportion of the delegates in accordance with the vote. Are we locked in to a winner take all thing for at least a majority of the delegates?

Mr. Nichols - It's proportional only in the sense that it can split district by district. It's not truly proportional in the strict sense.

Mr. Marsh - Suppose there are 30 delegates to be elected at large, and candidate "a" gets 60% of the vote and candidate "b" gets 40% of the vote. And of those you want candidate "a" to have 60% of the delegates and candidate "b" to have 40% of the delegates in accordance with party rules. Do we have that kind of flexibility in this language?

Mr. Fink - Not necessarily. That's just getting back to what I was saying. I think there ought to be another sentence to say that the general assembly shall provide by law for the effectuation of the vote for delegates. I don't think we can mandate it in the constitutional language--that's too complex. The philosophy could change over a time. But I do think that the general assembly ought to be charged with the duty of turning the vote for delegates into delegates, and they don't necessarily follow. You suggest that maybe we could mandate it by proportional representation, in other words, a direct turning of the percentage of votes into delegates. Another way of doing it would be to say that all voting would be by congressional district, which is, I think, what's going to emerge. And the winner in the congressional district is the delegate even though in all the congressional districts across the state, the winning candidate gets 51% of the vote, and all of the losing candidates get 49% of the vote--one candidate could take all of the delegates under that system, even though he only won by 2% of the votes in each one of the districts.

Mrs. Sowle - Tell me how this language precludes proportional representation.

Mrs. Eriksson - I don't see how it does, in any way.

Mr. Fink - It isn't only what we think we're saying. I think it's what the legislature reading this language ten years from now thinks the intention of the language was.

Mrs. Sowle - How does this language preclude proportional representation in any way?

Mrs. Eriksson - It just says they have to be chosen by the electors.

Mr. Fink - But it doesn't define "chosen".

Mr. Marsh - It doesn't define chosen, and if I get the most votes, haven't I been chosen?

Mrs. Sowle - And is that how you think it would preclude proportional representation?

Mr. Marsh - Yes.

Mr. Fink - It could be so read, and I think it would be good to add some language even if it seems superfluous to us at this point.

Mr. Nichols - But to say that they may be identified in a manner provided by law, I think, that in itself gives the legislature the flexibility to spell out details.

Mr. Marsh - As far as the wording of the ballot is concerned, but I don't think it gives them that kind of flexibility as to the vote . . .

Mr. Nichols - We thought the sentence in Howard's original proposal was fine.

Mr. Fink - That said, "The names of delegates to such conventions need not appear

on the ballot if the general assembly provides for some other method of effectuating the vote of the electors."

Mr. Marsh - That would be unobjectionable.

Mrs. Eriksson - I don't know what that means.

Mr. Aalyson - I don't either. What do you mean by effectuating the vote of the electors?

Mr. Fink - Okay, maybe we could insert some other language besides "effectuating". "effectuating" to me is a short-hand way of saying that the legislature can provide for proportional representation, or the legislature could provide for direct translation of votes to winnters, the legislature could provide for the votes to be done on a congressional district basis, or at large. The legislature could provide, for instance, that each interest group that was running could provide a list of delegates in such proportion that they got that would be the delegates that would be sent; and some things I can't conceive of. Maybe "effectuate" is not a clear word.

Mrs. Eriksson - I don't think it is because to me that can also be read very restrictively. It could almost be read as a winner take all.

Mr. Fink - And that's just what we're trying to avoid. Do you think there is some other language that you could think of that would carry out the kind of thing that Jim and I are worried about?

Mr. Aalyson - My feeling is that if we don't limit the legislature, then they have the power to do whatever they want to. It seems to me we're trying to do a number of things. One is to retain the concept that there shall be an elective process for delegates, at least for a majority. Two, we don't want to tie the hands of the ballot whereby this elective process shall be effectuated. Three, we want to provide that the names of candidates shall be used without their written consent. And if we do that, without tying the hands of the legislature in any other respect, I think they're free to do whatever they choose to do.

Mrs. Eriksson - How about, instead of saying, "shall be chosen by direct vote of the electors" which is the language in the present constitution, simply saying, "shall be elected as provided by law." And that way, you can say congressional districts, at-large. And then it's clear that the general assembly can provide the method of election.

Mr. Aalyson - Read the sentence as you would modify it.

Mrs. Eriksson - "At least a majority of the delegates to a national political party convention at which candidates for national office are nominated shall be elected as provided by law."

Mr. Aalyson - Does "elected" carry the connotation that it must be by the electors?

Mrs. Soule - That's my question. "Chosen by the electors as provided by law"?

Mr. Fink - I would leave it "chosen by direct vote of the electors as provided by law".

Mrs. Eriksson - That would be alright. Just leave it as it is and add "provided by law" at the end.

Mr. Fink - And each time we put "by law" to indicate that the legislature can carry this out by appropriate legislation.

Mr. Nichols - Is it better to say "in a manner provided by law" or doesn't that make any difference?

Mrs. Eriksson - Why don't we keep both sentences the same.

Mr. Fink - I like "in a manner provided by law" rather than "as provided by law."

Mrs. Sowle - What does "direct" mean?

Mr. Nichols - I think "direct" contradicts what we're doing here.

It was agreed to remove "direct."

Mrs. Sowle - ". . . by vote of the electors in the manner provided by law".

Mr. Fink - You see what we've done is we've carried out everyone's intention. We've repealed this, by entirely turning this over to the legislature, but we could never get passed a constitutional amendment doing that. And that's simply what we've done, and I think that's a good process.

Mrs. Sowle - Do we have agreement now on the second sentence: "The names of candidates for delegate need not be separately identified on the ballot, but may be identified in a manner provided by law."

Mr. Aalyson - Do you need all that language? Do you need to say that they don't need to be separately identified? If you say that they can be identified in the manner provided by law.

Mrs. Eriksson - Craig's is "The ballot designation for candidates for delegate shall be in a manner provided by law."

Mrs. Eriksson - My one suggestion there would be to change the word "designation" to "identification".

Mr. Nichols - I think that that's a little fuzzy, though.

Mrs. Sowle - I'm not sure that I would know what that meant.

Mr. Nichols - I think that the legislature needs to be aware from the constitutional language that they have the option of eliminating the separate identification on the ballot of the delegates names.

Mr. Fink - And so Jim's language, I think, carries that out.

Mrs. Sowle - And that's the main thrust of the proposal.

All agreed on the second sentence.

Mrs. Sowle - Do we need to identify "major party"?

Mr. Fink - It isn't defined in the constitution.

Mrs. Sowle - It is defined by statute.

Mr. Fink - But if we put this in the constitution we have to define it in the constitution, and we'd be locked in. I think this "major-minor party" is a good solution to a short-run problem, but in the long run it may be that we'll evolve to some other designation.

Mr. Aalyson - The phrase "national political party convention" seems to me to embody the idea of major parties.

Mrs. Sowle - Well, let me pose the question. We know that if an action violates the federal constitution that this isn't going to bind anyway. But we do have a situation whereby the courts have said to the state of Ohio that they can't require that the delegates be elected under certain conditions. Is that right, Jim?

Mr. Marsh - Yes.

Mrs. Eriksson - I think the question is still unresolved, perhaps,as to whether the state of Ohio can require an election of delegates at all.

Mr. Fink - Are you thinking of Williams v. Rhodes? Is that the case you're thinking of--the George Wallace case?

Mr. Marsh - No, that dealt with signature requirements. We're thinking of the Socialist Labor case.

Mr. Fink - The companion case to that? Where they weren't going to have a national convention?

Mr. Marsh - Yes.

Mrs. Sowle - There's no problem if there's no national convention.

Mr. Fink - If there's no national convention, then the first sentence doesn't apply.

Mr. Aalyson - If you have a national convention, it seems to me that you're already talking about a major party.

Mr. Nichols - The American Independent Party had a national convention, only they decided very late to have it. In fact, I think their decision was after the primary, when it was too late.

Mr. Fink - The Socialist Labor Party had a national convention. Isn't their problem a question of choosing state committeemen and all of that that they didn't want to go through? It wasn't a reluctance to have a national political party convention.

Mrs. Eriksson - If we say that this only applies to major parties, aren't you going to have the Republicans and Democrats saying, "Why should it apply to us and not the American Independent Party"?

Mr. Nichols - Furthermore, as Howard points out, if you discuss major parties in the constitution, you've got to define it, and then you could have a federal court

decision coming along declaring it unreasonable and if you have a statute declared unreasonable and unconstitutional you can easily change it. But if you've got it in the constitution, you've got a problem of getting it back out.

Mr. Fink - I really think that, so far as I'm concerned, I'm satisfied with Jim's draft.

Mr. Marsh - I am too. If you get legal problems with minor parties, why then we can make exceptions for them.

Mr. Fink - It's less likely to violate the federal constitution the way we have it than if we put in something about minor parties.

Mr. Aalyson - I don't like to nit-pick but I think the third sentence needs a little modification. I think I would prefer it to read, "if identification of the delegates is solely by their preference for . . ."

Mr. Fink - It should be "candidates for delegates";

Mr. Nichols - I think that third sentence refers back to the second one which is saying the names of candidates for delegates need not be separately identified. In the following sentence you've said if the identification is solely by their preference, which is obviously referring back to the previous sentence.

Mr. Fink - To make it even clearer, why don't we say "if this identification".

Mrs. Eriksson - Or, "if such identification".

"If such" was agreed to.

Mrs. Sowle - Okay, and then we don't need "a candidate for delegate". Should we say, "by their preference" or "by preference" for candidate?

Mrs. Eriksson - Just say "by preference".

Mr. Fink - "By preference of the candidates"

Mr. Marsh - No. "for candidates" sounds right.

Mrs. Sowle - "for one or more of the national offices to which candidates are to be nominated at the convention." That takes care of our problem of president and vice-president. "The name of a candidate for national office shall not be used without his written consent." I like that.

Mr. Fink - I think that, as we've got this now, I don't see how the Democrats could worry about this because it seems to me that this will be consistent with anything that comes out of their mini-convention. I think since we've included that the name of no candidate shall appear on the ballot without his permission, that this ought to go through.

Mr. Marsh- The only way you'd get some objection is if someone wanted the names of the delegates still left on the ballot.

Mr. Fink - But they can be, depending on the legislation.

Mr. Aalyson - Is that word "solely" in the final sentence too restrictive? It doesn't add anything.

It was agreed to remove "solely".

There was discussion about obtaining the opinions of various persons on the committee's proposal, and the method of presentation to the legislature if Commission approval is obtained.

Mrs. Sowle - Let's go on to the drafts on the initiative and referendum.

Mr. Nichols - Those figures on the Governor's races were amazing, weren't they?

Mrs. Eriksson - The differences are partly explained by the fact that Ohio's governors only had 2-year terms until 1956 so every other gubernatorial contest coincided with the presidential election.

Mr. Nichols - And in 1958 we started electing them in the mid-term. That's why you see, for example, '48 and '44 are high, while '42 and '46 dropped. 1948 was high and '50 dropped again. '52 was high, and '54 dropped again.

Mrs. Sowle - So we should not see, in other words, from now on, we probably will see a reflection of population statistics, and so forth.

Mr. Nichols - Well, I don't know. If you look at, starting with '52, you'll notice that it declined every year until '66 which gradually went down, and '70 was the first year that it jumped back up to a more normal figure. So for a period from '56 to '66 it was declining rather steadily. In '70 you had a hot senate contest and a hotly contested governor's race, and I would suppose that that would account for a larger turnout then.

Mrs. Sowle - The conclusion that's drawn here is not a conclusion that we might draw ten years from now.

Mrs. Eriksson - Except that I think you still can draw the conclusion that the number of votes still does not seem to be increasing in proportion to the population or potential voters.

Mr. Nichols - It seems to reflect the level of interest in the governor's contest for that year rather than the population trend. That's why, in '66, for example, the figure was unreasonably low, apparently because there was not an interesting contest that year.

Mrs. Sowle - But we're comparing apples and oranges, aren't we?

Mrs. Eriksson - To some extent.

Mr. Nichols - The constitutional amendment was in '56, so beginning in '58 governors had four-year terms elected half-way through the presidential election years. Even in '58, which was a mid-term election as far as presidential years are concerned, you had a higher vote than you had in 1970, because the right to work issue was on the ballot.

Mrs. Eriksson - An issue may draw out people even more than a gubernatorial election, and even more than any increase in population. Certainly between '58 and '70, the number of voters increased, and it will probably increase even more for the next time, because 1970 did not reflect the 18 year old vote.

Mrs. Sowle - If we went with the average of the 13 elections as a base, is it fair to assume that that base would be a fair one to use, because if anything, we may expect an increase rather than a decrease? If we go to a fixed number rather than a percentage.

Mr. Nichols - If your view is to make the number a little bit less than the percentage requirements, then it would be a fair figure to start from. For example, your 6%--instead of using 178,000 you could go with 150,000. And your 3%, instead of going for 89,000, go for 75,000. For 4% you could go with 100,000. And you would be adopting a figure that's lower than the present percentage requirements, and probably also lower than the same percentage requirement would be in any gubernatorial election.

Mr. Aalyson - On the constitutional amendments, which requires 10% we've said that we probably should require a higher number.

Mrs. Sowle - What would you say--200,000 signatures?

Mr. Nichols - 250,000 to keep the proportion the same, but the actual figures are lower than they would be now.

Mrs. Sowle - Without deciding whether to go with a number or percentage, there are two very definite positions on either side of increasing or decreasing percentages. We either go in without a recommendation or for us to take one or the other side. I have been giving it a good deal of thought. I hate to go back to the Commission with blank spaces, and I really am closer to Dick's position on this. I think that if we relieve the county requirement, that makes it sufficiently easier, though I'm willing to go with roughly what we have now. Maybe, however, going to numbers instead of percentages. I think that I would want to go to the Commission with a recommendation somewhere near the difficulty which now exists, but naturally, with plenty of discussion before the Commission so that could be fully debated before the Commission decides.

Mr. Aalyson - I agree that we should not leave the spaces blank.

Mrs. Sowle - I am rather sympathetic with going to a number rather than a percentage.

Mr. Aalyson - I think it simplifies things, certainly, and for a constitutional amendment, if we were to choose the number 250,000, which is a nice number, in view of these averages it does strike me that if 250,000 citizens are concerned and want to have a change, I think they're entitled, at least, to have the opportunity to let the voters vote.

Mr. Nichols - Having a raw figure eliminates the necessity of computing the required number of signatures, and of having an exact count reaching toward an arbitrary goal--what would appear to be a very arbitrary goal when you have an odd figure.

Mrs. Eriksson - It also carries out Craig's theory that someone wishing to do one of these things can read the constitution and find out basically what he has to do.

Mr. Nichols - There are a lot of people who don't know who to call to find out how many voted for governor.

Mr. Aalyson - That's what I'm saying. If Mr. Petro wanted to do this, how does he know to go to the secretary of state? If he looked in the constitution, it would tell him. Simplifying this procedure seems to me to be desirable. Regarding amendments of equal merit, one might not have a chance because of the things on the ballot in the previous gubernatorial election.

Mrs. Avey - Is there any other reason for not reducing the percentage (or number) of signatures, other than the feeling that the general assembly will be opposed?

Mr. Aalyson - It seems to me that we don't want to make it too easy. I don't know whether there is any other reason. I see no other reason.

Mr. Nichols - Going to a raw figure that is slightly lower than the percentage requirement might be slightly easier to sell than actually presenting a change in the percentage requirement.

Mrs. Eriksson - But there is still a philosophical question. I'm not sure that Dick will even agree to lower figures even of fixed numbers. I don't know.

Mr. Nichols - All the figures show is that the vote for governor is not related to population--it doesn't follow a gradual growing pattern like population does, or as population in Ohio has, at least. And because of that, it might not be valid to have the signature requirement based on the vote for governor, because that means the signature requirement is prone to go up and down rather than gradually growing, which is probably the intent of having a signature requirement, to have to gradually grow with the population.

Mrs. Sowle - And the simplification of the procedure for anyone wanting to use it. They can read it and see exactly what they need.

Mrs. Brownell - I understand all of this, but there is still is an effort going on to make registration easier. If we get to this point of making registration easier, and there are efforts now to bring government down to local levels and local participation. Will this in fact, increase the number of voters?

Mr. Nichols - If percentage was tied to a population figure, it would gradually grow. If it was tied to a vote for governor, it could go up and down. If it was a flat figure, it's going to stay the same. That would mean that it's relatively easier as the population increases.

Mr. Aalyson - It seems to me that all you're doing is permitting the opportunity for something to get on the ballot. And then the people can accept it or reject it as they choose.

Mr. Nichols - If you're suggesting tying it to the number of qualified voters, there's a couple of problems with that. One is that not all parts of the state have registration, it would be a difficult figure to determine. And it's almost impossible to determine an exact figure of qualified electors right now. Until we get statewide registration it will be impossible to get an exact figure.

It was agreed to postpone a decision until the next meeting.

Mr. Aalyson - I don't think we need the summary to review the new drafts.

Mrs. Sowle - Let's proceed with the fourth draft then.

Mrs. Eriksson - Section 1a now identifies the initiative petition as proposing an amendment to this constitution and printed across the top is the caption "signed by ..... number of electors, certified as provided in section 1g of Article II." We did not take out the 120 days before the election for filing. The secretary of state shall submit the proposed amendment at the next succeeding general election. Now this is where I have made a change. You had agreed to the language, "shall submit the proposed amendment to the electors at the next succeeding general election or special election on the date of a primary election." Craig's draft had "whichever is earlier". I have some problems with this special election. If we say or statewide primary election, we would only have the primary election in the even numbered year. Your intention was to permit it to be submitted in the primary election in the odd numbered year, knowing that you have to designate that as a special election, because otherwise, all the polling places would not be open. The problem still is how do you specify that. The phrase "next succeeding general election or special election" I felt would not do it, because there is no such thing as a next succeeding special election. You have to say when that is, and I thought if you said "next succeeding special election on the date of the primary election" it still might sound as if you were giving the people an option. Someone still has to say that that particular date needs to be a special election. Roy, do you have any particular suggestions on how to say that so it would be very clear?

Mr. Aalyson - The next primary election?

Mr. Nichols - I think it's arguable as to when the next primary election is. Does it include the odd-year primary which will not necessarily be held in all parts of the state?

Mrs. Eriksson - And of course the further problem is that some cities have primaries on other dates in that odd-numbered year. And that's why you have to have something that indicates that it's a statewide election.

Mr. Nichols - In the odd-numbered year you have the primary in about 3/4 of the precincts of the state. I think Jim indicated the last time that he did not think that this would pose any problem, to have language of this type, to have "a special election on the date of the primary election". He felt that that could be construed liberally enough to mean that you could have it at the primary in an odd-numbered year as well. He didn't think that anyone would be able to say that that means you've got to be able to vote in a statewide primary the same day that Cleveland has its primary in September. There's no other statewide special election on the date of the Cleveland primary, but rather it would be talking about the time the primary is held generally through the state, which is defined by statute and not by charter cities.

Mrs. Eriksson - Right, and I think by saying, <u>the</u> primary election, rather than <u>a</u> primary election

Mr. Nichols - <u>The</u> primary election suggests that it's the date of the primary that the statute fixes rather than the variation that the city charter may set. Because if a city doesn't have a charter it's governed by the statute. And I think when you're talking about <u>the</u> primary election you're talking about the one set by statute.

Mrs. Eriksson - I still felt that we needed to keep the "whichever is earlier" and the "at a special election" rather than saying "next succeeding general election or special election"

Mr. Nichols - I think the "at a" is an essential part.

Mr. Aalyson - "At the next succeeding general election or at a special election to be called . . ."

Mrs. Eriksson - Then you have the question of who is going to call it. What we want to do is fix it and make it self-executing. And that's why I thought "on the date of the primary election" would do it. Maybe we could put "whichever is earlier" in a different place. Say submit the proposed amendment to the electors at whichever is earlier, the next succeeding general election . . .

Mr. Nichols - I think it fits better where it is.

Mrs. Avey - Do you think the date of the primary election could still be construed to apply only to the even-numbered year?

Mrs. Eriksson - That's what I'm worried about.

Mr. Nichols - I originally was too, but Jim has a better instinct for that sort of thing than I do, and he didn't seem to be bothered by it.

Mrs. Eriksson - Of course, it's the secretary of state's office that's going to construe it.

Mr. Nichols - Of course, a future secretary of state might construe it differently. Right now, the primary election is defined in Section 3501.01 and says "primary election shall be held in the first Tuesday after the first Monday in May of each year" and so long as the statute reads that way, it would include an odd-numbered year.

Mrs. Eriksson - That's right, because there's definitely a primary election. As long as the statute reads that way, and the only thing that you have to look to is whether you're going to hold that primary, it's alright.

Mr. Nichols - I don't know how you can meet that problem in the constitution because if you get that specific in there, then you're also tying the legislature's hands on how they want to define "primary" and when they want to hold it, and so on. So it may be something that you'll need to leave as you have it here and trust the legislature to leave that definition alone. They're not likely to change that definition, there just doesn't seem to be any compelling reason why they would.

Mr. Aalyson - The only thing they might tamper with, it seems to me, is to change the date.

Mrs. Cowle - Would it help at all to tie it to law - "the date of the primary election as set by law"? That idea, not those words, but that idea? To distinguish it from any charter city provision for a primary election.

Mr. Nichols - The date of the primary election established by law? Or "on the date established by law for the holding of the primary election"?

Mr. Aalyson - An ordinance is a law.

Mrs. Eriksson - In the constitution a law usually means the acts of the general assembly: "at a special election on the date fixed by law" for the holding of the primary election". And that is clearly defined in the law that the primary election is held on certain dates. That might add a few words but maybe that would make it clearer.

Mrs. Avey - Would "statewide" add anything to that?

Mr. Nichols - No, statewide would bind you to your even-numbered year. Where are you making the insertion?

Mrs. Eriksson - "on the date fixed by law for holding the primary election"

All agreed.

Mrs. Eriksson - Then that last sentence is simply saying if such amendment is adopted by a majority of the electors voting on it, it becomes a part of the constitution, and shall be published by the secretary of state. And that "it becomes a part of the constitution" is the same language used in Section 1 of Article XVI, and that's construed to mean that it is effective immediately.

Mrs. Sowle.- I see. That's why you've changed the language "shall take effect immediately" after "approved".

Mrs. Eriksson - Right. I put that in because I thought we should parallel section 1 of Article XVI, and that's the language from there.

Mr. Aalyson - I have no quarrel with that. I'm looking at some punctuation in the sentence that we have just discussed and I'm wondering whether there shouldn't be a comma after "next succeeding general election, or at a special election".

Mr. Nichols- I don't think it makes any difference.

Mrs. Sowle - I don't either. It may well be, that would tie the "whichever is earlier" back to "succeeding." Have we approved 1a then? (All agreed) Then we're up to section 1b.

Mrs. Eriksson - There are no changes in the first or second paragraphs. In the third paragraph it ways: "if a proposed law is amended by the general assembly and becomes law" rather than "if amended and enacted by the general assembly". I think that in this instance, you do want to require that it become law, not just that it's enacted by the general assembly.

Mrs. Sowle - Because of the veto.

Mrs. Eriksson - Right. Now in the first instance, you're saying that if it's enacted as proposed, it shall be treated in all respects as though it originated in the general assembly, so you don't need to be concerned about its status, while if it's amended and passed, I think you do need to be concerned that it become law. If the governor vetoes it, obviously you can't file a supplementary petition because you have no law to place before the voters. Also, after I read the summary, I think you had agreed to the caption reading "supplementary petition for a law first considered by the general assembly".

Mrs. Sowle - That makes it clear what supplementary means to anybody looking at the petition.

Mrs. Eriksson - In both places it would be the same--whether it was not enacted, or if it was amended by the general assembly. And it doesn't make any effort to describe whether you're submitting it as proposed or as amended.

Mrs. Sowle - What happened to division "d"?

Mrs. Eriksson - I simply moved everything from "d" into "c" because we had eliminated so much from "c" - the effective date, etc.

Mrs. Sowle - The thirty day provision was moved from "c" to "b"?

Mrs. Eriksson - And to "a".

Mr. Aalyson - Actually, then, the only change we're making in the fourth draft as submitted is to add the language "first considered by the general assembly" and the election language.

Mrs. Sowle - Does that meet with your approval, Craig?

Mr. Aalyson - Yes.

Mrs. Eriksson - In the blank space should be: "proposing submission to the electors of a law, section of law, or item in any act appropriating money."

Mrs. Sowle - Then we add the previous language to the special elections.

Mrs. Eriksson - I've added to this the thirty day effective date after it's approved at the election. This brings us to "e" and I think I made no changes here other than those agreed to. I used the expression "conflicting matters of law" and in each case said "is the amendment to the constitution" or "is the law."

Mrs. Sowle - Let us turn now to 1g.

Mr. Nichols - Do you think it would be helpful to be repetitious in the first sentence and say "The style of all laws submitted to the electors by initiative or supplementary petition shall be. . ." and "The style of all constitutional amendments submitted to the electors shall be . . ."

Mr. Aalyson - And maybe reverse their order.

Mrs. Eriksson - If you submit a law by initiative to the general assembly, it's really not the people enacting it if the general assembly enacts it. This would seem to indicate that you had to put this style in all initiative or supplementary petitions, although it does say, "the style of all laws submitted to the electors" but you're only submitting it to the electors by a supplementary petition. I wonder if we ought to be more precise. The provisions with respect to enacting laws by the general assembly say the style shall be "Be it enacted by the general assembly." There's nothing about style for constitutional amendments.

Mr. Nichols - The style of the constitutional amendments relates only to the constitutional amendments that are submitted by initiative petition.

Mr. Aalyson - If they are submitted indirectly, what is the style of the laws?

Mrs. Eriksson - Do we want to say in here how it will be?

Mr. Aalyson - "Be it enacted by the general assembly at the request of the people",

Mrs. Sowle - If it's enacted by the general assembly, then you wouldn't go to section 1g to get the style. Wouldn't it be automatically captioned?

Mrs. Eriksson - You've got to get all this in the petition, because what you do is give this petition to the general assembly. It appears on the petition is how it is going to be introduced.

Mrs. Sowle - We need, then, a third provision here for the indirect initiative.

Mr. Aalyson - "The style of all laws submitted to the electors" and that's for either direct initiative or supplementary.

Mr. Nichols - "All laws submitted to the electors" could include a referendum issue also.

Mr. Aalyson - The only thing it doesn't cover is the indirect.

Mrs. Eriksson - Leave the first sentence the way it is, "The style of all laws submitted to the electors by initiative or supplementary petition shall be, "Be it enacted by the people of the state of Ohio". Only now it will be the second sentence.

Mr. Aalyson - And then the style of all laws submitted to the electors by initiative or supplementary petition shall be . . . Then the style of all laws submitted to the general assembly by initiative petition shall be," And then I had a suggestion and I'll throw it out again, "Be it enacted by the general assembly at the request of the electors".

Mr. Nichols - But it's at the request of the petitioners.

Mrs. Eriksson - "Be it enacted by the general assembly pursuant to initiative petition." Something like that.

Mrs. Sowle - How about "in response to"?

Mr. Nichols - In response to is not really constitutional language, but it may be as close as you can come to saying what you mean.

Mrs. Eriksson - "In response to initiative petition" does that sound better then "pursuant to"?

(Everyone thought so.)

Mrs. Sowle - I'm still worried about the first one because I think the first one is broad enough to cover the indirect initiative.

Mrs. Eriksson - It is when you go to the electors.

Mr. Aalyson - But it might not go to the electors.

Mrs. Eriksson - If this is submitted to the general assembly and not enacted, then you'd go back and when you submit it to the electors you'd change the style of the petition.

Mr. Nichols - That's why I suggested the word "directly".

Mrs. Sowle - I like "directly" because even if the general assembly passes it in any form a law that has originated by initiative petition, the first part of the petition has been submitted to the electors. So, in effect, the law has been submitted to the electors. Do you follow me?

Mr. Nichols - I was interpreting "submitted to the electors" as being placed on the ballot.

Mrs. Eriksson - Yes, that seems to be the interpretation.

Mr. Nichols - It's not submitted to the electors when the petition is circulated.

Mrs. Eriksson - I think **this** means on the ballot. "The style of all laws submitted to the electors by initiative or supplementary petition". Now that covers both direct and indirect when it gets to the electors.

Mr. Nichols - Perhaps you wouldn't need "directly" in there.

Mrs. Sowle - We now have three sentences.

Mrs. Eriksson - Putting constitutional amendments first, and then our first sentence and then the third sentence. Logically, our third sentence really ought to be the second sentence because that's the order in which they come in the constitution. In the provision for the designation of the committee, I eliminated this business about initiators. After I read the whole thing over, I don't find any reason to call them initiators. I took that, I think, from the statutes. I had used it, and it was your suggestion, Craig, that we should state who these initiators are. But I can't find any reason now, the way we read it, to have to designate anyone as an initiator, at least not in the constitution. "Whoever seeks to file a petition shall first file the text and the names and addresses of three to five electors who shall be a committee to represent the petitioners. Now the petitioners are, of course, whoever seeks to file a petition. It's the "whoever."

Mr. Nichols - "Petitioners" could be broad enough term to include any signer.

Mrs. Eriksson - Ultimately, it is any signer, but it's whoever seeks to file the petition. Now it's the "whoever seeks" who are really the initiators. But I can't see any reason both to call them initiators and a committee because we have not retained the provision that there shall be the 100 people signing that first petition. The only thing we haven't said is who shall sign the first petition--we've simply said who shall represent them.

Mr. Aalyson - This is what bothers me about failing to qualify one of the committee as an initiator.

Mrs. Eriksson - But what we have to do then it say that he shall sign it.

Mr. Aalyson - Let me say what bothers me, and let's see if I'm unduly bothered. Suppose I see, to initiate a petition, and I then designate the names of three to five people. I just pick them at random and they don't want to serve as a committee.

Mrs. Eriksson - Right, and that's why I say that I think we have to say that those three to five people must sign the petition.

Mr. Aalyson - That's what I was trying to provide for in my draft, when I required that at least one of them would have to be an initiator, which I meant as a signer.

Mrs. Eriksson - I think the problem is that what we never did say was what an initiator does.

Mr. Aalyson - Right, and Peg said that all people who sign are initiators, and then somebody said that's not necessarily so.

Mrs. Eriksson - No, because in that sense, when we talk later on about signers, we're talking about signers of the petition.

Mr. Nichols - Initiators could be construed to be circulators.

Mrs. Eriksson - We don't want that. The way this now reads "whoever" could be one person signing the petition, who could name anybody to be the three to five persons on the committee.

Mr. Aalyson - Exactly, and maybe he wouldn't be one of the three to five, and there would be some disinterested people who he was designating to represent him.

Mrs. Eriksson - That's right, so this needs more work. But I think that just calling somebody an initiator doesn't do the job.

Mr. Aalyson - That may be true, but as I said, I don't know what the definition of "initiator" is.

Mrs. Eriksson - There isn't any, and I think that's what we've got to do is to say who the "whoever" is and what the whoever must do to name a committee and a committee chairman.

Mr. Nichols - Not fewer than three nor more than five consenting electors?

Mrs. Eriksson - I think we ought to make them sign something.

Mrs. Sowle - Yes, so what we need to add to this is their consent and their signatures, right?

Mrs. Eriksson - And the other thing is that if we call this a petition, then we've got two petitions going, and I think that's what I was originally getting at when I called this a request. And then we agreed that we didn't need to request the board to do this, if we required them in the constitution to do it. In the statutes, you've got two petitions. You've got the petition for the constitutional amendment or whatever and you've also got a written petition signed by 100 qualified electors to the Attorney General. I think if we can avoid two petitions, it might be well to do that.

Mr. Aalyson - Why do we have to have the designated electors sign the petition? Why not just have them consent to being . . .

Mrs. Eriksson - Consent in writing.

Mr. Aalyson - To be a member of the committee.

Mr. Nichols: We had that situation come up on presidential electors in 1972. Some of the minor party candidates designated people as presidential electors, and then our office sent the notification of these people that after the election they were required to file a statement of their expenditures. And they didn't even know that they were candidates for anything.

Mr. Aalyson - "together with names and addresses of not fewer than three nor more than five electors who shall consent in writing to be a committee"

(All liked that.)

Mrs. Eriksson - "to represent the petitioners and one of whom shall be chairman."

Mr. Aalyson - In the first full paragraph on the second page of the redraft it has to do with certification. I was wondering whether there shouldn't be something which certifies that he had available a true copy of the full text. We require him to do that earlier. Now, should we require him to certify that he did?

Mrs. Eriksson - I wouldn't see any harm in requiring that.

Mr. Aalyson - I don't know that it's necessary.

Mr. Nichols - If you wanted to avoid duplication, it would seem better to have it here than previously - I mean on the certification.

Mrs. Eriksson - Include that in the certification.

Mr. Aalyson - What I'm wondering is should it be both? In other words, require him to have it, and then have him certify that he did.

Mrs. Eriksson - We've required him to certify that the signers signed with knowledge of the contents, and that would be an appropriate place to say that he certifies that he had a copy of the full text available.

Mr. Aalyson - As I read through, it seemed that we were having him certify everything else that we're requiring of him.

Mrs. Eriksson - It would be an additional assurance that he would carry it with him, if he knew he had to sign a statement to that effect.

Mrs. Sowle - I think that that's true, because I think that it's important that that not be overlooked.

Mr. Aalyson - Then maybe it would be appropriate to insert it after "they so signed said petition with knowledge of the contents thereof" or before.

Mrs. Eriksson - That he carried?

Mr. Aalyson - That at all times while soliciting, he carried a true copy of the full text of the proposal?

Mrs. Avey - Did we ever solve the problem of blind people signing petitions? Blind people should be allowed to sign petitions, and you have the word "read" in here.

Mrs. Sowle - They read in the sense that something is read to them.

Mrs. Avey - But in that case you would have to have the petitioner read to him that a full copy of the text was available. Maybe the sentence covering that would be that he is required to certify that he believed those signers signed with full knowledge of the contents thereof.

Mrs. Eriksson - I think that part is alright, but maybe we need to consider that in conjunction with the statement, "if you wish to read the full text . . ."

Mr. Aalyson - "to consider"?

Mr. Nichols - "review"

Mrs. Avey - That's really visual, too. I think "consider" is adequate.

Mrs. Eriksson - "Consider" might be a broader term. In that case, someone would have to read it to him.

Mr. Aalyson - Of course, if this is printed on the petitions, how does he know it's there?

Mrs. Avey - That's one of the problems.

Mr. Aalyson - Of course, if somebody is asking him to sign something, I suppose he would ask him to read it to him, and they'll have to read that to him.

Mrs. Eriksson - And otherwise the solicitor wouldn't be justified in certifying that the signers signed with full knowledge of the contents thereof, so I think that would be alright.

Mrs. Sowle - Is "ask" a good word. To "ask" the solicitor?

Mr. Aalyson - How about "tell"? I don't like "inform."

Mrs. Eriksson - "Ask may be colloquial but people reading it will understand.

Mr. Nichols - You could say "so advise" but the words "advice" or "advise" often confuse people when all they want is information. They think "advise" is a narrower term than it is.

Mrs. Sowle - Looking at this sentence, " . . . petition and signatures are presumed sufficient unless, not later than forty days before the election, it is otherwise proved." Is "otherwise proved" adequate?

Mrs. Eriksson - That is what the present constitution says. That may not be really

meaningful to the ordinary person but the statutes supplement the constitution by providing the method of checking signatures and for people to challenge signatures. If someone wanted to challenge the petition, he would look to the statutes. I don't see any necessity for writing all that in the constitution. This language is exactly the same as in the present constitution except for the removal of the extra 10 days for filing more signatures if it is discovered that they don't have enough. The secretary of state urged the removal of that provision.

Mr. Aalyson - This whole section seems to be to be inconsistent. First we provide that signatures shall be presumed sufficient unless otherwise proved. They we go on to say that no law or amendment shall be held invalid if the signatures are insufficient.

Mr. Nichols - That refers to an attack after the election.

Mr. Aalyson - I'm not sure I understand it. This may refer to attack after election as opposed to before, but I don't think it's all that clear.

Mrs. Sowle - Any attack on the petition or the signatures has to be made at least 40 days before the election.

Mrs. Eriksson - It may not be held unconstitutional or void for this reason, but there may be other reasons for which it could be held unconstitutional or void after the election.

Mr. Nichols - The "40" days is the only thing I would question.

Mr. Aalyson - I reach the same conclusions you do. But it did raise a question in my mind and I had to solve that problem. I think the wording of the constitution should be so clear that the question would not be raised at all.

Mrs. Sowle - What is the question?

Mr. Aalyson - I see a conflict. You provide that there is a presumption of validity unless otherwise proved. Then it goes on to say that none shall be held invalid on account of insufficiency. If you think about it, you realize that this is a post-election insufficiency.

Mr. Nichols - Are you saying that the end of this paragraph is unnecessary because it's stated in the beginning?

Mrs. Eriksson - It says "submitted to the electors" so it has to be after the election.

Mr. Nichols - I think this is designed to further clarify the effect of the first sentence.

Mr. Aalyson - What if they are proved otherwise 40 days before the election?

Mrs. Sowle - Then it is not submitted. Would it help if it said "in all respects sufficient to take it to the electors"?

Mr. Aalyson - I think what would clarify it more in my mind would be something at the beginning of the second sentence such as "Unless so proved . . ."

Mrs. Eriksson - Maybe we need to add "If otherwise so proved, it shall not be submitted to the electors." Then you would not have the possibility of its being proved insufficient and still being, for some reason, submitted to the electors. If it's too late to get it off the ballot, maybe you need something saying that the vote shall not be counted. When our issue a few years ago and the lottery issue were ruled off the ballot it was too late to get them off the voting machines, and some people actually voted on them.

Mr. Aalyson - "If, prior to the 40 days, they are proved insufficient, it shall not be submitted."

Mrs. Sowle - I don't see a conflict here, but I do see something left out.

Mr. Nichols - It wouldn't hurt to put in another sentence that fills in the assumed fact.

Mrs. Eriksson - "if, prior to 40 days before the election, the petition or signatures are found insufficient, any votes cast on such proposal shall be void." That would take care of it if it actually gets on the ballot.

Mr. Aalyson - That doesn't take care of the situation which bothers me. If there are sufficient signatures invalidated to get you below the required number, then what?

Mrs. Sowle - It shall not go to the electors.

Mr. Aalyson - It doesn't say that here.

Mrs. Eriksson - We could just say that it shall not be submitted, but if it is submitted by error or because it's too late to take it off, what will happen then? That is what I am trying to cover.

Mr. Nichols - But if you say don't count it, that contradicts the following sentence.

Mr. Aalyson - I think we should say that if there are not sufficient valid signatures, it shall not be submitted. Maybe you don't need the second sentence.

Mr. Nichols - But if you add the sentence you are suggesting and leave off the last sentence, I think the inference then is the opposite of what the last sentence states. In other words, the election would be held invalid. What if it is submitted despite what the constitution says?

Mr. Aalyson - How could it be? If it is improperly submitted, it shouldn't become law and as this reads, it would be. Why even talk about insufficiency if we're going to allow it to become law even if it is insufficient?

Mrs. Eriksson - We don't want to change the effect of the last sentence because we still want to assure that the insufficiency must be proved at least 40 days before the election; that you can't wait and then come in after the election and show the insufficiency.

Mr. Aalyson - I agree that that is what we want but that, to me, is not what it says.

Mrs. Sowle - But what if it is improperly submitted?

Mr. Aalyson - Is the Secretary of State going to place this on the ballot and have those ballots printed more than 40 days before the election? Isn't he going to wait until the 40 days?

Mr. Nichols - This is why I said that the one thing I would question in the whole paragraph is the "40 days". If we have to prescribe the ballot by the 75th day in order to get ballots printed and out to absentee voters by the 45th day and then you have a finding on the 40th day that the signatures on the petition were insufficient, you could have people who have already voted on that question before they were found insufficient.

Mrs. Eriksson - We've moved the filing up to 120 days before the election. Under the present constitution, you have to file 90 days before the election so you have 50 days for someone to examine the petition and signatures and prove them insufficient. We could change the 40 to 70 and still allow 50 days to prove insufficient.

Mr. Nichols - There probably wouldn't be any problem changing it to 75 days, and thus making it compatible with the other provisions of the constitution and code, if issue #3 passes.

Mrs. Eriksson - Then you can say that it shall not be submitted.

Mr. Aalyson - I'm agreeable to that if it will clear up the problem that a proposal might get on the ballot even though the signatures have been proved insufficient.

Mrs. Eriksson - Should we then eliminate the last sentence?

Mrs. Brownell - But there could still be the problem of a challenge after something has passed.

Mrs. Eriksson - Then you could say "if properly submitted" at the beginning of the last sentence.

Mrs. Sowle - I think we still need that last sentence.

Mr. Nichols - That would do it - say "if properly submitted."

Mrs. Sowle - Is that enough, to say "if properly submitted"?

Mrs. Eriksson - Or you could say, ". . . not having been proved insufficient prior to the 75 days before the election . . ."

Mrs. Brownell - That still permits challenges on other things--such as unconstitutionality.

Mrs. Sowle - If we put 75 days in there, how long does one have to examine the petition and establish insufficiency of signatures?

Mrs. Eriksson - 45 days. Now you have 50 days.

All agreed to these changes.

Mrs. Sowle - Should Ballot Board be capitalized?

Mrs. Eriksson - No. Only "Ohio".

Mr. Aalyson - In the next paragraph, by changing "the" to "an" before "argument" we are mandating the preparation of an argument by the persons who filed the petition.

Mrs. Sowle - They have to prepare an argument which would have to appear in the paper. But there doesn't have to be an argument on the other side. The general assembly could provide for one. Why do we mandate it? Wouldn't it be alright if what goes into the paper is the proposal, the ballot language, and the explanation without any argument?

Mrs. Eriksson - Presently, the constitution seems to mandate the preparation of an argument.

Mr. Aalyson - I think it's a good idea to make them explain their own reasons for wanting whatever they have petitioned for.

Mr. Nichols - I do too. Anyone who is going to put the state to the expense of having an election on something should be required to state his reasons. To justify why the issue should be submitted.

Mrs. Eriksson - Under the present constitution, if they didn't go it, someone else would. There would have to be an argument prepared.

Mr. Aalyson - Why is there a comma after "ballots" and why is "ballots" plural?

Mrs. Eriksson - "Ballots is plural because it is in the present constitution, and it may be justified because different things do go on different types of ballots--such as paper ballots and voting machines.

In that sentence, relating to the Secretary of State's duty to place a law, section, item, or constitutional amendment on the ballot for an affirmative or negative vote, let me again raise Dick Carter's concern. He had specific language regarding a referendum issue there, because he is concerned about issues being placed on the ballot in which yes means no and no means yes. I took that out because I thought that it is already covered by what we have. A law referred on a referendum is placed on the ballot so that a "yes" vote is a vote for the law, not a vote for repeal of the law. However, Dick again raised this question because he feels that, although that conclusion is correct for a referendum, where it can happen is an initiative for repeal of a law--a yes vote is <u>for</u> repeal, or <u>against</u> the law. Dick feels that happens frequently in local elections where an initiative to repeal a city ordinance is apparently not uncommon. It would very much like to see some language put into here which would take care of that problem.

Mr. Aalyson - But if you require that the law itself, or ordinance, go on the ballot, and you want to repeal it . . .

Mrs. Eriksson - Then the persons supporting the initiative would urge people to vote "no." But he feels that an issue stated on the ballot "shall ordinance # . . . be repealed?" is confusing to the voters.

Mr. Nichols - This has been raised in connection with the income tax issue which was on the ballot. However, I think that the confusion arose there because,

especially on the paper ballots, the question was very long. I think many voters got lost in the question--in other words,how it is worded is important. On this May's ballot, we have a series of statements followed by a brief question. I think that will go a long way toward clearing up any confusion about whether to vote no or yes. So that you are clear that you are voting on this question, not these statements of fact. The same could be done locally. The statement of facts explain what the question is.

Mrs. Eriksson - The ballot board may be able to state questions so that people understand better what they are voting on, and then they will not be confused as to whether to vote yes or no to achieve the result they desire.

Mr. Nichols - That's what we're trying to do this May--show that you can have a different form of question and so long as it is not misleading there is no reason why it would be objectionable.

Mrs. Eriksson - If you have an initiative to repeal, you are really placing before the voters a law to repeal a certain law. "Shall section , . . . be **repealed?"** You can understand that people would be confused even if it attempts to explain what the law does.

Mr. Nichols - But if you have a series of declaratory statements about the law--that the laws provide this or that and then ask the question: Shall this law be repealed? I do not think people will be confused. It's a more accurate question on an initiative to repeal that to have them submit the law and say vote yes or no on the law, and then have the no vote interpreted as a vote for repeal. Of course, we're not talking about local issues here anyway.

Mrs. Eriksson - No, but he would like to do something that would help with this problem locally.

Mr. Aalyson - What do we mean by "ballot" when it says "shall cause the ballots so to be printed"?

Mr. Nichols - It can mean printed ballots or it can even mean punch cards in some counties which just have holes in them and no printing on them at all.

Mr. Aalyson - Do we need "so to be printed"? The word "print" bothers me.

Mrs. Sowle - We tried to get rid of "print" in some of the other sections also. In the ballot rotation section, as I recall, we got rid of the word "print" because we discussed the possibility in the future that elections might be held on cable TV, or by phone and voiceprint or some other such method.

Mrs. Avey - In section 2a, dealing with ballot rotation, we used the word "appear" instead of "print."

Mr. Nichols - Why not just take out "so to be printed as" and it will read "He shall cause the ballots to permit . . ."

Mr. Aalyson - Why not use the term "balloting process" and that will take care of future contingencies?

Mrs. Sowle - I don't have trouble with the word "ballot" because I think it is a very broad term but I don't think we should leave the word "print" in there.

Mrs. Eriksson - What we're really talking about here is the function of the ballot board in drafting the ballot language--because the Secretary of State simply puts whatever the ballot board prescribes on the ballot. It's really up to the ballot board to frame the question so that a yes will mean yes and a no will mean no--and so that an affirmative and negative vote can be given on each issue. This duty the present language gives to the secretary of state I think we are giving to the ballot board.

Mr. Aalyson - We should require the ballot board to prescribe the ballot language--in a manner that permits an affirmative or negative vote on each law, section, item, or constitutional amendment.

There was discussion about "that" and "which" and the difference in proper usage between the two.

Mr. Aalyson - "To be submitted, in a manner that permits . . ."

Mr. Nichols - How about: The ballot language shall be such as to permit . . ."

Mrs. Sowle - Since we're really trying to tell the ballot board what to do, how about adding it to the paragraph where we're saying what the ballot board shall do?

Mr. Nichols - It's misplaced now because it is not the duty of the secretary of state any longer.

All agreed.

The committee adjourned until Wednesday, April 17, at 10 a.m.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
April 17, 1974

Summary

The Elections and Suffrage Committee met on April 17, at 10 a.m. in the Commission offices in the Neil House. Present at the meeting were committee members Katie Sowle, Chairman; Craig Aalyson, Dick Carter, and Jack Wilson; Peg Rosenfield of the League of Women Voters; and staff members Ann Eriksson, Director, and Brenda Avey.

Mrs. Sowle: I think it's appropriate to begin our discussion with the bedsheet ballot matter because we are going to talk about that before the Commission this afternoon. I talked with Mr. Lavelle. He expressed gratitude for being kept informed, and he is perfectly well satisfied. He thinks this provides for everything he could conceive of.

Mrs. Eriksson: Mr. Carson and Senator Gillmor have been in touch with Republican headquarters, and have expressed general agreement. Nolan raised a question about alternates. At the present time, you elect a list of delegates and you elect a list of alternates. If now we are providing specifically for the election of delegates and removing the necessity for names, is there a possibility that that could be construed as still requiring you to put all of the alternates on the ballot? He also proposed a slight change in the last sentence.

After discussion, the wording of the last sentence was agreed to..

Mr. Carter: I hate to get the alternate question involved in the constitution. As you know, we're on pretty shaky ground when trying to say at all in the constitution how parties shall conduct their internal affairs.

Mr. Aalyson: An alternate is nevertheless a delegate.

Mrs. Eriksson: All you really have to do is make clear in the legislation that you're electing an alternate delegate.

Mrs. Sowle: Let's turn to initiative and referendum. We have the remaining issues of percentage, number, extraordinary majority, and we have the simple job of just looking at the fifth draft. May I suggest that we look at the fifth draft first.

Mr. Carter: I have some comments throughout on this, and most of them are not very substantive - style and that sort of thing. (Mr. Carter distributed copies.) The first thing in section 1a is that, although I suggested this change originally, I don't like the idea of starting out, "When...." It seems quite indirect. The first change is simply to make a statement that the voters have the right to do it, and I think it reads better. "The submission of a proposed amendment to this constitution to the electors may be demanded by an initiative petition."

All agreed.

Mr. Carter: I don't think that's a substantive change. Now, I did have a question there then as to whether you wanted to use the word "directly". Really, the "direct" and "indirect" come into the initiative when you have the problem of direct and indirect, and it seems to me that it's redundant to use the words "directly to the

voters". There's no other way you can submit it to the voters in the case of the amendment.

Mrs. Rosenfield: Is there anything wrong with leaving it in, again, on the grounds that you understand it perfectly clearly, but somebody just picking up the constitution doesn't realize that it goes directly without going to the legislature?

It was agreed to leave in "directly".

Mr. Carter: I know this was proposed before, and it still bothers me, about using "this article" instead of "Article II in this constitution".

Mrs. Eriksson: Yes. I don't have any objections to "this article". We do say "this chapter" in the Code when referring to the chapter that it's in, so I see no reason why we can't do that.

All agreed.

Mr. Carter: May I bring up one other substantive question? We have a blank here, and I thought this might be an appropriate time to talk about the number of signatures.

Mrs. Eriksson: May I bring up one other technical question? Do you want to have a comma after "next succeeding general election,"?

Mr. Wilson: Since you have a clause later on separated by a comma saying "whichever is earlier" it might be wise to separate the two that you were talking about with that comma.

Mrs. Eriksson: I think the feeling was that it made it a little clearer.

Mr. Aalyson: I don't think it's necessary, perhaps helpful.

Mr. Wilson: You either ought to put the comma in there or take out the one after primary election.

Mrs. Rosenfield: No. I think if you think of it as though you are given two alternatives in just words, "black or white, whichever you prefer". So I wouldn't want a comma before "or".

Mr. Aalyson: You don't have to have the comma.

Mrs. Eriksson: The phrase is so long you might want to have it there, and I think it's going to be clear that "whichever is earlier" will refer to both elections.

It was decided that the comma should be inserted after "next succeeding general election".

Mrs. Sowle: Do you want to discuss the percentages or numbers at this point? Dick, how do you feel about the percentages and numbers today?

Mr. Carter: I'd like to speak to the point for a few minutes. I've read the minutes of the last meeting, and of course, am familiar with our previous discussions on this. As I reflect on it, the question that we're talking about is basically, "how much faith do we have in representative government?" and the rights of the

people directly. Brenda, you raised the question in the minutes which I would like to respond to, - is our judgment on this what we can get through the legislature? Is that the only reason we wouldn't lower it? No, I feel that the question is really one of how far you want to go between two extremes. We have many states that have no initiative and referendum, they have no rights, and they exist perfectly well without it. On the other hand, you've got the California situation where it is a very big burden to the state on having a very lower entry requirement to get these things on the ballot. Now, what's right for Ohio is strictly a judgment question. There is no right or wrong. Personally, I lean toward one side because I'm not too anxious for people to be writing laws indiscriminately and putting the electorate through a lot of confusion, so I have the feeling that, other than the relaxation of the county requirement, I'd like to leave it the way it is. But I don't want to rely on my own judgment in that respect. I'd like to have the opinion of others, and I feel that it's a mistake for us to rely on just the three people we have here. We can't go to the commission with a blank, so I think we have basically two alternatives. One recommendation would be to stick with the figures we have now, and then say to the Commission, "Now, you ought to consider this." The other alternative would be to make a change, with the recommendation, this is a substantive question and we ought to think about this change. I've come to the conclusion that to accomplish the objectives of getting some debate on this, and getting other people involved, it would be better to make a change, because it forces them then to think about it. So, on reflection, I would like to fix the number, following Craig's idea, not with the idea that I'm in back of it, but to make sure that we get it considered as an alternative and get a good discussion going. I would like to fix that number at approximately what the percentage means. And secondly, I think that we have a little bit of research to do before we go to the commission with this, to know a little bit about what the requirements are in some of the other states, particularly California, where they have this problem. What is the entry levely requirement in California that gives them all these problems?

Mrs. Eriksson: 5% sticks in my mind for California.

Mrs. Sowle: Wouldn't it help to transpose the California percentages into numbers?

Mr. Carter: Yes, to get a feeling as to what causes these problems in California - give us some insight as to what these numbers and percentages are.

Mrs. Sowle: I think that would help us, and I think it would help us to present it to the Commission as well.

Mr. Carter: I'm proposing that we agree on some numbers if we can to put in here, but with the qualification that this is not a firm recommendation by the committee, but an alternative we feel should be considered by the Commission - and we put it in on that basis rather than having blanks.

Mr. Wilson: What percentages are there?

Mr. Carter: Ten percent of the electors at the last gubernatorial election for a constitutional amendment. We rely on a percentage for the last governor's race.

Mr. Wilson: I have no quarrel with the percentage. I'd rather see a percentage of the registered voters rather than a percentage of those who voted for governor.

Mr. Carter: It's very difficult to deal with registered voters because registration is not universal in Ohio.

Mrs. Rosenfield: In looking at the figures, for gubernatorial elections, they in fact do not increase with population - they vary with the election.

Mr. Wilson: I'm opposed to a numerical figure because who knows what significance that will have in the future? Suppose we strike gold in the state, and half of the country's population moves to Ohio?

Mr. Carter: That's a valid argument.

Mrs. Rosenfield: But it was interesting to see that from 1940 to 1970, the actual number of people who voted in 1970 in the governor's election was less than in 1940, in spite of a considerable increase in population.

Mr. Carter: I find those numbers very meaningless. There are so many other factors that could be considered.

Mrs. Rosenfield: Except that it proves that it's not just an increase in population.

Mr. Carter: I don't think it proves that at all.

Mrs. Rosenfield: In the number of people voting?

Mrs. Sowle: We changed along the way from the two year vote to the four year.

Mr. Carter: 1940 was getting back into the pre-election years and I don't think you can conclude that a lower percentage of the people are voting today.

Mrs. Rosenfield: The meaningless of the numbers is itself significant. There isn't a nice tidy trend.

Mr. Carter: If we are to stick with a percentage, I did make a recommendation, which you talked about in the committee, of averaging the last 3,4,5 elections, so that you don't get the ups and downs.

Mrs. Sowle: One of the objections to the percentages we discussed the last time was that two groups going to the public with a constitutional amendment, or an initiative petition for a law - the number that they're given by the secretary of state's office is a very arbitrary thing, because after "right to work" in 1958, for example, there was a big vote then, to get to the people 4 years later would have required an entirely different number because there was less interest in the next election. So, that seems, at least to me, a little bit arbitrary. The other thing is what is the purpose of the number or the percentage, and that is just the right to get to the voters. And then the simplified idea that the person wanting to take this route can find it all in a provision without having to take the extra step of going to the secretary of state and then he has to do the computation.

Mr. Wilson: I still am not comfortable with a fixed number, though.

Mr. Aalyson: Why are you uncomfortable with it, Jack? I'm the one who originally stumped for the idea of a fixed number because it simplifies matters so greatly, it seems to me, for everybody involved in the process.

Mr. Wilson: It may simplify it, but what is right today may put us in the California position 50 years from now.

Mr. Aalyson: But one can change the constitution.

Mr. Wilson: But if one puts a percentage in there, one might not have to change the constitution.

Mr. Aalyson: But one creates all these difficulties along the way to these 50 years, if one uses a percentage. It's a choice of whether you want troubles all during the 50 years eliminating one problem, or taking the chance that you are going to have a problem if you stick with a number. Of course, I guess I'm persuaded, that if 100,000 people are interested in doing something, they should have the right to see whether they can do it.

Mrs. Sowle: Even if the population changes?

Mr. Aalyson: Yes, 100,000 to me means a lot of people. That means more than you can pack into OSU stadium. And the voters can always turn them down. The simplification seems to me to be an admirable goal plus the idea that if you have this many people who want to do something, why shouldn't they be given the opportunity to try?

Mr. Wilson: Why shouldn't 50,000 be allowed to try?

Mr. Aalyson: We have to reach a point where we decide that we can't go the California route. I recognize this, and as I say, by a number you can do this, if you make the number high enough. On the other hand, you let a substantial segment of the population have a chance to express their voice. I don't know what the number is, but it seems to me that there is a number that would satisfy both sides of the question.

Mr. Carter: When Craig first brought up the idea of the fixed number, my reaction was extremely negative. I think part of the conditioning process that we went through when we were on the finance committee is the complete inanity of using fixed numbers. Now this was in terms of dollars. Now we're talking in terms of people, and I'm persuaded that that's number one a very different kind of ball game. People are not going to change as nearly as the dollar concept. It still bother me -putting an absolute number in. I also thing we have to give some thought to the thing that Craig is talking about. It isn't like the budget. The real question is - how much interest should you have to be able to put something on the ballot? That is the question. I think there is some validity to his argument that if, in this case I would presume we would be talking about 270,000 people, something like that, and I'm talking about keeping pretty close to the present amount, that say they would like to have a constitutional amendment, I'm thinking that if that many people sign a petition, they ought to have the right to take it to the voters.

Mr. Wilson: How did you arrive at that figure?

Mr. Carter: It is essentially the same figure as the 10% we have now.

Mr. Wilson: Then why not leave the 10%?

Mr. Carter: I'm not objecting to that. It is true, although I don't think it's that important, that there is a great simplification if you use the number instead of a percentage. But it doesn't seem to me it's too difficult for someone that's interested in a petition and going to have to collect 300,000 or 100,000 signatures, to find out from the secretary of state the figure. One other thing. The constitution

now requires that you have to get a certain percentage from one-half the counties in the state, which is a burdensome thing. There is a serious question as to whether that is constitutional under the federal constitution "one man-one vote". So we're recommending removal of that. That removes one hurdle. We haven't had a referendum since 1939, so it must be impossible to do it. The legislature has simplified this process very recently, and if you eliminate this county requirement, I think it's going to be a lot easier for people who want to get things on the referendum. But my thought was that if we put in a change in the suggested language, it forces the Commission to think and debate the very question we're talking about. I am quite willing to put it in to stimulate debate.

Mrs. Sowle: My only problem with the percentage is the handicap that you give people who are following an election in which there is an unusually high turnout.

Mr. Carter: That I think we can handle by the averaging.

Mr. Aalyson: Before we proceed, and I like your suggestion, Dick, because I think it ought to be debated, and whatever the Commission decides, that's it. What real advantage do you see to the percentage as opposed to a number?

Mr. Carter: The status quo.

Mr. Aalyson: I'd like to hear Jack's, because I'm willing to be persuaded otherwise, and I don't see any advantage to the percentage concept.

Mr. Wilson: That's part of it. Other than as the state changes in voters or registered voters, or whatever we have, population, it retains the same percentage of the population. With a growing population, your fixed figure would account for a smaller percentage of the population, and it would give a more probable chance for success in getting a petition signed 50 years from now than it would right now. Which is not necessarily what I think we should be doing. We're trying to get something that will work, not necessarily forever, but I don't think it should be something that would automatically change as soon as another baby is born in the state.

Mr. Carter: Do you have any objection, Jack, to presenting it the way we're talking about to the Commission debate.

Mr. Wilson: No, I'll argue the same thing in the Commission.

Mr. Carter: That's what I mean. And I think it should be debated. For example, I'd be very much interested in what people like Frank King, Jim Shocknessy, some of our legislative members of the Commission who are knowledgeable in politics, and we might get some public input on this. I just hesitate to use a little group like this to make a judgment of that nature for a recommendation.

Mrs. Sowle: What is your language, Dick, on the averaging of the percentages?

Mr. Carter: That comes later. Well, that's all I had on section 1a, and I think we can leave this big question until the very end. Now, for section 1b, I have another handout. The first thing in the first paragraph is just tracking with what we did in the previous section. I would suggest that I think we ought to drop out that word "first". I know I suggested it originally. "The petition for a law to be submitted to the general assembly". You don't need "first" there. What we're down to is just submitting it to the general assembly. That's all I had in the first paragraph.

Mrs. Sowle: Does everyone agree with the first paragraph?

Mr. Aalyson: I'm not so sure that I like the idea of eliminating the word "first" because, again, I think it's an identifying characteristic.

Mr. Carter: As I reflect on it, really what we're talking about at this point is simply a petition to the general assembly, and that's all it really is. All the rest of it comes down as we talked about the supplementary petition. In other words, this kind of infers, already, that the general assembly isn't going to do it, and you're going to take it to the voters.

Mr. Aalyson: Okay, I'll go with that change.

Mr. Carter: Secondly, I think you can make the next paragraph. "If the proposed law enacted by the general assembly becomes law," (and this is before I got the discussion. You do need to have that "becomes law" in there because of the veto.) But it can apply to both items, either as proposed, or with amendments to the petition. It may not be necessary, but it can apply to both.

Mr. Aalyson: It would pin it if it read, "if the proposed law is enacted by the general assembly, and becomes law...."

Mr. Carter: That would be better. I had a little problem with "in all respects as though it originated in the general assembly." This was before I got the minutes, but I thought it would be sufficient to say that it shall be treated as a law originating in the general assembly. Now then, except that, "enacted with amendments". It would be possible for the legislature to pass it as an emergency, and therefore it wouldn't be subject either to a referendum, and then the law would be in effect before the people had a chance to do anything about it. Now this is a new thought here - it seems to me that it would not be appropriate to have it enacted as an emergency measure, and maybe we should have a prohibition. I raise the question.

Mr. Wilson: This goes back to the question of philosophy. Possibly the proposed petition is emasculated by amendments to where it might be a converse proposal but it would still retain the same origination of language. Then it certainly shouldn't be adopted as a law until the people have a chance to react to it.

Mr. Aalyson: Of course, we later provide in the section, although you've eliminated maybe part of it, that if a supplemental petition is filed, it shall not become law.

Mr. Carter: Yes, that is correct.

Mr. Aalyson: And I assume that would apply even to a law enacted as an emergency.

Mr. Carter: If they enact it as an emergency, it becomes law at that point. Then when the people file their supplementary petition, it would become un-law until the election. And it struck me that would be a very bad circumstance.

Mrs. Sowle: So it would become law before a supplementary petition could be filed.

Mr. Carter: So my thought was that we really should prohibit the emergency.

Mrs. Eriksson: My own preference then would be to simply make a flat prohibition rather than saying, "if enacted with amendments, it shall not be enacted as an

emergency measure". Simply say that the general assembly shall not enact as an emergency measure any law.

Mr. Carter: I have a little problem with that. Let's suppose, I can't think of a good example, but an initiative petition comes to the legislature, and all of a sudden there is a very good reason for passing that as an emergency - something that was not really anticipated when the people filed the initiative petition and then happened - I don't think you want to have a prohibition on the legislature from passing a law that everybody agrees to exactly as it was submitted, as an emergency.

Mrs. Eriksson: But the legislature can always pass another bill that's identical, as an emergency.

Mr. Carter: I see. Maybe the courts would interpret that as monkey-business.

Mrs. Eriksson: I don't see how they could.

Mr. Wilson: Let me give you an example of some monkey-business. Let's say you've got an initiative petition sent in to take the state of Ohio out of the Daylight Savings Time. But the legislature amends that excluding the months of January, February, March, April, May, June, July, August, September, October, November and December, and passes it as emergency legislation. Now, what happens? They put an amendment in there excluding 12 months, which essentially reneges the petition.

Mrs. Eriksson: When the law is submitted, there's no way that the initiators could have an emergency on it, because the initiators have to follow this section which says when it's going to be effective. But the general assembly could presumably amend it to add an emergency. That's what you're trying to prevent.

Mr. Carter: Daylight savings would be a good example of it. They could pass it as an emergency because it has to take effect for the energy crisis, then all of a sudden you're on Daylight Savings Time for two months. If someone files a supplementary petition you've got to go off for the period from then until the election. You get into that kind of a mess. This is a really tough section because we're involved in statutes, and there really is no alternative.

Mrs. Rosenfield: In this paragraph, you've got a lot of phrases and then the word "it".

Mrs. Sowle: That's what I'm worried about, "it shall take effect". We've lost the antecedent for "it".

Mr. Carter: I didn't think that's a problem because "it" is consistent all the way through..

Mrs. Sowle: Yes, that's true.

Mrs. Rosenfield: I feel it would be useful for that second sentence to say, "the proposed law shall take effect only if...."

Mr. Aalyson: It would read somewhat as follows then? "If the proposed law is enacted by the general assembly and becomes law either as proposed or with amendment, it shall be treated as a law originating in the general assembly, except that if a supplementary petition is filed as provided in this section....."

Mr. Carter: No. "except that if enacted with amendments...."

Mr. Aalyson: Okay, and then we're going to change back, "and if a supplementary petition is filed as provided in this section" - that's the "it" you're bothered by.

Mr. Carter: But the "its" mean the same thing and we use then 3 or 4 times in a row. Of course, you could replace "it" by "such proposed law" throughout.

Mr. Aalyson: Then you don't have amended law, you don't take care of amendments to what you propose.

Mr. Carter: That's right, good point.

Mr. Aalyson: "the amended law shall take effect only if the law proposed by such..." I kind of like that. Instead of "it","the amended form" or "the amended law".

Mr. Carter: Incidentally, what does "enacted" mean? Does that mean just passed by the legislature?

Mrs. Eriksson: Yes.

Mr. Carter: That's all it means - before the governor has considered the matter?

Mrs. Eriksson: Right, it becomes law when it is signed by the governor and filed with the secretary of state, and it doesn't take effect until 90 days later.

Mrs. Sowle: I agree that it would be easier to judge it if we had it retyped and so forth, but do you have any quarrel, substantively, with this change? (No one did).

Mr. Carter: The second one I feel quite strongly about. As I read that and the two sentences of repitition, I am offended and I find it hard to read.

Mr. Aalyson: Before we go on, there is something in the second paragraph that is a technical matter. "either as proposed or with amendments".

Mr. Carter: "or as amended"?

Mr. Aalyson: Right, rather than "with amendments".

Mrs. Sowle: "or amended".

Mr. Aalyson: I don't like "or amended", how about "or in amended form"? That permits a single or a multiple amendment.

Mr. Carter: I think it's easier to take a look at that when we get the new draft, because Ann's going to have to play around with the emergency measure language too to incorporate that into the draft. In the fourth paragraph, I found that confusing and repititious, essentially repeating the same things twice with a little different variation; I found that very hard to follow. So what I was going to suggest, and I really think it just is much clearer, is "If within six months from the time it is received by the general assembly, the proposed law has not become law as proposed, or has been enacted in an amended form" and I use those words very carefully -

"enacted" regardless of what the governor says.

Mrs. Eriksson: No, you don't want to permit a supplementary petition to be filed if the governor has vetoed it.

Mr. Carter: Why not?

Mrs. Eriksson: If the governor vetoes it then there is no law.

Mr. Carter: The supplementary petition is really to pass a law. It's not like a referendum. So that really what you want to know to let the petitionsgo to work is what the general assembly did. And whether the governor vetoes it or not seems to me becomes irrelevant to what they do. Let me tell you the reason that's going through my mind. Here I am with a group of people, and we come up with a petition to pass a law to the legislature. The legislature then passes it in amended form. We do not agree with the way they amended it, like your daylight savings time example, so we immediately want to get started on our supplementary petition. It seems to me that the thing that triggers it is when the general assembly enacts the law in a form we don't like irrespective of what the governor does. Whether he vetoes it or not doesn't make any difference to us because we don't like the law. So I would think that the 6 months should be triggered either from when the legislature has done something - enacted a law - or at the end of the 6 months when they've done nothing.

Mrs. Eriksson: But if they do not enact it as proposed, then it has not become law within the 6 month period. Regardless of whether they've enacted it in amended form, and the governor has vetoed it.

Mr. Carter: To me it doesn't make any difference what the governor does, because the legislature has not enacted the law that we the petitioners like. We want to get started right at that time on the next step.

Mrs. Sowle: But the thing changes if the governor vetoes it.

Mr. Carter: No, I don't think it does - that's my point. Because the legislature did not enact the law that was in response to our petition, and we ought to be able to go to work at that point to go directly to the voters. And what the governor does is irrelevant at that point, as I see it.

Mrs. Sowle: This is just a timing thing.

Mr. Carter: Yes, we're only talking about timing, this is when you can go to work.

Mr. Aalyson: I follow your line of reasoning, Dick. Now, Ann, are you saying that if the governor vetoes it, we don't want a supplemental petition to be available?

Mrs. Eriksson: This was the earlier discussion.

Mr. Aalyson: I think that if the governor vetoes the law either in proposed form, or let's say he vetoes it after it's been passed in its proposed form, then that should initiate the right to petition.

Mr. Carter: This provides for it.

Mr. Aalyson: If the legislature changes it, I think I agree with Dick that the

petitioners ought to be able to go ahead right from that point without waiting for the governor. If the governor vetoes the amended form, we still want to get our form on. If he signs the amended form, we still want to get on, so we can start earlier. I don't know that there should be any difference, but I kind of like your idea that as soon as it's enacted, if it's not what we want, we ought to be able to get started.

Mr. Wilson: When do we start if the legislature enacts it as submitted and then the governor vetoes it?

Mr. Carter: "if within 6 months from the time it is received by the general assembly the proposed law has not become law as proposed".

Mr. Wilson: That means barring the governor's veto or a complete rejection by the general assembly.

Mr. Carter: "or has been enacted in amended form" and that triggers the petitioners to go to work.

Mrs. Rosenfield: So you only wait for the governor's action if the legislature passes it as proposed. If they don't act, or if they act in an amended way, you don't wait for the governor.

Mr. Carter: That's the way I see it.

Mrs. Sowle: Either way you don't wait.

Mrs. Rosenfield: You wait for the governor if they pass it in a way of which you approve - in the original form, because if they pass it and the governor signs it, you've got your law. But only if they pass it in original form does the governor's actions have anything to do with....

Mr. Carter: That's the way I picture it. What this sentence now says is that in either one of those two events, the petitioners can go to work at the earlier of the two dates.

Mrs. Sowle: After the expiration of the 6 months or the date of enactment in amended form, whichever is earlier.

Mr. Carter: I find that makes good english and good sense. The other way you've got two within 6 months.

Mrs. Sowle: Yes, I think this is fine.

Mr. Carter: Ann, in a manner signed by the governor, does it become law at that time, or does it become law at the effective time - the 90 day thing? It becomes law when the governor signs it, does it not?

Mrs. Eriksson: That's right.

Mr. Carter: The language about "120 days after the filing" I removed from the indirect and the direct and put in a separate paragraph applicable to both.

There was discussion about the use of "law" and whether "any of the amendments" might mean only one.

Mr. Carter: If it bother you, you could say, "submission of a proposed law either as first proposed or with any amendments". And it makes it a little easier to read.

Mrs. Sowle: Would it be better to say any one or more?

Mrs. Eriksson: If there's any question about interpretation, I think it's better to put some words in.

Mrs. Sowle: "any" really does mean "any one".

Mr. Carter: You really think so?

Mrs. Rosenfield: I think quite literally it does, but I don't know whether the rules of bill drafting and constitutional writing...

Mrs. Eriksson: I don't know that there is a rule really, and I can't think of any court cases on that point in Ohio, so I really can't say for sure. I would think it would be interpreted to mean "one or more".

Mr. Carter: Could you just leave it out and say "with amendments"?

Mrs. Eriksson: But you want to permit the selection.

Mr. Carter: Yes, together with amendments which have been incorporated therein by either or both houses.

Mrs. Eriksson: But that might mean that they have to take all of the amendments.

Mr. Wilson: "any one or more" is more explicit than what we've got right here.

Mr. Aalyson: I'd like to come back to the 120 days. I agree with you, Dick, that it shortens it, but I think the reason we reiterated it, or the reason we kept it at least in both sections was that, again, as one who quite often has to refer to laws, I like to have every section, if possible, say the whole thing. In other words, so that you don't have to go jumping from place to place. Now, if one were to read, for example, paragraph 'a', one would be left with the question, "when are these going to be submitted?". I prefer length and redundancy if it adds to clarity. I'm not sure it does add to clarity here.

Mrs. Sowle: Of course, Craig, you have to read this whole section together anyway. For example, 'c' applies to both the indirect and the direct. It isn't as if we are sending you to that long section at the end.

Mr. Aalyson: There is a little difference. I know it does apply to all, and section 1g applies to all of them too, but if you can state in the same paragraph where you permit the filing of a supplemental petition, what the secretary of state's got to do, I think that's desirable even though you'd have to reiterate it in the direct as opposed to the indirect.

Mr. Carter: I think that's a judgment question.

Mr. Aalyson: Yes, it's one of those things where I suppose your personal experience...

Mr. Wilson: I could sympathize, having just made out income tax for the past three months, where you have to go from this line to that line.

Mr. Carter: On the original one we have all the references to section 1g. I didn't agree with that. But it doesn't seem to me that anyone who is interested in an initiative petition should do anything less than read the section.

Mr. Aalyson: The article itself isn't so long, I agree, and probably you're right. Redundancy is not necessary here. Let's look at it as you suggest and it probably will look all right even to me.

Mrs. Sowle: That takes care of section 1b.

Mr. Carter: In section 1c, I had a little problem with this word "until" which is in the present language of the constitution. And really I am beginning to get a little concerned about what it means. "No law passed by the general assembly shall go into effect until 90 days..." Does it mean exactly 90 days, does it mean more than 90 days?

Mrs. Eriksson: It means exactly 90 days, under the present construction. And the only way you can alter that is by writing a separate section in the law or by emergency.

Mr. Carter: Suppose you didn't want it to go into effect until 120 days. Is there a constitutional prohibition?

Mrs. Eriksson: It still goes into effect under this language on the 91st day. Then you have to write a separate section in there which says that sections 1 and 2 of this act shall be effective on such and such a day, or you write your provisions internal in the law itself. I would be very reluctant to change that word.

Mr. Aalyson: May I make a suggestion that might help Dick and me too? Why should it read "no law shall go into effect" rather than " a law passed by the general assembly shall go into effect 90 days after it is filed"?

Mr. Carter: That's clearer.

Mrs. Eriksson: But if you say that, if you say it shall go into effect 90 days after filed, then you might be construed as precluding the possibility of making it go into effect later by writing such a provision in the act.

Mr. Aalyson: Okay.

Mr. Carter: Alright. Now, the second thing I have there is I read carefully the discussion on the terminology. I would feel quite strongly, and I don't feel it's in contrast with what you are talking about, is the title for a referendum. I asked some people, "what is a referendum?" They hadn't the faintest idea. So if you say "Petition for Referendum on Law Enacted by the General Assembly" that's meaningless to the average person signing a petition. So I feel that being as the heading for this is something that is trying to give information for the voter, is that I feel we ought to have that word "rejected" in there. So I suggest, "Referendum Petition for Rejection of Law..." Now, I realize it's a little redundant, but really I think it ought to be in there because this is information to the people that are signing the petition - that's our objective.

Mr. Wilson: Rejection isn't the best choice of a word.

Mr. Aalyson: Repeal?

Mrs. Sowle: You're not repealing it.

Mrs. Eriksson: No, you don't repeal, and of course, the referendum puts this before the voters and they may either vote for it or against it. I changed that word "rejection" because I thought that you're not really doing that. You're voting for the law or against the law. If you have "referendum petition for rejection" you're really only giving them one choice.

Mr. Carter: Some way I think it ought to be put in english in non-legal terms.

Mrs. Rosenfield: The effect of it is repeal. That's how people feel about it, I don't care what the legal term is.

Mr. Aalyson: I liked what Mr. Wilson suggested. "Referendum Petition for Voter Consideration of a Law Enacted by the General Assembly".

Mrs. Sowle: All you're doing is asking for consideration, and that's all a referendum means - to refer.

Mr. Aalyson: Voter approval?

Mrs. Eriksson: Voter consideration indicates that you have an opportunity to vote for it or against it.

Mr. Carter: The petitioners, not the voters, but the petitioners are in favor of rejecting that law.

Mrs. Sowle: But this looks as if you sign it that means you want to reject it.

Mrs. Eriksson: That's right, and I think that the solicitors can say that.

Mrs. Sowle: If this is the label of the petition, what's going to be at the top of the ballot?

Mr. Aalyson: "Referendum petition seeking rejection..."?

Mr. Carter: I like that word "seeking".

Mr. Wilson: How about, referendum for voter approval or disapproval of a law passed by the general assembly?

Mr. Carter: But that really isn't what you're petitioning for. What is the petition for?

Mrs. Eriksson: It's a petition to refer this law to the people.

Mr. Carter: To have them consider it.

Mrs. Sowle: Yes, and one might well sign a petition that is going to vote in favor of it.

Mrs. Eriksson: That's why some persons signed the income tax initiative, because they felt it should go to the people.

Mrs. Sowle: So "rejection" probably, in that sense, should not be in there.

Mr. Aalyson: Referendum petition for voter consideration of a law enacted by the general assembly. (Everyone liked that).

Mr. Wilson: That may be the intention of those who are carrying the petition to reject it, but all they can do is put it on the ballot for a yes or no vote.

Mr. Carter: In section 1g, I have a couple of substantive changes. On the style question, I am suggesting that we not try to say to the general assembly what they do to the law that is enacted by them. Really what we're talking about is the style of things submitted to the voters. I would be more comfortable simply saying "The style of all constitutional amendments submitted to the electors by petition shall be...." and "The style of all laws so submitted...."

Mrs. Sowle: How submitted?

Mr. Carter: By petition to the electors.

Mrs. Sowle: But it says "submitted to the electors by petition".

Mrs. Eriksson: He's taking out the second sentence.

Mr. Carter: And just have one simple little sentence.

Mrs. Rosenfield: And you're just leaving out all reference to what the general assembly does.

Mr. Carter: I had, "the style of all laws so submitted..."

Mrs. Sowle: But that means submitted to the electors. And then you're leaving out any provision for enactment by the general assembly.

Mr. Carter: Is there any reason to provide for it? What do you do if they pass in amended form? And you get involved in some more complications.

Mrs. Eriksson: That was why this language "in response to an initiative petition" was agreed upon, because it wouldn't matter whether they passed it amended or not. The only reason I think there's validity to putting that in there is because what you're really talking about is how they're going to prepare their petition. All this says is "the style of all laws submitted to the general assembly by initiative petition" Now if the general assembly, and if it goes through as proposed, it may never be redone in any subsequent form.

Mr. Carter: How is that any different than a law just passed by the general assembly?

Mrs. Eriksson: It isn't going to be any different, and if the general assembly changes the style, I don't think it matters. All this says is the style of all laws submitted to the general assembly by initiative petition, to tell the petitioners what to put on their petition, I think is all this does.

Mr. Aalyson: Otherwise, they may come in saying anything, "We think the law ought to be so and so."

Mr. Carter: Then this is really directory information to the petitioners.

Mrs. Eriksson: If the general assembly changes that, I don't think we would be

concerned about what they do with it. It only gets it on the petition which the secretary of state sends up to the general assembly.

Mr. Carter: Alright, then I still think you don't need it. You've got a different situation when you submit a law directly to the voters is one situation. You don't have the opportunity for the legislative process and the legislative service commission to do their thing and so forth. Now, if you're just going to submit a law to the general assembly, what difference does it make at that point?

Mrs. Eriksson: I don't think it does. I think we only put it in here because there seemed to be a gap.

Mrs. Sowle: Now, we're preparing an initiative petition by the indirect method. We have to word that petition.

Mr. Carter: It's a petition to the general assembly to pass a law. Now, when they pass the law, they're going to stylize it. But what difference does it make if it's stylized if it's just going to the general assembly?

Mrs. Eriksson: I think it was only viewed as being something helpful to the petitioners, to help somebody get started if they otherwise didn't know anything about drafting it.

Mr. Carter: I do think it's important to have the style in there when you're talking about submitting a law directly to the voters.

Mrs. Sowle: Yes, you have to have something.

Mr. Carter: But the legislature is certainly going to stylize it if they pass it. Would that be an amendment to the law?

Mr. Aalyson: I don't know. Is it? It wouldn't be an amendment , I suppose, that anyone would quarrel with. No one would demand a supplementary petition on that basis.

Mrs. Eriksson: One doesn't know, because there are a lot of non-substantive amendments that go through but they are still amendments.

Mr. Carter: Okay, I withdraw. I think there is some substance to that.

Mrs. Eriksson: And if the general assembly wanted to simply enact it this way, there it is, there wouldn't have to be any change in it.

Mr. Carter: I do think we could still take out a couple of words - "initiative and supplementary".

Mrs. Eriksson: In that last sentence?

Mr. Carter: In all three sentences. In other words, "the style of all constitutional amendments submitted by petition, the style of all laws submitted to the general assembly by petition, the style of all laws submitted to the electors by petition. Saving just a few words.

Mr. Wilson: Primarily because in the next paragraph you start talking about initiative and supplementary, or referendum.

Mrs. Rosenfield: Do we need "proposed law"?

Mrs. Eriksson: Then maybe we should have "proposed laws" in the style of all laws would be "the style of all proposed laws". (That change was agreed to.)

Mrs. sowle: Do you call it a referendum petition?

Mr. Carter: The styling doesn't refer to a referendum though, does it?

Mrs. Sowle: No, so maybe we need initiative petition, and initiative and supplementary...

Mr. Carter: But the referendum is not a law submitted to the electors.

Mrs. Sowle: It submits the law to the electors that the general assembly has passed.

Mr. Carter: I'm not sure that's correct but I'll agree with it for a moment. I still don't see any problem with simply saying, "The style of all laws submitted by petition shall be..."

Mrs. Eriksson: Because if it is a law passed by the general assembly, then it won't be enacted by the people of the state of Ohio.

Mr. Carter: It's just not applicable.

Mrs. Eriksson: But it is a law submitted to the people by petition.

Mr. Carter: If we add "proposed" law, doesn't that take care of it?

Mr. Wilson: No, because it's already a law, it's just being subject to the referendum.

Mrs. Sowle: If we take out those words and say "petition" what might petition mean? It might be a little too broad there because it could mean referendum petition.

Mrs. Eriksson: When you say "the style of all proposed laws submitted by petition" if it's already passed by the general assembly, it's already a law.

Mrs. Sowle: It's very clear when you say "initiative" petition and "supplementary" what you mean.

Mr. Wilson: Since there is this differential between initiative, supplementary, and referendum, I can understand what the prior paragraph is about.

Mr. Aalyson: If additional wording promotes clarity, I like the wordage.

Mr. Carter: Okay. In the second paragraph, you'll notice that I suggested just dropping that phrase "a copy of the full text of the proposal to be so submitted" because everything we are talking about is to the general assembly. Does it help anything to put that in there? It seems to me that it is a little superfluous.

Mr. Wilson: Except that the initiative and supplementary petitions might be submitted to the general assembly whereas the referendum would be to the people.

Mr. Carter; Yes, but it doesn't help that problem.

Mrs. Eriksson: I would agree that that could be removed. (All others agreed.)

Mr. Carter: I feel this language is wrong, "please ask the solicitor". He has a legal right! We've got to put it stronger, I think, than that, and so I was going to suggest, "The solicitor of your signature is required to have a true copy.... Upon request he must present it to you for examination..."

Mr. Wilson: Another way to do that is to go back a sentence or two and say the petition shall contain a full text of the amendment.

Mr. Aalyson: No, we don't want to do that.

Mr. Carter: For the reason that some of the laws in a referendum are very long. We saw one and it was 40 or 50 pages, and the cost of printing that on every petition would be prohibitive.

Mr. Aalyson: We had a public member come in who said that having this creates confusion, is a time waster, a number of other things, and we thought that was a valid criticism and so we took it out but made it available.

Mrs. Rosenfield: I like having that kind of "is required by law because you are not..." People think that they are often asking a favor.

Mr. Carter: Yes. It's their right to examine it. The second change is simply one of english and I'm not sure I've got it right yet. I had a little problem "for a signer residing....the address...where he resides" and the other one "a resident of...." They don't track, they use different approaches. So I made a substantive change that it's up to the signer to put down the date and address.

Mrs. Sowle: The provision has been interpreted to mean that as long as the signer signs his own name, it's okay for the circulator or somebody else to fill in the date and the voting address, as long as they're accurate. And we felt we didn't like these two things to be different: the way it's stated in the constitution and they way it's been interpreted. So we're simply making it consistent with what the court has said, because we think it's clearer to the people involved in circulating the petition for this to say something to make it very clear who did what. So we didn't want to require that the signer put down the date and the address.

Mrs. Rosenfield: You don't want to toss out somebody's signature, do you, because somebody else put their address in?

Mr. Carter: No.

Mr. Aalyson: And on that line, Dick, oftentimes the solicitor will know the township and the county, whereas the signer will not.

Mr. Carter: I particularly agreed with that when we required the ward and precinct. I think you'll find that most everybody knows their township. So what you're saying is that you felt that the solicitor should be able to fill in the address and the date, and that tracks with the way the court has interpreted the present law.

Mrs. Sowle: The language is not completely to our liking in the next sentence, but

Maybe we can do something about that without changing the meaning of it.

Mrs. Eriksson: It did read that the address shall be the township and county, and I changed that so that it shall include the township and county, because you may have another address which is significant.

Mrs. Sowle: In the sentence about the date and the address could it be, "the date of signing and the signer's address shall be placed on such petition after the name"? Does that help any instead of "there shall be"?

Mrs. Eriksson: Yes.

Mr. Carter: Then you can go ahead with "such address...."

Mrs. Rosenfield: Do you need this word, "of a signer residing"? Can't you just say, "a signer residing outside of a municipality shall include the township and county"?

Mrs. Eriksson: But somebody else may be writing it on. I like Dick's there; "such address shall include the township and county for residence outside of a municipality". I see no reason why that wouldn't be better wording than "for a signer..."

Mr. Carter: You like to salvage as much as you can from the present constitution. That raises a question. Suppose that we make so many changes in a section, which we are clearly doing here, that you might as well "ex-ex" out the whole thing and put in a new section. Is that a repeal, then?

Mrs. Eriksson: I've given this more thought. I suggest that you scrap the present sections and write a new article. I suggest using Article XIV which is presently blank. The only thing we would keep in Article II is the present section 1 where we would be making the change, simply saying that the general assembly enacts laws except for the initiative and referendum. Then we would say, except for the initiative and referendum as provided for in Article XIV of this constitution. Remove 1a-1g and write them in Article XIV which will give us an opportunity to split up section 1g. It will relieve us of the necessity of trying to track with the present constitutional language. It will also mean that we will have to explain in great detail the changes we're making, but, of course, we are going to have to do that anyway.

Mr. Carter: I agree very strongly with what you are suggesting, and with issue 3 that's going to help.

Mrs. Eriksson: It's going to be very hard to read if we try to amend sections. And I'd like to try to get rid of the 1a,b,c things anyway, because that's really not necessary to be so sparing on sections.

Mr. Carter: I'm in agreement with that.

Mr. Wilson: It's also condusive to further proliferation.

Mr. Carter: In the next paragraph, there is no substantive change at all. It's just what I thought is a clear way of stating just what's there, and also to divide in two parts as to what the solicitor certifies as fact, and what to the best of his knowledge and belief. Dividing it in two categories, and there are two categories of items involved there, so that was the attempt. The first items that are identified

are that he certifies that the people signed it on the date and in his presence, that he carried the copy. He should say that he did all of these things. And, to the best of his knowledge, that these people lived where they said they did, and that they had knowledge of the contents. I think if you get it really tight, I thing that it will make a little better sentence.

Mrs. Eriksson: And that he believes they're electors.

Mr. Carter: Yes, the things that he really can't say are true. It seems to me that what this committee is trying to do is say "look, you have to meet the requirements that we set forth for filing a petition. But if within 75 days before the election, they're not proved to be insufficient, then it goes on the ballot and from that point forward, whether your number of signatures where there or not is irrelevant." It's only talking about getting it on the ballot and there can be no argument about whether the election is invalid because of the petition after that 75-day period. Is that the thrust of what you were trying to do?

Mrs. Sowle: Absolutely.

Mr. Carter: What does "sufficient" mean? Sufficient means that you have the right number, and that's by law? By court decision, or by what?

Mrs. Eriksson: By court decisions and attorney generals' opinions. It means not only that you have enough signatures but that they meet the requirements of the constitution and that they're valid signatures.

Mr. Carter: That's what I was concerned with. The petition and the signatures shall be presumed to be in all respects sufficient. Now, what I indicated, in concert with "when so certified and filed" is that all this means is that these signatures are valid. And this bothers me.

Mr. Aalyson: If we're going to move this perhaps to another article, maybe we can get rid of that language, and say that when properly certified and filed the petition shall be considered valid.

Mr. Carter: With the minimum number. If it is otherwise so proved, the proposal shall not be submitted. What I was afraid of, you've got 100,000 signatures, you need 90,000, and they come in and prove that 5,000 are invalid and have to be thrown out. That statement might be interpreted to mean that it shouldn't go on the ballot. In other words, the petitioners carried the burden on making sure that every signature would be valid. We don't mean that, of course, and this is so important that any little doubt in my mind made me feel that I'm not sure that that's crystal clear.

Mrs. Rosenfield: In that first sentence, when it says, "unless otherwise proved", does "proved" there mean that the court has decided?

Mrs. Eriksson: No, in the present procedures it doesn't have to go to court unless it is appealed. The secretary of state can make a determination that there aren't enough even to begin with, or he sends them, then, to the boards of elections, and they may strike off signatures.

Mrs. Rosenfield: It's not clear to me at what point it's proved. If I come in and challenge those signatures, and you come back and say they are too valid, and you go to court, and if that court decision has not been made within 45 days, have you

lost your whole thing just because the court didn't get around to acting.

Mrs. Eriksson: It's possible, although that is really not any change from the way it presently works.

Mr. Aalyson: Election contests are entitled to priority in the court.

Mrs. Rosenfield: But it says here that if by 75 days....

Mr. Carter: I don't think 75 days is an unreasonable time for a challenge including a court decision.

Mrs. Rosenfield: But if that 75 day deadline comes, and the court hasn't decided, and you think you've got a really valid case, and they've just dragged their feet then you've lost the whole thing by inaction.

Mr. Carter: It's very possible, and I see nothing the matter with that, Peg, because really what we're trying to do is to say you have to do certain things to get it on the ballot. Now, once it's on the ballot, all will happen in the past and having the people that are opposed to the petition say that these guys have a lot of phonies on their petition, 45 days to me is a reasonable time, which is more than they have now as I recall.

Mrs. Eriksson: It's 50 now. It's comparable - 45 days.

Mr. Aalyson: You are worrying about the rights of the people who are challenging the petition. I think they ought to get right in and dig.

Mrs. Eriksson: If they know they're going to want to challenge the petition, they're going to be observing the gathering of the signatures. Just like these other people have to be ready to go when their time is at hand.

Mrs. Rosenfield: So they're going to be ready to pounce.

Mr. Aalyson: They're going to need strong evidence in their hands if they're going to challenge.

Mr. Wilson: Suppose, though, that they have proof positive and they get a court that wants to drag its feet.

Mr. Aalyson: The court is mandated to consider elections matters first in the statutes.

Mr. Wilson: What if they don't?

Mr. Aalyson: There you're saying that the court is not going to do that which it should do simply because it doesn't want to, and I think if we encounter that situation, we're going to have to get rid of a judge.

Mr. Carter: Remember that this matter is going to the voters, anyway, which is the matter of concern, so we're only talking about the qualification, which is a secondary issue. It isn't like a final determination.

Mr. Wilson: What I'm getting at is the possibility of the language in here that if

the court does not rule...

Mr. Carter: The worst that can happen is that it is on the ballot.

Mrs. Eriksson: And another thing that can happen is that the 75 days is going to be a little bit flexible anyway, because the secretary of state even now, when you get much closer to the election than that, you can still get things off the ballot.

Mr. Wilson: With our language, though, if the ridiculous becomes the fact and the court does not rule, it would go on the ballot.

Mrs. Eriksson: Yes.

Mr. Carter: Yes. And I think that's good.

Mrs. Rosenfield: Given a problem, it should go on rather than be kept off.

Mr. Wilson: That solves what you're driving at, doesn't it?

Mr. Carter: If it goes on the ballot even though proved insufficient, aren't the instructions that you're not to count the ballots?

Mrs. Eriksson: But it happens that sometimes the instructions aren't followed, or that the secretary of state might not get the word out or that the county boards of elections for some reason, you wouldn't get the word and it would be printed on the ballot anyway.

Mrs. Sowle: It says "if it is otherwise so proved" and so the proposal shall not be submitted, but the question is, what if it is anyway?

Mrs. Eriksson: We could say, "no vote on a matter properly submitted to the electors pursuant to a petition...." Let's think about that a little bit and see whether that would imply something we don't realize.

Mr. Carter: We've already got up there, "when so certified" and this is going to be qualified. I think that's good.

Mrs. Eriksson: You may be having some problem with language and I already have, "no vote on a matter shall be held unconstitutional or void..."

Mrs. Sowle: And you're really talking about whether the law is void. I have a lingering feeling about "properly submitted to the electorate" because is there any way properly can be construed to do exactly the reverse of what we mean?

Mr. Carter: That's why I think it should be tied in with what we said in the preceding sentences about what's sufficiency. I agree. We should be very careful that it isn't construed to be the opposite of what we mean.

Mrs. Sowle: Properly might be construed to refer to the proper number of signatures and all of that.

Mr. Carter: I have a problem over on page 3, about preparation of arguments. I noticed that you struggled with the word "position" the last time. The question I have is whether we don't want to use language similar to what we have on issue 3,

that if the general assembly does not provide by law for the preparation of opposing arguments, the ballot board shall do that. Because it seems to me that someone ought to be required to give a balance on that. And that's exactly what we did in the other one.

Mrs. Eriksson: That would be a substantive change.

Mr. Carter: And I would think we could use the same language we had before, or similar to it.

Mrs. Sowle: What if there aren't any opposing arguments?

Mr. Carter: Well, we faced that problem and that's why I thought we might track with the same language. I'm sure there will be on these kinds of things.

The committee will meet on May 1 at 10 a.m. at the Commission offices in the Neil House.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
May 1, 1974

Summary

The Elections and Suffrage Committee met on May 1 at 10 a.m. at the Commission offices in the Neil House. The meeting was attended by committee members Katie Sowle, Chairman, and Craig Aalyson. Also present were staff members Ann Eriksson, Director, Brenda Avey, and Edith Hilliker representing the League of Women Voters.

In the new section 1 of Article XIV (formerly 1a of Article II), Mrs. Sowle noted there are no really substantive changes. There is the difference in the language according to Dick's suggestion at the beginning.

Mr. Aalyson - I had a wording change to suggest. The words "directly to the electors" in the second sentence, it seems to me should all be taken out and put after "submission" to say "submission directly to the electors of a proposed amendment . . ." I think it would read a little better.

Mrs. Eriksson - In a sentence like this it is always difficult to decide what you're going to put next to what.

Mrs. Sowle - The construction in 2a and 2b is the same. I don't think it much matters.

Mr. Aalyson - If you change one, you should change the others. The grammar of the thing seems to be a little better in the fashion I've suggested, but not so much that I want a seventh draft.

Mrs. Sowle -"Directly"does modify "submission" it's true.

Mr. Aalyson - Even in 2a, "submission to the general assembly . . ."

Mrs. Eriksson - Maybe we could take the word "directly" out. We talked about it before. In the case of a constitutional amendment, it may not be as purposeful to keep it in as in the case of an initiative for a law. There you have two choices, here you only have one choice.

Mrs. Sowle - That's right.

Mrs. Eriksson - And this says that the Secretary of State is obligated to put it on the ballot, and so there's no possibility for him to send it up to the general assembly first. However, it certainly makes it absolutely clear if the word "directly" is in there.

Mrs. Sowle - I think that any way we word that is going to have some difficulties. I kind of agree that it sounds better to say either, "the submission directly to the electors" or "the submission to the electors". "Directly" as we discussed last time may make it abundantly clear what procedure you're talking about. I think maybe we ought not tamper with it, since the other sections would also have to be changed.

Mr. Aalyson - In the final sentence of the first paragraph in section 2a, "the secretary shall transmit it." As I read that, that didn't flow quite properly for me. I'm wondering if maybe the words "the petition" should not be substituted for "it" there.

Mrs. Sowle - I tend to agree with you. What technically should "it" mean--the proposed law?

Mrs. Eriksson - It should mean the petition, because I think the whole petition is transmitted. That raises a question that I never thought of before, though. Because the petition itself isn't going to have the entire text of the law in it. I think we'll have to provide for the transmission of both the petition and the text of the law which is filed with the Secretary of State, but may not be on the petition itself.

Mrs. Sowle - So, "the secretary shall transmit the proposed law together with the petition".

Mr. Aalyson - "The petition and the full text of the proposed law."

Mrs. Sowle - Did Dick make any suggestions?

Mrs. Eriksson - Dick has said he did go over them carefully, and he had a few minor suggestions but nothing of substance. And as far as the blanks that need to be filled in, after reconsidering everything, his preference would be to go to the Commission with what's presently in the Constitution--with the percentage and the same percentage. But he said that with a recommendation to the Commission that this is viewed by the committee as tentative, and that the committee would want the Commission to consider this matter rather carefully. However, he said that his preference there was not so strong, that if you decided that you preferred to change the percentage to a fixed number, he would not be opposed to that, with the same suggestion to the Commission attached.

Mrs. Sowle - One think that has occurred to me, with the discussion about population, is that I think a fixed number would be perfectly satisfactory even if population were increasing in the state, because I don't think that percentage makes that much difference, and I think the fixed number has some **real** advantages. But what if the population declined? There is some possibility that population will decline.

Mrs. Hilliker - Not instantaneously.

Mrs. Sowle - And if you have a fixed number in the Constitution and the population declines, I'm not so sure that I would feel that was a proper . . .

Mr. Aalyson - I suppose, of course, it would depend upon the number. Of course, I have the difficulty, and perhaps I've been urging it so strongly because of that, of denying what appears to me a very substantial segment of the population being permitted to take its cause to the voters. And really that's all it's doing is taking its cause. It could be turned down if the majority prefers or it could be adopted if the majority prefers. When I think of numbers in terms of 100,000, 150,000, 200,000 it seems to me that this indicates a strong enough feeling among enough people to justif their being at least able to get the matter submitted. Now with a declining population, I would think that the chance of the population declining so rapidly to such an extent that this would be a factor would be small. If we have 11,000,000 people and we're talking about 150,000 or 200,000 or whatever the number might be, I don't think that there would be such an acute change that this would create any real problems. I assume that when you're talking about a decline in population you're thinking that maybe the fixed number should go down as the population declines, and I see that as a very tenuous possibility.

Mrs. Eriksson - I don't think that we would envision a rapid decline in population over the next 25 or even 50 years. The population of Ohio does not increase as rapidly, certainly, as some other states.

Mr. Aalyson - I was thinking about this myself, and about numbers which we should select if we select numbers. I get to thinking about 150,000 people, for instance. That would mean that petitioners would have to stand up at Ohio State University at two football games and have everybody who emerged from that football stadium sign the petition in order to get it on the ballot. And that's a lot of people.

Mrs. Sowle - It certainly is.

Mr. Aalyson - I think that's something we should discuss maybe in a later period in this meeting.

Mrs. Sowle - The second sentence in paragraph 2 "if a law proposed by initiative petition becomes law either as proposed or in amended form". . . and so forth. Was it not our discussion last time at this particular point that if it's enacted in amended form, regardless of whether it's signed by the governor or not, we want a supplementary petition to be possible.

Mrs. Eriksson - I did make a change here, because if you look in the third paragraph, you find: "If it does not become law as proposed," which could cover the situation of it's being passed as amended. If it doesn't become law as proposed, you aren't saying <u>why</u> it didn't become law as proposed. It could have been passed as amended and vetoed by the governor, and it would not have become law as proposed.

Mrs. Sowle - Right.

Mrs. Eriksson - It could have been passed as amended and been signed by the governor, but it still would not have become law as proposed. And it seemed to me that covered everything.

Mrs. Sowle - I see that and I certainly think you're correct. If there a difficulty with timing, because if you change the language in the second paragraph to "if a law proposed by initiative petition . . ." How did Dick suggest it be worded last time?

Mrs. Eriksson - We went back to the idea that you could file it within 6 months after enactment. But I also changed that, because that is simply not practical to try to do that. Because the date of enactment is not a significant date. It is a difficult date to pin down. If the date of enactment, the date of last action by the general assembly? Is the date that the Speaker signs the act? This is not a clearly defined term. The only thing that I've done here is make you wait until the end of the 6 months. I don't think that it's worth worrying about in order to give people the opportunity to start the ball rolling a little bit earlier in that one situation. To me, it's not worth worrying about the timing factor, as to knowing what that date is. And so I changed that also.

Mr. Aalyson - We're trying to accomplish this, are we not? If the matter is enacted in amended form, we want to give the petitioners 90 days to challenge, and if it does not become law at all, we want to give them 90 days following the 6 month period. I think that you have done that.

Mrs. Eriksson - If it becomes law then you want the 90 days to run from the date it becomes law because that will track with the referendum. If it doesn't become law, then they're going to have to wait the 6 months, and I don't think that that's any serious disadvantage. It just would make it very difficult to try to make sure that we knew what we were doing the other way. Besides it will conflict with the referendum if it does become law.

Mr. Aalyson - In the third paragraph, I have a couple of questions and maybe a couple of suggestions. Why do we use the phrase "one or more" rather than "may be demanded by supplementary petition".

Mrs. Eriksson - I put the "one or more" in there in one of the earlier drafts to make it clear that there could be more than one supplementary petition filed.

Mr. Aalyson - You mean by different groups of petitioners?

Mrs. Eriksson - Yes.

Mr. Aalyson - Okay, I see that.

Mrs. Eriksson - We're not making any restriction that the supplementary petition has to be filed by the same people who filed the initiative petition.

Mrs. Sovle - As I recall, that did arise in discussion.

Mrs. Eriksson - It just seemed to me that there was no other good way to make it clear.

Mr. Aalyson - Okay, I thought that's what you meant. I'm concerned with the seventh and eighth lines of the third paragraph. The word following "or" in the 6 months in the seventh line and the word "it" in the eighth line. Here is what I have proposed and maybe I need to read a little more than just those lines. We're providing that the supplementary petition be designated in a certain way and filed with the secretary of state within 90 days after the expiration of the 6 months. And then I said, "provided that, if the proposed law has become law in amended form, the supplementary petition shall be filed within 90 days after the amended law has been filed with the secretary of state.

Mrs. Eriksson - I wonder if "provided that" . . .

Mr. Aalyson - That's probably bad but I had to say something.

Mrs. Eriksson - There are two conditions here and the "or" attempted to separate them.

Mr. Aalyson - I was trying to achieve greater clarity. Let me read the entire sentence down to that point and let's see if we can come up with something. "If within six months from the time the petition is received by the general assembly, the proposed law has not become law as proposed, its submission by the electors may be demanded by one or more supplementary petitions having printed across the top, "Supplementary Petition for a Law First Considered by the General Assembly" signed by electors certified as provided in Section of this Article and filed with the secretary of state within 90 days after the expiration of the 6 months, or . . ." This just doesn't make sense to me. "Or if the proposed law has become law in amended form within 90 days after it has been filed with the secretary of state . . ."

Mrs. Sowle - I have a little trouble with this whole thing too because it seems to me if it has become law in amended form then it has not become law as proposed.

Mrs. Eriksson - That's right.

Mrs. Sowle - So which do you choose?

Mr. Aalyson - Well, if the proposed law has not become law as proposed . . .

Mrs. Eriksson - That covers a number of things.

Mr. Aalyson - Yes, and I think this is a problem. It can be either because it didn't become law at all or because it became law as amended. That's why I had the difficulty later with the language. It just wasn't clear to me, there was a little ambiguity when I tried to read that.

Mrs. Sowle - Let's assume the law has been amended and then becomes law, the proposed law has been amended and then becomes law. Does the group wanting to submit it to the electors now have a choice as to which time to use?

Mrs. Eriksson - No, which time to use is going to depend on the circumstances.

Mr. Aalyson - Whether it fails totally or becomes amended.

Mrs. Eriksson - There's no choice. Whether it simply has not become law at all or whether it's become law as amended, it is intended that there is no choice.

Mrs. Sowle - Now, I wonder whether you couldn't have a contrary interpretation of that.

Mrs. Eriksson - Yes, that's obviously a problem.

Mrs. Sowle - So let's go with this business of 90 days after the expiration of the 6 months. So I do think there is some ambiguity still here.

Mrs. Eriksson - I intended, of course, not to make it a choice, but to require that the if clause would always apply in that situation, but obviously it's not clear.

Mr. Aalyson - Maybe we could use "but" instead of "or".

Mrs. Eriksson - Or "except that" I would like better than "provided that". "filed with the secretary of state, except that if the proposed law has become law in amended form, the supplementary petition shall be filed . . ."

Mrs. Sowle - That might be better because you really are carving out this one thing. What we really mean then is if the proposed law has not become law as proposed and no amended version has become law. That's what we mean.

Mrs. Eriksson - Right.

Mr. Aalyson - I incline to two sentences because the clarity is there with the two sentences.

Mrs. Sowle - I'm beginning to think, though, that one sentence is better with the words "except that" because that makes it amply clear that we don't have an option if there is an amended version.

Mr. Aalyson - "Except that" would be an improvement. But I do believe that we also need the additional language that the supplementary petition shall be filed within 90 days after . . . and rather than "it", I like "the amended law", because you have to go back so far to get the progenitor of the "it".

Mrs. Eriksson - That, I think, would make it much clearer.

Mrs. Hilliker - Would you mind reading it as it is changed?

Mrs. Eriksson - It will read, "and filed with the secretary of state within 90 days after the expiration of the 6 months except that, if the proposed law has become law in amended form, the supplementary petition shall be filed within 90 days after the amended law has been filed with the secretary of state."

Mrs. Sowle - I think that's much clearer.

Mr. Aalyson - In 2c, I had a very minor modification. I want to read it in its present form first and tell you my thoughts. "Upon the filing of a supplementary petition under Division (A) or a petition under Division (B) of this section, the secretary of state shall submit the proposed law to the electors." Now, what does one mean by "proposed law"--the original proposed law or that contained in the supplementary petition?

Mrs. Eriksson - I thought that by saying supplementary petition that would be clear. That was why I put it in that way.

Mr. Aalyson - Well, this is what I have proposed and it may or may not be clear to you. I have proposed that it should read, "the secretary of state shall submit the law proposed therein to the electors."

Mrs. Sowle - And "therein" means either the supplementary petition under (A) or the petition under (B).

Mr. Aalyson - It seemed to be a little clearer to me. In the second sentence of 2d, "No law proposed by petition. . ." I'm wondering if the words "by petition" are perhaps a little vague because we talk about supplementary petitions and referendum petitions. I had a possible suggestion: "No law proposed under the terms of this article and approved by the voters. . ." It seemed to me to cover everything: petition, supplementary petition, whatever. When I read over it "petition" caused me to bridle a bit. Petition, of course, describes supplementary petition.

Mrs. Eriksson - Yes, it describes any petition, and of course, the condition that it must be approved by the voters eliminates the possibility that you're talking about it as proposed to the general assembly initially. This is the language in the present Constitution.

Mrs. Sowle - This doesn't really refer to referendum petition, does it?

Mr. Aalyson - You don't propose a law by referendum petition.

I think the question I had, Ann, was whether the word "petition" automatically includes supplementary petition. I think it probably does, but don't we differentiate between the two in the remaining parts? One wonders whether some judge might say, It says petition, and elsewhere they use "supplementary petition" and "petition" in two different contexts, I'm going to say this means petition, not supplementary petition."

Mrs. Sowle - If we modify the word "petition" we probably ought to do it in the preceding sentence, which uses the same language.

Mr. Aalyson - I didn't have the same problem with that because that meant to me the first one and then the supplementary petition would follow.

Mrs. Eriksson - You would want the restriction to apply to a supplementary petition though, because it could be almost a new law being proposed.

Mr. Aalyson - Right. If we put the word "any" before petition, would that cure it? Well, my language was "No law proposed under the terms of this Article and approved by the voters shall be vetoed by the governor". If we said, "No law proposed by any petition shall contain more than one subject, no law proposed by any petition and approved by the voters is subject to veto by the governor" maybe that would clear up the slight problem that I have.

Mrs. Sowle - Is there any petition provided elsewhere?

Mr. Aalyson - I don't know. I thought that "under the terms of this article" indicated that we would know what were talking about.

Mrs. Eriksson - There is no other provision for proposing law by petition. I'm almost inclined to want to say, "no law proposed by petition or supplementary petition" since that's really the distinction we've made elsewhere.

Mr. Aalyson - Okay, that would be fine.

Mrs. Eriksson - "No law proposed by petition or supplementary petition shall contain more than one subject which shall be clearly expressed in its title."

Mrs. Sowle - Should it then be "initiative petition or supplementary petition"?

Mrs. Eriksson - Yes, maybe we should say that.

Mrs. Sowle - "initiative or supplementary petition". And then, "no such law proposed. ." or.....

Mr. Aalyson - "No such law, if approved by the voters, is subject to" I think would do it.

Mrs. Eriksson - That might raise a condition, about what to say if it's not approved by the voters.

Mr. Aalyson - If it's not approved, it never becomes law.

Mrs. Sowle - Yes.

Mr. Aalyson - When approved?

Mrs. Eriksson - Or just "no such law approved by the voters"? Just make it a description of the law rather than raising questions. "No such law approved by the voters is subject . . . ." and what law are we talking about? We're talking about a law proposed by initiative or supplementary petition.

Mr. Aalyson - Are we going to say no law proposed by "initiative or supplementary petition" or "initiative petition or suppmentary petition"?

Mrs. Eriksson - I think "initiative or supplementary petition". No law proposed by initiative or supplementary petition shall contain more than one subject. No such law approved by the voters is subject to veto by the governor."

Mr. Aalyson - Yes, that ought to do it. No other problems for me. In section 3, I think the word "or" should precede "section 2" as well as "section 4".

Mrs. Sowle - Doesn't the comma there mean or?

Mr. Aalyson - Yes, I think it does, but I think the word "or" there is preferable.

Mrs. Eriksson - I was going to propose taking all of that out and simply saying "except as otherwise provided in this Article".

Mr. Aalyson - One problem I have with that is my own bugaboo about clarity and telling people where they can go right at the point that you're saying this.

Mrs. Eriksson - As long as it was in Article II, where we had a lot of other things having to do with legislation, I wanted to be specific. However, I think that when we have it in a complete article of its own--what I'm concerned about is that particularly as things might change in the future and someone might not think to change this section at the same time, you can write in conflicts by being quite that specific.

Mr. Aalyson - That's a possibility. My personal feeling, however, is that when one reads this section, section 3, with the change that you suggested, that is leaving out the specific references, then he's got to go back and start searching through this whole article to determine where there might be other provisions. And I personally do not like to do that if it can be spelled out. I would like to have it spelled out. Right the way you have phrased it tells him exactly where he has to go to find out how it might otherwise be provided.

Mrs. Sowle - I think that I would feel more secure if I were working with it to have section 2 and section 4 specifically mentioned. And I think I see what you mean by "or" in there--"in this section, or section 2, or section 4 of this article."

Mr. Aalyson - You see "in this section" and then you have almost an apposition--Section 2, of course it doesn't mean that but it could cause you to hesitate for a second.

Mrs. Sowle - Now should we have commas if we use those "ors"? I suppose we can, it's optional.

Mr. Aalyson - I think it's preferable to have the commas.

Mrs. Sowle - Anything else in Section 3? Let's go on then to Section 4.

Mr. Aalyson - I guess I have a philosophical question on Section 4. It's nothing that we've discussed previously. I wonder what the motive is for precluding a referendum on an emergency law, and in keeping with that question, I wondered why we couldn't say, "the filing of a referendum petition challenging any such law shall not delay its going into effect"? Why should we preserve the sanctity of an emergency law? It does require a 2/3 vote and all of that, but that doesn't necessarily mean that it's a good law.

Mrs. Eriksson - I think we talked about this a little bit. One problem in doing that would be to permit a law to be effective and then not effective for a while, if you were going to do that.

Mr. Aalyson - But many laws have that problem. I mean, you have a law that's effective and then you repeal it.

Mrs. Eriksson - Yes, but this would presumably be for a fairly brief period of time.

Mr. Aalyson - Yes, that's probably so. But I still haven't come to any conclusion as to why these emergency laws are so sacred. I can conceive of the possibility that something could be railroaded. I guess the answer is you can repeal the emergency law by a petition.

Mrs. Eriksson - Yes, you could. You could have it by initiative petition. There is no restriction on initiative petition, even with respect to tax levies and appropriations.

Mr. Aalyson - I see now that we can take care of them that way. Although the referendum calls for a lesser percentage.

Mrs. Sowle - That's true, there would be that difference.

Mr. Aalyson - That's fine, as long as it can be gotten rid of.

Mrs. Sowle - Section 5?

Mr. Aalyson - In the final paragraph, "If conflicting matters of law are approved", why not "If conflicting laws"?

Mrs. Eriksson - In a referendum, you could have specifically not only a whole law but a section or an item in a law.

Mrs. Sowle - That was it.

Mr. Aalyson - I knew there was some reason we had reached this conclusion.

Mrs. Eriksson - We had originally spelled out "law, section or item" and I think Dick suggested "matters of law."

Mrs. Sowle - We're up to Section 6--the big one.

Mr. Aalyson - Surprisingly enough I have a few comments. In the second paragraph

it prescribes that the text shall be accompanied by the names and addresses of not fewer than three nor more than five electors who shall consent in writing to be a committee. I wonder whether the word "be" might be better supplanted by "who shall consent in writing to serve on" or "serve as a member of a committee". Now the reason that I suggest that is, how does an individual, if you go to an individual and say "Will you serve?" How does he consent to be a committee? That's picayune but it bothered me nevertheless.

Mrs. Sowle - Yes, it's not good language. I would agree. It should be "to serve on a committee."

Mr. Aalyson - I don't even know whether "serve on" is proper. That's what I first suggested and then I gave an alternative of "serve as a member of".

Mrs. Sowle - What's the subject of this?

Mrs. Eriksson - Five electors.

Mrs. Sowle - "the names and addresses of electors . . ."

Mrs. Eriksson - "who shall consent in writing to serve as a member of a committee."

Mrs. Sowle - Since our subject is electors, you don't want to say "serve as a member", you want to say, "serve as members".

Mrs. Eriksson - Or you could say, "each of whom shall consent in writing to serve as a member of".

Mr. Aalyson - I like that.

Mrs. Sowle - Now, I have a question in that same sentence, and again this may be picayune, but I did have a question, and it has to do with the tense of the verbs. "Whoever seeks to file a petition shall first file with the secretary of state a copy of the text of the proposal together with the names and addresses . . . of not fewer than three nor more than five electors who shall consent in writing . . ." Don't we really mean who have consented in writing? I think what we really mean is who have consented in writing. At the time of the filing, you need their consent.

Mrs. Eriksson - Well, then why don't we say, "each of whom consents in writing" rather than making it past tense which sounds as if they must already have filed a consent prior to that with the secretary of state. And it seems to me that that consent is part of the petition. "Each of whom consents in writing" at the time you're filing.

Mrs. Sowle - Haven't they already written their consent at the time of filing?

Mrs. Eriksson - Well, I don't know whether they have or not. Isn't the consent contemporaneous with the filing? We're not requiring that they prepare it or certify it or date it or what have you. And it seemed to me that it really was part of the petition.

Mr. Aalyson - But it's going to be a separate document or documents, isn't it?

Mrs. Sowle - Together with the written consent . . .

Mr. Aalyson - It could possibly be five different consents or one paper with five signatures on it.

Mrs. Eriksson - It could be, right. With a copy of the full text of the proposal attached to it is what it could be.

Mrs. Sowle - Would it be clearer to say something like, "together with the written consent"? I'm wondering if people about to file such a thing are going to read through this and say, "Now, how do we do this consent part? How do we conform to the requirements?" And what we really mean is together with the written consent.

Mrs. Eriksson - The written consents of five electors. But we want to get the names and addresses in here too, and we want somebody designated chairman. It seemed to me that it's not necessary to be quite so specific here.

Mrs. Sowle - "together with the names and addresses of the electors and their written consents"? Or, "with the written consents of each to serve as a member of a committee. . ."

Mrs. Eriksson - "Shall" is not something that happens in the future, it's a mandate. "Whoever seeks to file" shall first file with the secretary of state. In other words, that is also a mandate requiring you to file.

Mr. Aalyson - I'm beginning to see Katie's problem. "Each of whom shall consent in writing," if we left it that way--when?

Mrs. Eriksson - It could be a future thing.

Mrs. Sowle - I think I would like to see it absolutely clear to anybody reading it that they have to file written consents when they file this whole thing.

Mr. Aalyson - Well, it says "together with" doesn't it?

Mrs. Sowle - Together with the names and addresses . . .

Mr. Aalyson - "and written consents"?

Mrs. Sowle - "of each to serve as a member of a committee"

Mr. Aalyson - Each of whom has consented in writing.

Mrs. Eriksson - But that would imply that they might have consented but that the consent doesn't have to be filed. And I think what Katie wants to make sure of is that they not only have to consent in writing, but that the consent in writing has to be filed.

Mrs. Sowle - Yes.

Mr. Aalyson - A copy of the full text of the proposal to be submitted to which is attached the names and addresses. . .

Mrs. Sowle - Well, together with does that, doesn't it?

Mr. Aalyson - I thought it did. "Together with the names and addresses of not fewer than three nor more than five electors, each of whom has consented."

Mrs. Sowle - How about "together with the written consent and names and addresses of not fewer than three nor more than five electors."

Mr. Aalyson - How about "Whoever seeks to file an initiative, supplementary or referendum petition shall first file with the secretary of state and the Ohio ballot board a copy of the full text of the proposal to be submitted together with the names and addresses of not fewer than three nor more than five electors each of whom has consented in writing to serve as a member of a committee."

Mrs. Sowle - That still doesn't require you to file the written consent with your petition.

Mrs. Eriksson - I would say that maybe we need another sentence. Take out the consent and make a separate sentence out of it. Say, "together with the names and addresses of not fewer than three nor more than five electors who shall be a committee--something like that--to represent the petitioners in all matters and one of whom shall be designated chairman. The written consent of each member of the committee shall be filed with the . . ." But the problem is that we haven't said what that thing is. The written consent shall be filed at the same time, or something like that.

Mr. Aalyson - Okay. "Whoever seeks to file . . . shall first file with the secretary of state and the Ohio ballot board a copy of the full text of the proposal to be submitted and shall file the names and addresses of not fewer than three nor more than five electors . . ."

Mrs. Sowle - Together with their written consent?

Mr. Aalyson - Each of whom has consented, in writing, . . .

Mrs. Sowle - How about, together with their written consent to serve on a committee?

Mr. Aalyson - No, I don't like that either. They shall file the names and addresses and written consents?

Mrs. Sowle - "Consent" won't stand alone though--you have to have more with that.

Mr. Aalyson - Shall file with the names and addresses and written consents of not fewer than three nor more than five electors who shall serve as a committee to represent the petitioners.

Mrs. Sowle - Well, that's alright. I think maybe Ann's with the second sentence is a little more technically correct. You kind of have to say consent for what.

Mr. Aalyson - Well the next question could be, is it necessary that we file the written consent so long as the written consent has been secured?

Mrs. Skvle - If we're going to require consent in writing, where is that writing going to be--in somebody's desk drawer? It seems to me it's a little better draftsmanship to nail it down where that writing ought to be located.

Mrs. Eriksson - We might do it this way: "Whoever seeks to file shall first file with the secretary of state a copy of the full text of the proposal to be submitted, the names and addresses of not fewer than three nor more than five electors who shall serve as a committee to represent the petitioners in all matters relating to the petition and one of whom shall be designated chairman and the written consents of such electors to so serve." And you could keep it all in one sentence that way and still separate the elements and still make it all go back to "shall first file" if you did that.

It was so agreed.

Mr. Aalyson - I would like to say "shall sign indelibly" rather than "shall indelibly sign."

It was agreed.

Mr. Aalyson - In the next sentence, I think the word "the" should be inserted before date--the signers address and the date of signing.

All agreed to that change.

Mr. Aalyson - I have nothing further in that paragraph or the next one.

Mrs. Eriksson - Do you have something in that next paragraph?

Mrs. Sowle - Yes. "He carried and made available a copy of the full text of the proposal, and that, to the best of his knowledge and belief". I'm not sure why I put that "and" in there.

Mr. Aalyson - There has to be a semicolon in there if there is no "and." Put a semicolon after "full text of the proposal".

Mrs. Sowle - Yes, I think the semicolon would do the same thing as the "and."

Mrs. Eriksson - I don't think it's necessary grammatically to do either one. But I do think that it would make it clearer. The "that" sticks out there and it would seem to need something else. Actually, it simply that it's not the end of the series. It separates what the solicitor can say for sure as opposed to what he only thinks he knows.

Mr. Aalyson - That's why I put a semicolon in there.

Mrs. Sowle - We have a series of three here--getting back to the second line of that paragraph--"stating the number" is the first one, "that each" is the second one and the third one is where we're talking about the semicolon and the "and". And so this is the last in a series of three things: stating the number, stating that each of the signatures; and stating that to the best of his knowledge and belief . . . and so forth.

Mrs. Eriksson - I think either "and" or a semicolon would clearly separate the two series that we're talking about.

Mrs. Sowle - But if we have a semicolon here I think we have to put a semicolon before "that each of the signatures" And then I'd still put "and" before "to the best of

his knowledge and belief." In fact I think I'd prefer that.

Mrs. Eriksson - But I think you need something more separating those three things. There are three things that fall together and then "to the best of his knowledge and belief" are another series of things. If you want to separate something, it should be the two series.

Mr. Aalyson - I could live with it if we put the semicolon after proposal and the word "and". I think everything is very clear.

Mrs. Sowle - I think it's clear.

Mrs. Eriksson - "and that" and then a semicolon after "proposal," and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name it purports to be". Then, after that comma, take out the "and" and say "that such person is an elector residing at the stated address who had knowledge of the contents of the petition." I would keep the "and" before "who" but say "and that"; instead of saying "who" say "such person". "And who" doesn't sound right to me. "And that such person is an elector residing at the stated address who had such knowledge of the contents of the petition".

Mr. Aalyson - Do you need "thereto" in the last sentence of that paragraph? "No affidavit or other certification thereto shall be required."

Mrs. Eriksson - It probably either ought to come out or else say "to the petitioner."

It was so agreed.

Mrs. Sowle - I'm still worried about the overall structure of this other sentence. We hang an awful lot on the word "stating". We hang all the rest of that sentence on "stating."

Mr. Aalyson - Well, how about "and stating" then? "And stating that to the best of his knowledge and belief".

Mrs. Sowle - Do we need "and that at all times soliciting signatures"- do we need an "and" there?

Mr. Aalyson - I think you do. If you took that "and" out of there, the clarity of the sentence would diminish. Well, let's read this. "On each part petition shall appear the certification of the person soliciting the signatures to the same stating the number of signers of such part petition, that each of the signatures was made on the stated date in the presence of the solicitor and that at all times while soliciting signatures he carried and made available on request a true copy of the full text of the proposal; and stating that to the best of his knowledge and belief each signature is the genuine signature of the person whose name it purports to be, and that such person is an elector residing at the stated address who had knowledge of the contents of the petition." To me it sounds alright.

Mrs. Sowle - Very good.

Mrs. Eriksson - I think we ought to take the comma out after "be" to make it clear that that last "that such person" is also subject to the best of his knowledge and belief clause. Because he's not going to have absolute knowledge of that any more

than he does whether it's the real person or not.

Mrs. Sowle - Yes, I would agree.

Mr. Aalyson - I see that. When I was reading it I had a little problem with the comma after "same" and that language. "On each part petition shall appear the certification of the person soliciting the signatures to the same".

Mrs. Sowle - "to the part petition"?

Mr. Aalyson - "to the same, stating". As a matter of fact, right there I might prefer instead of stating "which certification shall state" or "states the number" or "in which he states".

Mrs. Avey - You could switch around the first sentence and say "the person soliciting signatures to each part petition" to get rid of the same "shall state". . .

Mrs. Eriksson - But we want to require that there shall be a certification too.

Mr. Aalyson - On each part petition shall appear the certification of the person soliciting signatures to the same, which certification . . .

Mrs. Sowle - Do you think it's unclear what stating refers to?

Mr. Aalyson - It wasn't until I started reading it aloud, and then, as you remember, I had to hesitate and then go back and do it again.

Mrs. Eriksson - How about just saying "on each part petition shall appear the solicitor's certification stating the number of signers"?

Mrs. Sowle - Do you have a comma after "certification"?

Mr. Aalyson - No.

Mrs. Eriksson - I don't think you need one now, because now the certification is what states. There is no break in thought there.

Mr. Aalyson - I don't think anyone could construe that solicitor to mean anybody except the solicitor of that petition.

Mrs. Eriksson - I don't think so either. Not if you say "the solicitor". It has to be the particular solicitor of that part petition.

Mr. Aalyson - On each part petition shall appear the solicitor's . . .

Mrs. Sowle - He carried and made available upon request a true copy. Why is there a comma after "request"? And should there be one?

Mrs. Eriksson - No, there shouldn't be unless you put one after "carried" too.

Mr. Aalyson - I don't think there even needs to be one after "signatures"." And that at all times while soliciting signatures he carried and made available upon request a true copy" .

Mrs. Soule - How about commas after "that" or "signatures"?

Mr. Aalyson - I think it would be better that way, myself.

Mrs. Soule - I'm still worried about the series, and whether we should have semicolons.

Mr. Aalyson - Well, we've got series within series. We're separating the things that he could state because he knew, and those things he could state because he believed, into two separate series.

Mrs. Soule - And we're repeating "stating"?

Mrs. Eriksson - Yes.

Mrs. Soule - Okay. Alright, next paragraph.

Mrs. Eriksson - It seemed to me that if we wanted to break this into two sections, that would be an appropriate place to do it. It would require a little re-wording but if you feel that this is too long for one section, that we could break it there. Because now we have gone through all of the solicitation of signatures, and now we're filing it and putting it on the ballot.

Mrs. Soule - Would you make this section 6 and 7 if you did that or would you make it a subsection?

Mrs. Eriksson - No, I'd make it section 6 and 7.

Mr. Aalyson - I don't know that I like the idea of making it two sections because everything is germane. It would be breaking the continuity to put it into two sections.

Mrs. Soule - As it is, it contains all of the procedures, doesn't it?

Mrs. Eriksson - Yes.

Mrs. Soule - I'm happy with it in one.

Mr. Aalyson - It's not longer than it would be in two, and I don't see any advantage to it.

Mrs. Eriksson - An advantage to having shorter sections is if you even want to amend them in the future, you're not opening up so many things, and it isn't quite so difficult then.

Mr. Aalyson - I prefer keeping it one section. I have a question of the next paragraph, "when properly certified and filed, etc." The last sentence. I think I would prefer to see the word "properly" eliminated from that last sentence. What does it mean and what does it add? We have provided that if you don't prove the petition invalid or the signatures invalid, it shall be submitted to the voters, and it shall not be, if it is submitted, invalid. And then you go on to say, no vote on a matter properly submitted . . .

Mrs. Eriksson - Again, the only question was, suppose it got on the ballot anyway.

Mrs. Sowle - If they were printed up so early and there was no way to take it off and some happened to count it, and so forth.

Mrs. Eriksson - I am not really crazy about the word "properly" because it may imply more than we want it to imply.

Mr. Aalyson - "correctly"?

Mrs. Eriksson - Or else, spell it out again. Say, no vote on a matter submitted to the electors with respect to which the petition and signatures were not proved insufficient . . . But that's very awkward. But that's really all I intend "properly" to cover. I don't want to get other questions in there so, like constitutionality of the proposal.

Mrs. Sowle - How about something like this? "If it is otherwise so proved, the proposal shall not be submitted". And then, "otherwise no vote . . ." to make it part of this preceding sentence, so that it's very clearly tied into the time in which proof has to be made challenging the signatures. Would it help not to have that a separate sentence? "But unless otherwise so proved, a matter submitted to the electors pursuant to petition shall not be held unconstitutional or void."

Mrs. Hilliker - I don't see how you are going to combine those, Mrs. Sowle, because one of them, "if it is otherwise so proved, it shall not be submitted" has to do with the actual submission of the ballot and the last sentence has to do with something subsequent to the balloting. It has to do with the vote on the issue.

Mr. Aalyson - Maybe there are too many negatives and inversions in that sentence.

Mrs. Sowle - No, you see, that last sentence only has to do with the sufficiency of petitions or signatures.

Mr. Aalyson - Right.

Mrs. Sowle - We have two situations. If it is otherwise so proved, the proposal shall not be submitted. Now the next sentence, we are having to take into account that sometimes they are submitted anyway, as kind of a clerical error as a problem of early printing. So in the next sentence I'm suggesting, "unless otherwise so proved" **that is, proved not later than 75 days before the election, "unless otherwise so** proved, a matter submitted to the electors pursuant to a petition, shall not be held unconstitutional or void on account of the insufficiency of the petitions or of the signatures." Now that might be very confusing, because the preceding sentence says the proposal shall not be submitted.

Mrs. Eriksson - But I think that's clearer than what we have now.

Mrs. Sowle - "Properly" cannot be misinterpreted this way.

Mrs. Eriksson - That's right, if you don't have it there. If you take out "properly" and say "unless otherwise so proved, a vote on a matter submitted to the electors pursuant to a petition shall not be held unconstitutional".

Mrs. Sowle - Is somebody going to read this and say "Now wait a minute." reading that sentence as I've proposed it. You've just said the proposal shall not be submitted, so why are you putting this in? Of course, we know why we are.

Mrs. Eriksson - You could argue that you could just leave out the word "properly" because now we are moving the time far ahead of the election, and we're also eliminating, we hope the possibility of a last minute removal from the ballot.

Mrs. Sowle - I have a feeling that if we left out "properly" and what I've been suggesting, that a court would do what we're talking about anyway.

Mrs. Eriksson - The court would say that it wasn't submitted.

Mrs. Sowle - That's right.

Mrs. Eriksson - Even if the word "properly" were not in there. It was an unconstitutional submission, and therefore it is no submission.

Mr. Aalyson - Just leave out the whole sentence.

Mrs. Eriksson - Leave out "properly". If it properly goes to the people than you can't come in later and say that the signatures were invalid.

Mrs. Sowle - I still like what I suggested. "If it is otherwise so proved the proposal shall not be submitted. Unless otherwise so proved, a matter shall not be held unconstitutional." It may be saying black is not white, and white is white, and making it all too plain, but I'm not sure it hurts.

Mr. Aalyson - What are we trying to accomplish? We're trying to provide that if there is an inadequate number of proper signatures, the opportunity shall exist to prove this inadequacy. Then, if the inadequacy is proved, the petition shall not be submitted. If it's not proved, the petition shall be submitted.

Mrs. Sowle - If it isn't timely proved.

Mrs. Eriksson - And if it is submitted, not timely proved, and submitted, then you cannot raise those particular questions later.

Mr. Aalyson - Yes, if it is submitted without the timely proof of inadequate signatures, you can't ever bring that up again. Do we need to say that? If we require the proof within the period, then aren't we implying that if you don't do it then, you can't ever do it.

Mrs. Eriksson - Well, the present Constitution doesn't imply that. The present Constitution spells that out. I would think that it would be clearer to keep it stated in the Constitution. Make positive that you can't come in later and do it.

Mrs. Sowle - Pursuing Craig's thought for a moment, if we left out both of the last two sentences in that paragraph, the first sentence actually says all of that, doesn't it? The petition and the signatured shall be presumed to be in all respects sufficient, unless not later than 75 days it is otherwise proved. The next two sentences are in there really only to reinforce that statement.

Mrs. Eriksson - What if we say shall be "conclusively" presumed to be in all respects sufficient, unless something happened. Then take out the other two sentences.

It was so agreed.

Mrs. Sowle - Maybe it does just confuse the issue.

Mrs. Eriksson - Let's try it that way, then, and see how other people read that. We can indicate in our comments what we hope to accomplish by adding "conclusively" and lengthening the time before the election. And why we took out the last sentence--simply because we thought it was unnecessary.

It was so agreed.

Mrs. Sowle - Do you have any further questions about section 6?

Mr. Aalyson - No.

Mrs. Eriksson - I have two points. On page 3 in the first full paragraph, I still question in that first sentence "supporting their position". I haven't been able to think of any better way to say it.

Mrs. Sowle - It means supporting the petitioner's position, doesn't it?

Mrs. Eriksson - Yes. "Their position" does strike me as being a nonlegal expression and something that may be not be completely understood. But I can't think of any other term.

Mrs. Sowle - Supporting their proposal?

Mrs. Eriksson - No, because we wanted this to apply to a referendum too and it isn't going to be in their proposal, really, if you're putting the general assembly's law before the people. And we wanted it to apply so that they could either be for or against something, depending upon the circumstances.

Mrs. Sowle - Well, I see no problem with the language.

Mrs. Eriksson - If it hasn't concerned either of you, then let's let it go that way. Because if it concerns someone else at the Commission, well, they'll certainly raise that. The other thing that I wanted to raise was this. By writing in a prior procedure, before you actually get to the point of preparing the petition, by requiring it to be submitted to the ballot board, and so forth, what we are trying to do here is eliminate the present statutory requirement that it be submitted to the attorney general ahead of time with the 100 signatures. Perhaps we should consider specifically stating in there that it shall not be required to be submitted to anybody else ahead of time. Just as we have written in that no other affidavit or certification shall be required, to prohibit the general assembly from adding another procedure.

Mrs. Sowle - It could be inserted after the first sentence in paragraph 2 of section 6. "Whoever seeks to file shall first file with the secretary of state and the Ohio ballot board" and then somehow to incorporate the idea, "and with nobody else".

Mrs. Eriksson - "No other preliminary filing shall be required," or something like that.

Mrs. Sowle - When that request is made of the attorney general, what is it exactly that he does?

Mrs. Eriksson - He has to approve the summary. The people write their own summary, but he has to approve it.

Mrs. Soule - Here the board prepares the summary, which might or might not be read as precluding the attorney general, too.

Mrs. Eriksson - We really intended the ballot board to replace the attorney general here.

Mr. Aalyson - At the end of that first sentence there in that second paragraph, then?

Mrs. Soule - Either the first sentence or the second sentence.

Mr. Aalyson - After "the board shall within 15 days . . ." and then "no further filing shall be required" or "no further approval"? You may not even need a further sentence. Could you doctor the initial part of the preceding sentence? "thereafter the committee shall prepare . . ." "The committee shall then prepare?

Mrs. Eriksson - That might do it.

Mrs. Soule - And then it goes on to say, "and the summary prepared by the board" which might preclude action by the attorney general.

Mrs. Eriksson - Maybe if we said, "the committee shall then prepare" it will tie it in very clearly to the time sequence without saying that they have to do it in a certain period of time.

Mr. Aalyson - Is "shall" a good word for that context? "May then" would sound as though at that time they now have authority to go ahead, but we also want to make it mandatory that they do it.

Mrs. Eriksson - So that it would be clear that it wasn't the secretary of state or somebody else that's going to have to prepare the petition.

Mr. Aalyson - Yes, we do want to mandate it. Do you think just the insertion of the word "then" would accomplish our purpose?

Mrs. Eriksson - I think it would make it clear that there isn't room in here for any other action. If the committee goes ahead and can go ahead at that time, the general assembly can't then turn around and require them to do something else.

Mrs. Soule - Has that procedure ever been contested under the present sentence which we have copies in this?

Mrs. Eriksson - No. The question has been raised in some of the court cases involving the income tax. Some of the judges of the supreme court - Judge Schneider was one - said that they considered that whole attorney general's procedure to be unconstitutional. But the court didn't so hold.

Mrs. Soule - But did it hold the contrary?

Mrs. Eriksson - No. It wasn't raised specifically. It was just a comment.

Mr. Aalyson - Now, the parentheses in the final paragraph on page 3, is there still some question about that?

Mrs. Eriksson - That's just tied in to the question of whether it's going to be an absolute number or a percentage. You won't need that sentence if you're going to put an absolute number in.

Mrs. Sowle - In this referral of the matter in section 7 to the Local Government committee are we recommending to the Local Government Committee that language be added to require that local initiative and referendum petitions be placed on the ballot so that an affirmative or negative vote could be cast?

Mrs. Eriksson - Yes, this committee would specifically make that recommendation without suggesting proposed language. There may be other changes. And it may depend upon how that's done as to what sort of language would be appropriate.

Mrs. Sowle - We ought now to take up the question of percentage or number. Did we ever resolve the issue of requiring an extraordinary majority of the general assembly to change a law passed by initiative or to reenact a law rejected by referendum?

Mrs. Eriksson - The discussion was that putting a restriction on the general assembly like this would destroy the chances of it being adopted by the general assembly. I think Dick also felt that it really wasn't necessary--that we didn't seem to have a history in Ohio where the general assembly turns around and goes contrary to what the people have just done.

Mr. Aalyson - I think we decided that it would be politically suicidal and therefore it wouldn't be necessary.

Mrs. Sowle - Well then we're down to the issue of percentage or number and depending on which we decide, what percentage or what number for each. Are you still in favor then of a specific number for each one?

Mr. Aalyson - Yes, I am. I see no merit really to the idea of a percentage. I'm willing to be persuaded. I think it's a concept that has a lot of validity in a lot of situations, but I'm unable to see its validity in this situation. Percentages in and of themselves don't mean anything, in the abstract that is. Again, as I've said before, I am persuaded that if a number, yet to be selected, of the electors approve a petition, a sufficient number, they ought at least to get to the voters. And of course that's all they do, get to see what the voters want to do.

Mrs. Sowle - I'm inclined to prefer a specific number, both because it simplifies the procedure, and because I agree that percentages in and of themselves don't have virtue. What we want is some sort of a hurdle, and I think we provide enough of a hurdle by a reasonably large number. Is there any state that uses a set number, I don't remember.

Mrs. Eriksson - Yes, several states. Maryland, for example, requires 10,000 qualified voters, but with a restriction that not more than half for Baltimore.

Mr. Aalyson - That's very interesting because instead of requiring a certain number from each county, they prohibit using one county, which of course is the most populous county. And you don't recall then, Ann, that any state, except California

has abused this situation? And in California they have a percentage, and the percentage is probably greater in number than would be required here in Ohio.

Mrs. Eriksson - Oh, by far! Even though their percentages are lower. But the population is high, and it depends, there again, on total vote for governor, which means that they have a pretty tremendous turnout. They must have about 6,000,000 turn out to vote for governor, whereas we have maximum 3,000,000 turn out in Ohio in the best of years.

Mr. Aalyson - So there really doesn't seem to be any correlation between the percentages required and the California problems.

Mrs. Eriksson - And the number of petitioners. No, that's my conclusion.

Mrs. Sowle - How many states do not require a distribution among counties? I know we've already made that determination for our purpose.

Mrs. Eriksson - Many of them do seem to require some sort of distribution.

Mrs. Sowle - Illinois does not but they probably don't have much experience with this with the new constitution, do they?

Mrs. Eriksson - No, this was just put in in Illinois.

Mrs. Sowle - And California does not require a distribution? I'm looking at the big states.

Mrs. Eriksson - Some require distribution in congressional districts. For example, Florida requires a distribution from 1/2 the congressional districts, but that's of course, much less of a burden than counties. Several others use congressional districts.

Mr. Aalyson - This requirement of a number of districts of some sort, whether it be county or congressional districts or whatever, was premised upon the idea that you didn't want the urbanites to rule the farmers. So we still have that problem with television and the general communication set-up? Is this a major problem or is this a carry-over from those days?

Mrs. Eriksson - This is a carry-over. It was really to protect the rural voters, to give them a greater say in what was going on. It's the same theory as representation from counties in the legislature which has been upset by the one-man one-vote. However, some of the newer constitutions, such as Alaska still include it.

Mr. Aalyson - But of course Alaska is in a rather unique position since it is equivalent to our early states in the sense that it is still frontier.

Mrs. Sowle - That would not change the one-man one-vote problem, but of course there is some question as to whether they would control.

Mr. Aalyson - Was there any sentiment expressed at the last meeting, four members were present, that this idea should be retained of apportioning the votes among the counties?

Mrs. Eriksson - No. Mr. Wilson did say that he preferred to keep the percentages,

and keep them as high as they presently are. But he didn't really say anything about the elimination of the distribution, as I recall.

Mr. Aalyson - I think that everybody decided that that should be put to rest.

Mrs. Sowle - I think we ought to have wording on the alternative percentage provision. Such as Dick's proposal - averaging percentages over several years. One of the things that I find wrong, and I think most of the people who talked about it have found wrong, is that with the percentage approach, you get arbitrary differences from year to year, depending upon a very heavy vote on a highly controversial issue. One way to solve that problem, if you look at that problem in isolation, is to look at several years. I think that when we go before the Commission, it would be good to have wording for that alternative.

Mrs. Eriksson - Although he still prefers percentages, he's agreeable to go along with whatever it is. Dick thinks it ought to be presented as a tentative proposal, although put in the draft, but presented to the Commission as a tentative conclusion of the committee, or a conclusion of the committee but the committee wishes the Commission specifically to consider the reasons and alternates.

Mrs. Sowle - I think in the report to the Commission we ought to present that alternative.

Mr. Aalyson - We want to hit on something that is going to, as Dick said, stimulate debate, and then let the Commission make its decision, realizing that we on this committee have been unable to arrive at a decision among ourselves.

Mrs. Sowle - I would like to go with fixed numbers, but with a draft of a proposal incorporating percentages averaged over maybe the preceding three gubernatorial elections. I just picked three out of the air. I don't know that there is any magic in three or five. There are no other states that use that approach, are there?

Mrs. Eriksson - No, they're all either fixed percentages or fixed numbers.

Mrs. Sowle - But I think three is better than five because you go a little too far.

Mr. Aalyson - I'm not sure I understand your proposal, Katie. Are you saying we're going to put a number in which would represent an average or are you saying that the base shall be a percentage determined by averaging?

Mrs. Eriksson - Put a fixed number in but that you present to the Commission that with a draft as an alternate using an average of percentages.

Mr. Aalyson - So it's two separate alternatives then. One is a fixed number, and one is a percentage which would take into account a spread over three elections. I see. That's fine with me. I think the Commission is going to decide the thing and they should know what the committee's problems have been.

Mrs. Sowle - And if Dick has further modifications of that, I would be agreeable to that. I thought Dick's suggestion had more merit than what we have now. I would like to see at least that change.

Mr. Aalyson - What would we use as a basis for the fixed number?

Mrs. Sowle - We are getting to that now. Let's look at the figures from the last 13 gubernatorial elections, and this is really the first range of numbers that we had talked about. Dick seemed to, if I recall the discussion at the meeting when he commented on this, I think he was finding, instead of 250,000 he would say 300,000. I don't really remember. It becomes rather arbitrary at this point.

Mr. Aalyson - I would rather imagine that whatever number we put in, there's going to be a good bit of discussion and we are going to end up with a different number. I don't have any fixed number in mind.

Mrs. Sowle - The average of 13 elections was roughly 3,000,000. The average of the last three gubernatorial elections looks fairly close to that.

Mr. Aalyson - So we have a quarter of a million, 150,000; 100,000; and 75,000.

Mrs. Sowle - They sound good to me.

Mr. Aalyson - I would recommend that we submit these numbers and see what the Commission wants to do. Use 250,000, 150,000, 100,000 and 75,000.

Mrs. Sowle - On constitutional amendments, that would be 250,000.

Mr. Aalyson - Ten per cent would be the constitutional amendment, then the 6% would represent the direct initiative.

Mrs. Eriksson - At the present time there is only the indirect, and it takes 6% and the referendum takes 6%.

Mr. Aalyson - And 4 and 4 is what the secretary of state was thinking of?

Mrs. Eriksson - The secretary of state was eliminating the indirect and was reducing the referendum from 6 to 4.

Mr. Aalyson - So it would be 3 and 3 on an indirect?

Mrs. Eriksson - At the present time.

Mr. Aalyson - Then 75,000 and 75,000, is that correct?

Mrs. Sowle - Something tells me that nobody's going to buy that. I was thinking of 100,000 and 75,000.

Mr. Aalyson - How about 75,000 and 100,000? It seems to me that if you are going to submit it to the legislature more easily than taking it back away from them. In other words, 75 to get it to the legislature, and if the legislature does not pass it you need another 100,000.

Mrs. Sowle - Is there a time limit that's harder on the supplementary petition?

Mrs. Eriksson - Yes, that's the 90 days and that's where you want to keep it about the same. That was what really the proposal was to reduce the number of signatures there.

Mr. Aalyson - Well then 100 and 75 might be the thing because if you can get another

75,000 in 90 days it looks as if there were some interest there.

Mrs. Eriksson - That's where the time limit is.

Mrs. Sowle - I would say 100 and 75,000. Are we talking about section 2a then?

Mrs. Eriksson - Yes.

Mrs. Sowle - Okay, and then the 75,000 would be the second blank in 2a, and the first would be the 100,000. And then in b we would have the 6% which is 150,000.

Mrs. Eriksson - That would be something slightly less than your total of the other two.

Mr. Aalyson - How about 175,000 there?

Mrs. Sowle - That makes sense to me. It's all very arbitrary. And we're making the lower amount because of the current restriction on the supplementary petitions.

Mr. Aalyson - And also because you are first submitting it to the legislature.

Mrs. Sowle - Then the only number left is the referendum.

Mrs. Eriksson - That's section 3. The referendum is now 6%.

Mrs. Sowle - Now we're talking about reducing it.

Mrs. Eriksson - The secretary of state was, and that was where Mr. Petro had the problem. Now if you want to keep it the same as your initiative, it really ought to be the same as the direct initiative, because there are more time restrictions on the referendum.

Mrs. Sowle - And it has already been through the deliberative process of the general assembly.

Mr. Aalyson - I think it should be 100,000.

Mrs. Sowle - Yes, that would be 4%. I think when this goes to the Commission, it might be useful for them to have this information just to give them an indication of what broad things we were going on in arbitrarily putting these numbers in. And then some wording on averaging as a substitute.

Mr. Aalyson - That would be in that parenthetical language.

Mrs. Eriksson - Now I need to know on what percentage basis you want to average. You're sticking pretty much with 10% for constitutional amendments, 6% for direct initiative and indirect, so you're sticking with the present except for the referendum which is reduced to 4%. Your indirect was 100,000 and 75,000.

Mrs. Sowle - But the present provision provides 3% and 3%.

Mr. Aalyson - It still comes out the same as the average. It comes out to be 6% of the average so really we are using the 6%.

Mrs. Skwle - My question is whether on the supplementary petition it would be a good thing to revise a lower percentage of the supplementary petition.

Mr. Aalyson - Make it 4 and 2 rather than 3 and 3.

Mrs. Sowle - I do think it's a good idea to reduce the percentage where there is a time limit.

Mr. Aalyson - 4 and 2 keeps the same number roughly.

Mrs. Sowle - So for the indirect it would be 4 and 2, and for the referendum it's presently 6.

Mrs. Eriksson - How about for the direct initiative, leave that 6 then?

Mr. Aalyson - I guess what we're doing is saying that these percentages are unwieldly in a sense and we prefer a number which comes close to being an average of those percentages. And that would be taken care of in the final paragraph on page 3, the basis on which the required number of petitioners shall be determined . . . is the average of the total number of votes cast for governor at the last three preceding elections.

Mrs. Skwle - Is there any problem in suggesting repeal of that property classification section? "The classification of property for the purpose of levying different rates thereon . . ." The single tax I'm not worried about but is the other a problem?

Mrs. Eriksson - Section 2 of Article XII requires uniformity and, in effect, does this anyway. This was only put in here as insurance against the single taxers. The Constitution has already been amended to permit personal property classification, and personal property is classified and it's not uniformly assessed or taxed. So that that's already been taken out. And anybody who wants to tamper with uniformity as far as real property is concerned has to amend section 2 or get around section 2 in some other way. So it does not seem to me that it's necessary for it to be in here.

It was agreed to send the revised copies of the drafts out to committee members and see whether substantial agreement could be obtained by mail before scheduling another meeting.

The meeting was adjourned.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
May 29, 1974

Summary

The Elections and Suffrage Committee met on May 29 at 10 a.m. at the Commission offices in the Neil House. Present were Mrs. Sowle, Chairman, Messrs. Carter, Aalyson and Wilson and staff members Ann Eriksson, Director and Brenda Avey. Professor Michael Kindred of Ohio State University School of Law attended as a guest speaker.

Mrs. Eriksson - There are the two problems in Section 4.

Mrs. Sowle - Craig, will you tell us what our instructions are from the Commission meeting?

Mr. Aalyson - Such members of the Commission as were in attendance seemed to me to have two problems. Some of the members seemed to feel that the language "idiots and insane persons" was perfectly satisfactory language in view of the fact that they felt that it carried at least a medical connotation that was pretty well defined. So that when you're talking about an idiot or an insane person you knew what you were talking about. Which I feel is probably not justified. Then, they were concerned, particularly in the case of disfranchisement because of a felony or some other similar consideration, that the person regain his franchise upon the removal of the impediment and that this should be automatic. Now, I'm not so sure that I disagree with them on that, although I don't know how we are going to draw the line. Do you say that the franchise will be restored if he is no longer incarcerated, or after the time has passed during which he could have been incarcerated, something of that sort? But they felt that there should be an automatic provision for restoration of the franchise.

Mr. Carter - Even though it's now in the statute?

Mr. Aalyson - Yes, some seemed to feel that there should be a constitutional requirement. There was some feeling and the Ohio Council of Churches agreed that if there's going to be a disfranchisement for mental incompetency to vote, then someone is going to have to be designated to make this judgment. I think Don raised this question, "Do you mean if the person is adjudicated mentally incompetent, then there has to be a separate and distinct adjudication as to his ability to vote?" I personally was not troubled by there having to be a separate adjudication because I think it could be done at the same time and in the same order. There seemed to be, some feeling that the doors of the mental institutions were going to open on election day and crowds would come forth and vote. I think this is just not a realistic attitude. I don't think it's going to happen and I don't think that if it did it's going to make any difference or any significance in the vote count. But there were some reservations about removal of the present provisions, and if we did remove it about more specific designation in the suggested provision as to who was going to adjudicate the incompetency to vote and when.

Mr. Carter - Our section 4 says only that the General Assembly shall have power to exclude.

Mr. Aalyson - Yes. All we're doing is giving a power which can be exercised or not as the case may be, and the General Assembly at the same time could then make provision for restoring the franchise if they wish to it seems.

Mr. Carter - In both cases, the mentally incompetent and the felon, we're saying that the General Assembly shall have power to exclude, so if there is no law enacted

there is no exclusion. There is a law on the conviction of a felony, Sec. 2961.01. Is there anything comparable to that on the idiots and insane?

Mrs. Avey - There are two bills before the General Assembly: Senate Bill 336, which concerns mentally retarded persons, and House Bill 984 which concerns mentally ill persons and Michael Kindred was one of the people who worked on this bill. Originally 336 provided for a separate hearing for loss of a right to vote, it said that mentally retarded persons would retain all their civil rights such as the right to vote, to marry, to drive unless taken away by a separate hearing for that purpose. And then in the substitute bill, they took that away. I spoke with Senator Ocasek, who was one of the sponsors, and he said that there was a lot of opposition from the probate court to having all of these separate hearings and so they took that out. Now in 984, there's still language in here that there will be a separate hearing to take away the right to vote, and we won't know until Friday whether they're going to leave it in or take it out to make it parallel 336 which is their stated intention. They're thinking along those lines, according to the bill, of having a separate hearing to take away the right to vote for mentally ill patients, at least.

Mrs. Sowle - It's a separate procedure at present, is it not? If somebody goes to vote, and that person is challenged, then it's adjudicated whether that person is an idiot or insane person for voting, isn't that right?

Mr. Carter - I don't know - it depends on what the statute says. That was my question - apparently there is no statute now.

Mr. Aalyson - I don't think there is any statute that covers idiots and insane persons.

Mrs. Avey - No, just people in the institutions. As far as the person on the street who is challenged at the polls, there is no statute, only the constitutional provision. The Constitution says that no idiot or insane person shall be entitled to the privileges of an elector and our proposal would give the General Assembly power to exclude.

Mr. Carter - That is self-executing at the moment.

Mrs. Sowle - And it did seem to me in all of our discussions that the committee members were in agreement on the concept that there is a difference between the need to commit somebody to custody on the one hand, and the determination of competency to vote. There may be people who are not competent to vote who are not in institutions, and vice versa. But the conditions are simply different for removing that kind of physical freedom from removing the ability to vote. And that they should be determined separately.

Mr. Wilson - Getting back to Craig's point, the number would not probably swing any election at any time. I think we could tie this together. I hate to see this bit of separate hearings, because that involves, additional court activity. I like Virginia's language, "any person adjudicated to be mentally incompetent by law", if they're in an institution, they're generally so adjudged to be incompetent. Just lock it to that. There may be some people who are incompetent to vote, whether idiots or otherwise, but I don't think there are enough of those to worry about setting up a separate category in the Constitution.

Mrs. Avey - One of the things that Mr. Montgomery mentioned is that the power to declare someone incompetent lies with the courts now, and he felt that that's where

it should stay.

Mr. Carter - How about putting that word "adjudicated" in there?

Mr. Aalyson - I have a suggestion that may or may not meet the approval of the committee. "Any person," and then an insertion, "specifically adjudicated mentally incompetent for the purpose of voting by the probate court of the county of residence." It seems to me that if the probate court is going to have a hearing on the question of incompetency, it can, at the same time, and in the same order, and very simply, once it becomes the routine, makd a finding as to whether the individual is mentally incompetent for the purpose of voting. It wouldn't require a separate hearing from that of the incompetency. Some of the members of the Commission felt that we should designate the agency which would make this determination.

Mr. Carter - Not leave it up to the legislature.

Mr. Aalyson - That's correct. My feeling is that we should give the power to the legislature, and then give them also the power to restore the franchise when they see fit. But some of the members felt that there ought to be an automatic and a constitutional restoration of the franchise and they felt that the Constitution should provide for it. At least, that was the sense I got from the discussion, was that they felt that the Constitution ought to provide for the agency which would make the determination.

Mr. Carter - I'm surprised at that.

Mr. Aalyson - Well, maybe it's simply because they haven't thought the thing through. I think one of the problems with the Commission is that we spend hours in the committee on this matter discussing it, and then the Commission itself, has maybe a half hour to discuss what we've spent hours on and don't see all of the problems we do.

Mr. Carter - There is no reason why we have to change our recommendation. We can go back with some rationale. I think that's a perfectly viable action. I don't think that the mandate is that you have to make a change. It's just submitted for further consideration.

Mr. Wilson - In the back of my mind, with anything this Commission or committee does, is the saleability. And I think you are going to run into trouble getting the voters to remove this provision and give the power to the General Assembly. We tried it with the embezzlers.

Mr. Carter - Except that now we have this power of explanation.

Mr. Aalyson - It doesn't seem to me that too many people are going to be that concerned on this particular issues, on whether an incompetent can vote.

Mr. Carter - With regard to the bribery and such crimes, that's the way it is now. The only one that it's mandatory is for idiots and insane persons.

Mr. Wilson - You're going to try to change that from mandatory to discretionary, with the discretion of the General Assembly, and I don't think that people are going to buy that kind of loosening up of the Constitution.

Mr. Carter - I hope you're wrong. But it's a good caution, nevertheless. I have some problem with putting in the Constitution as much as you were talking about,

Craig. If the structure of the courts is changed . . . .

Mr. Aalyson - I agree. Then let's just say "adjudicated".

Mr. Carter - That makes pretty good sense to me. I think that people would feel a little bit more comfortable with "adjudicated," in that sense that it requires a judicial hearing and process rather than an arbitrary action by the General Assembly. People might be scared that the General Assembly might say "all Republicans are now mentally incompetent" after the Watergate thing.

Mrs. Sowle - They might be afraid of abuse, just like the intelligence tests for voting-- can you recite the Declaration of Independence backwards, and if you can't you can't vote.

Mr. Aalyson - Does "adjudicated" necessarily carry with it the connotation that it shall have been by a court?

Mr. Carter - I would think so. To me, adjudicated means decided by a judge of a court, a judicial process.

Mr. Aalyson - "adjudicated" is often used to apply to the work of agencies which have a quasi-judicial power.

Mrs. Sowle - Perhaps we could define, in some way, by a court of law, without defining which court.

Mr. Aalyson - By a court of law.

Mr. Carter - You might even want to have it adjudicated by a Commission or a board that was set up specifically to do this thing by psychiatrists and people knowledgeable in the field. So I'm not sure we should confine it to a court of law.

Mrs. Sowle - One thing that appeals to me about leaving it to a court of law, as opposed to the General Assembly, and I think probably as opposed to a commission--the courts do function in such a way as to take into account changing definitions, advancing understanding of things like mental illness, and perhaps just in the regular common law tradition this is done, and perhaps the courts are in a better position to do that than the General Assembly.

Mrs. Avey - "Adjudicate" means to determine judicially (consulting dictionary)

Mr. Aalyson - I remember being pleased with Virginia's language too.

Mr. Wilson - "No person adjudicated to be mentally incompetent by law."

Mrs. Sowle - Adjudicated by law - that means by the courts.

Mr. Carter - I'm not sure it does. I think it means by law. I'm for "no person adjudicated to be mentally incompetent for the purpose of voting"

Mr. Aalyson - I like that. I think it's flexible enough.

Mr. Wilson - I still don't see why you need to have "for the purpose of voting" if you say that no person shall be entitled to vote who is mentally incompetent.

Mr. Carter - You might be determined incompetent for various purposes. You might be incompetent for driving an automobile, declared incompetent for failing to meet the driving test.

Mr. Wilson - You're not mentally incompetent then.

Mr. Carter - You could be though.

Mr. Aalyson - There are some well defined areas of mental incompetency which are so restricted that they could easily permit a person to vote but label him incompetent for a specific purpose, and our feeling in earlier discussion was that we should not disfranchise someone who was capable of exercising the franchise if he's simply mentally incompetent for some specific purpose. Some people have peculiar hang-ups on particular things, and as to that specific area they are incompetent.

Mr. Carter - It seemed to me, Jack, that we were more concerned with the potential of disfranchisement, than we were about letting someone vote who perhaps wasn't quite competent. That seems to be the lesser danger by far, because the real abuse could be as to where a party in power made some rather sweeping restrictions to louse up the other party. That was the real big thing. I don't think this whole thing is a very big subject except that possible danger.

Mr. Wilson - I accept your language now.

Mr. Carter - So that's why we thought it would be better to be pretty restrictive on that. There are probably a lot of people who vote and haven't the faintest idea what they're voting on, and it doesn't bother me if they happen to be mentally incompetent.

Mrs. Sowle - Well what was the study in one of our reports about the comparison of voting patterns in a mental hospital with the voting patterns of the medical and other staff.

Mr. Aalyson - They were closely related in percentages.

Mrs. Sowle - Yes, they were about the same.

Mrs. Avey - We have two exclusions: from voting and from being eligible to office, and one condition: that he be mentally incompetent for voting. I don't know much about the law on this point, but, can that be interpreted as an undue deprivation of being eligible to office simply because he's incompetent to <u>vote</u>? Can someone make a case for that?

Mrs. Sowle - The present Constitution does not make an idiot or insane person ineligible for office except indirectly. In other words, you have to have the privileges of an elector to be able to run for office. So if a person is not an elector, he automatically cannot run for office.

Mrs. Avey - That's right, but in the proposal we're not using "elector"--you're using mentally incompetent for voting.

Mr. Aalyson - Maybe it should be, "The General Assembly shall have the power to exclude the privileges of an elector from any person convicted of bribery, perjury or other infamous crime . ."

Mr. Carter - Our problem is that this is one of these cases where we are trying to make as few changes as possible from the existing language. It's a lot easier to simply add something. Now, when we got into the initiative and referendum, it was so bad, you know, that we finally decided there was no way to try to resurrect and patch up existing language. It's a lot tougher selling job because every time you cross something out, you raise questions. In other words, we we were to do what you were saying, "The General Assembly shall have the power to exclude from the privileges of an elector' and then cross out "or being eligible to office" you know, then you got the explanation problem. I think that makes sense but we ought to recognize it should be important enough to warrant monkeying around with existing language.

Mrs. Sowle - It seems to me that it we decide to abandon giving this to the General Assembly that we also should remove it from section 4 and put it back in section 6 and reword it something like "no person adjudicated mentally incompetent for the purpose of voting shall be entitled to the privileges of an elector" and that preserves part of the language and it just changes "idiot or insane" to "adjudicated mentally incompetnet for the purpose of voting."

Mr. Wilson - I've got a question along the lines here of when does this end? "Any person adjudicated mentally incompetent for the purpose of voting" a man can be so adjudicated then later on could be deemed to be entirely sane.

Mrs. Sowle - If he has recovered mentally, and the court says so, then he's no longer adjudicated mentally incompetent.

Mr. Wilson - He <u>was</u> adjudicated mentally incompetent is what I'm getting at. You should have the word "currently" in there is what I'm trying to bring up.

Mrs. Sowle - I can't imagine that a court would interpret it that way, though.

Mr. Wilson - If you have been at any time in your lifetime adjudicated incompetent, then this paragraph would cover you.

Mr. Aalyson - Well that could be remedied by saying, "no person adjudicated mentally incompetent for the purpose of voting shall during the period of such incompetency be entitled to the privileges of an elector."

Mr. Carter - Actually, it would be good if we could work that into both the felons and the mentally incompetent.

Mr. Wilson - Yes, that's what I was getting at.

Mr. Aalyson - Because we could put a separate clause in there, then to remove the impediment. There seemed to be several members who were concerned that the franchise be restored automatically.

Mr. Wilson - The Code, of course, does restore the franchise to convicted felons. Whether that should be done in the Code rather than in the Constitution I don't know. But if we do it in the Constitution, restore it when their period of incompetency ends, then there never would be any question of the General Assembly having to put something in the Code to restore the privilege.

Mrs. Sowle - It might be possible to get at it another way. I don't know if it's desirable, but since section 4 grants to the General Assembly the power to exclude

from the privilege of voting, you could automatically restore the privilege if you just restrict this language. Something like "The General Assembly shall have power to exclude from the privilege of voting any person convicted of bribery, perjury or other infamous crimes for the period of . . ." and then some definition of "sentence" or "probationary sentence" or something of that sort. So the General Assembly's power would only extend to excluding from the privilege for that period of time.

Mr. Carter - Yes, my mind was going along the same way. I think we are all at this point. It would be hopeful that you could come up with some general language suitable for a constitution that the General Assembly shall have the power to exclude. If we are going to make all of these changes, then maybe we want to consider Craig's thing of just the privileges of an elector. "During such period that a person is convicted or is adjudged mentally incompetent" so that the period applies to both of them. It would be kind of nice if we would work that out. "Shall have the power to exclude from the privilege of voting or being eligible to office during such period that any person is--something about a crime--or is adjudged mentally incompetent.

Mrs. Sowle - The only language I can think of is during the period of the sentence.

Mr. Aalyson - Does the sentence end if parole is granted? "Incarceration is the statutory language.

Mr. Wilson - We're trying to combine our proposals into something which the General Assembly has already done in the Revised Code as far as the privilege of voting for felons. We are also now trying to come up with this replacement in the Constitution for idiot and insane language and at the same time work into the Constitution return of it.

Mr. Aalyson - It would appear that the General Assembly has already decided that a convicted felon--I'll use that as a generic term--shall have his franchise returned so long as he's not incarcerated. They could free him on probation, parole, conditional pardon.

Mrs. Sowle - So that makes it easy to word.

Mr. Aalyson - And I think that's the sense of what they have said here--if we let him out for any reason, then we're going to let him vote.

Mrs. Sowle - Any person convicted of a felony for the period of incarceration?

Mr. Aalyson -;Felony includes incarceration in a prison.

Mrs. Sowle - Anything over a year.

Mr. Aalyson - Now, then, you want to permit the person who is incarcerated other than in a penitentiary to vote.

Mr. Wilson - Vote from the county jail?

Mr. Aalyson - In other words I think we ought to try to keep the present language in view of this previous discussion we had about keeping as much as possible.

Mrs. Sowle - This is what the statute says--"a person convicted of a felony is

incompetent to be an elector or juror--when any such person is granted parole and so forth he is competent again.

Mr. Aalyson - Any crime which renders the person liable for imprisonment within the penitentiary for more than a year.

Mr. Carter - Whether the sentence could be imposed. Whether it is or not is not relevant.

Mr. Aalyson -"The General Assembly shall have the power to exclude the privileges of an elector during the period of his incarceration from any person convicted of a felony." That's a start, anyway. "And from any person adjudicated mentally incompetent for the purpose of voting during the period of his incompetency."

Mrs. Sowle - My feeling is to reverse those two things--from any person convicted of a felony during the period of incarceration and from any person adjudicated mentally incompetent for the purpose of voting during his incompetency.

Mr. Carter - I have a slight preference for not using "during the period of" twice but that makes it clear.

Mrs. Avey - How about "until restored to competency"?

Mr. Wilson - Who determines restoration?

Mr. Carter - Again, we're leaving it up to the statutes.

Mrs. Sowle - We're back to your problem, Jack, of when that happens.

Mr. Wilson - If you want to go the route of incarceration as the key, you could bring the period of incarceration in for mental incompetency.

Mr. Aalyson - But he may not be incarcerated. He may be adjudicated incompetent and stay with his family.

Mr. Wilson - Yes, that's true. There's no question about being convicted of a felony and being locked up. You're there. But with mental incompetency you could be in or out.

Mr. Carter - "The General Assembly shall have power to exclude the privileges of an elector from any person during the period of incarceration resulting from the conviction of a felony and from any person adjudicated mentally incompetent for the purpose of voting during . . ." I think we can handle that. I think this is a draftsmanship problem.

Mr. Wilson - We're all agreed on what we want to accomplish.

Mr. Carter - Could we talk briefly about some of the initiative and referendum language? Just the last portion. The rest of it I was delighted with and I think you made some great changes.

Mr. Aalyson - Section 6 is the only one you had comments on?

Mr. Carter - Yes, I didn't have any problems with the other sections.

Mrs. Sowle - In section 6, in an interlineation - "and the written consents of such electors to so serve."

Mr. Carter - Now that's where I have a big problem--that whole sentence.

Mrs. Sowle - I was just going to say "so to serve" but let's turn to that sentence.

Mr. Carter - Let me read what I have. I find that a very awkward sentence. I read the discussion on it. I understand the reasons for it, and I think they're good reasons. But I think what you ended up with is just a very awkward construction and I think you can do the same thing while having it read smoother. It says, "whoever seeks, etc." the full text to be submitted . . . and then putting back in "together with the names, addresses and written consents of not fewer than three or more than five electors who shall have agreed to serve as members of a committee with a designated chairman thereof to represent the petitioners on all matters relating to the petition."

Mr. Aalyson - Who shall have consented . . . do you want "in writing"?

Mr. Carter - I have that. "Together with the names, addresses, and written consents" to make sure that the consents have to be filed as per your discussion at the last meeting. Let me read it again. "Whoever seeks to file an initiative, supplementary or referendum petition shall first file with the secretary of state and the Ohio ballot board a copy of the full text of the proposal to be submitted," now then this is the way it reads in mine, "together with the names, addresses and written consents of not fewer than three or more than five electors who shall have agreed to serve as members of a committee with a designated chairman thereof to represent the petitioners on all matters relating to the petition." I think it reads better.

Mrs. Sowle - It does.

Mr. Carter - I don't think there's any change at all from what you have.

Mr. Aalyson - It seems to me that we've tried to avoid "who shall have done" something.

Mrs. Eriksson - Yes. You could say, "who have agreed to serve"

Mr. Carter - Well, they really have to have agreed by the time they file because they have to designate a chairman.

All agreed.

Mr. Carter - Now the other problem I had on section 6 on the business of when a petition is certified in the 75 days and otherwise proved, that paragraph. Any time you eliminate a sentence and replace it by a word, I think that's good constitutional draftsmanship. But I do have a problem. One is that I feel that what we're trying to do here, as I read this thing over is tell the petitioners what they do--the procedure. And then, it would seem to me, first of all, that it would be better to take this paragraph and put it at the end of the procedure. It interrupts the flow of what happens.

Mr. Aalyson - I agree, I think it is kind of a summary sort of thing that ought to be at the end.

Mr. Carter - And then I also have a technical problem. I don't find in section 6 anywhere that it expressly states that the matter has to go on the ballot. It's clearly inferred. It says later that the secretary of state shall cause to be placed on the ballot the caption and the ballot language prepared by the Ohio ballot board for each proposal to be submitted. But nowhere do we expressly state that if the thing is properly certified and filed it shall be put on the ballot. Now, I don't know whether it's necessary, but I just wanted to bring it up.

Mrs. Eriksson - Each of the individual processes contains the language that it shall go on the ballot 120 days. Now maybe it ought to go in section 6 also.

Mr. Carter - Yes, you've got a good point.

Mrs. Eriksson - We say, for instance in section 1 "the secretary shall submit the proposed amendment to the electors at the next succeeding general election . . ."

Mr. Carter - All right, so it is covered then by each section.

Professor Michael Kindred arrived to speak to the committee on the constitutional language concerning mentally ill and mentally retarded persons. Mrs. Eriksson introduced him.

Mrs. Sowle - Thank you for coming, Professor Kindred. We're grateful to you. We've been around and around on this a little bit both within the committee and with the Commission. Would you rather we give you questions or would you care to make a statement to us about the proposal or perhaps we could do a combination of both.

Prof. Kindred - I would be happy to make a very short statement. It seems to me that the committee proposal goes in the right direction. That is the minimum that you ought to do and the only question I have is whether you ought to go further. The present constitutional provision is antiquated, and absurd, and probably unconstitutional under the federal constitution. It's very hard to know what the word "idiot" means in these days, and obviously there are many definitions of insane persons. As far as mentally ill and mentally retarded persons, surely a categorical exclusion of such persons from voting rights is unconstitutional under the federal constitution. There are many, many mentally retarded persons and mentally ill persons with respect to whom there is no rational reason to deny the right to vote. There may be some for whom there is a rational reason but that certainly requires a process be set up to distinguish between those for whom there is a proper exclusion and those for whom an exclusion is improper. As you know, the right to vote has taken on increasing constitutional significance approaching, if not having reached, the notion of a fundamental right. In addition to that, in terms of constitutional protection, the categories in the area of mental retardation, at least, and conceivably in the area of mental illness, but in the area of mental retardation there has been an increasing amount of discussion concerning whether that category should not be regarded as a suspect class under the Constitution, in which case general discriminations against them would have another constitutional hurdle to cross. In many ways, the mentally retarded fit very nicely into the kinds of criteria that the supreme court has articulated for a suspect class. Since you're talking about revising the Ohio Constitution, we obviously can't talk about the unconstitutionality under Ohio constitutional law, but certainly the federal constitution has an impact. Moving from the present provision which, as I say, seems to me to be obviously in need of revision, it seems to me that the real issue is whether it is appropriate to delegate to

the General Assembly, as you have, the power to disfranchise persons mentally incompetent as mentally incompetent for the purpose of voting. It seems to me clear that the General Assembly could enact a statute if they had the power given to them which would be constitutional. That is, it would be possible to enact a procedure which would call for an individual determination in an individual case that that person met a defined level of mental incompetence. I think that process would reach very few people and I think that you do have to have an individualized determination. You can't have a class determination. And if you set up an individualized process for disfranching people, of course the setting of standards would be difficult. The use of the process I would think would be very rare. And it would probably be used in a very patchy and indeed finely discriminatory fashion. It seems to me there's no prospect at all of an individualized procedure being used in a large number of cases. We have, whether one likes it or not, evolved from a system of a very narrowly defined electorate to an electorate that includes persons whose competence to make the kinds of decisions that are made in the political processes is very very limited. I would certainly prefer that we simply recognize that persons who are grossly mentally ill and grossly mentally retarded are not going to have the interest or the initiative to exercise the franchise and that one allows simply that self-selection process to work. It seems to me that once we have moved to a system where the franchise is as broad as it is, and there are as many incompetent people as there are voting in any kind of sensible terms, to pick ouf of that persons who are mentally ill and mentally retarded and say, "well, we're going to look at you" is indeed, it may not be constitutionally discriminatory, but it seems to me that as a matter of fact it is picking these categories of people who we have castigated in the past and against whom there are many community prejudices and fears and say "we're going to treat you differently." We're not likely to do that in any kind of a rational way.

Mrs. Sowle - Are you suggesting just the simple repeal of the constitutional provision with nothing substituted for it?

Prof. Kindred - Yes, I think that would be the most desirable thing to do. Short of that, I think your provision is a second best, although I suspect that maybe its third best and the second best would be to try to tighten it up a little bit.

Mrs. Sowle - Could I ask your opinion of another alternative? Instead of giving the discretion to the General Assembly, how about providing that the court simply decide who is mentally incompetent for the purpose of voting during the period of the incompetency?

Prof. Kindred - It seems to me that the problem with that is that it does not set a standard for the courts to follow.

Mrs. Sowle - Well, it sets the standard from any person adjudicated mentally incompetent for the purpose of voting. In other words, at that point, the court decided who is mentally incompetent for the purpose of voting.

Mrs. Eriksson - Doesn't the General Assembly still have to set up some procedures?

Mr. Wilson - They have the right to do it.

Mr. Aalyson - I would think so.

Mr. Carter - First let me say, Professor Kindred, that we agree with what you're saying. Our concern is two-fold. Our biggest concern in this is that it possibly

could be construed to eliminate the rights of people to vote. The second thing is that we would be very happy to delete it entirely except for the problem of going to the voters. We've been through this before, and the way it comes on the ballot, you're going to eliminate the prohibition of idiots and insane persons having the privileges of an elector. It's a very difficult thing to do.

Prof. Kindred - I can understand that.

Mr. Carter - So it's really a strategy thing. If you say not eliminate it, but give the General Assembly the power to prohibit it, and nothing's going to happen in all probability, or if it is the General Assembly is clearly going to have to consider all of the points that we've brought up. And then having the word "adjudicated" in there would further strengthen it from the standpoint that the courts are going to have to be part of the process. And who is going to go through disfranchising thousands of people through the courts. Who is going to bring the action? But you see there are people concerned about the ward leader going to the local institution and marching out the troops to vote Republican or Democratic as the case may be. You have these kinds of fears which I don't think are well founded but they are the kinds of things you have to deal with.

Prof. Kindred - I sympathize with you. I understand that political problem.

Mr. Wilson - Craig brought up the point that in any case where someone is adjudicated mentally incompetent for any reason that it's done by the courts now, and they could at the same time decide whether, with that degree of incompetency which the person exhibits, they should be ruled incompetent for voting, so it would certainly be an individual case.

Mr. Carter - But still the General Assembly would have to do something to activate this whole process.

Prof. Kindred - I think what you're talking about doing makes a great deal of sense, simply in terms of the getting that flat prohibition out of the Constitution. The danger, of course, if a procedure is set up so that some county probate judges are just going to declare everybody who comes through a guardianship procedure to be incompetent to vote. And others are going to look at it with a more discriminating eye. That's fact, but it may be that this is the best you can do and that seems to me to be a great deal better than what we now have. Of course, the other thing is that there are now substantial lobbying forces who would certainly oppose legislative efforts to enact statutes providing for broad disfranchisement.

Mr. Carter - And really, why should the legislature do it? Is it a compelling public concern?

Prof. Kindred - Well it's hard to imagine who would press it.

Mr. Carter - Yes, who would press it, who would lobby for it? It's hard enough to get something through the legislature when you've got a lot of forces mobilized.

Mr. Wilson - I will grant you this inconsistency might occur from court to court, but it occurs now in sentencing for convictions and we are never going to eliminate that inconsistency.

Mrs. Eriksson - Are there standards? The General Assembly enacts appropriate legislation providing for disfranchisement of persons found incompetent to vote. What

kind of standards would they write into that legislation? Are there standards available for this purpose that you know of?

Prof. Kindred - I don't know of any.

Mrs. Eriksson - Or is it strictly a question of telling the probate judge that he uses his own discretion?

Prof. Kindred - I can't think of how you could articulate standards, and I think being unable to articulate standards would probably make it very subject to constitutional attack. I don't know how you could. I mean I don't see how you can go beyond the nonstandard of incompetence to exercise the franchise. You can't use I. Q. tests.

Mr. Carter - When it comes right down, somebody's got to make an opinion, a subjective kind of an opinion.

Prof. Kindred - If it's important enough to disfranchise a small group of people.

Mrs. Sowle - If the standard were just no more than mentally incompetent for the purpose of voting, would that fall as too vague under the due process clause?

Prof. Kindred - Generally, of course, the courts are not terribly hard on vagueness but if you're dealing with a fundamental right, I suppose it would depend a great deal on the case that got taken up. If you're dealing with a case where the standard was being applied to a person who was a hydrocephalic bedridden person, you wouldn't have much problem. If it were applied to a person who held a job and had gone through a community school program, and so on, the court might well declare it vague.

Mrs. Sowle - What you've said about unconstitutionality of the federal provision I think can be very helpful to us in dealing with the Commission. And I'd like you to develop that further a little bit. I understand, you mentioned that retardation, so that would refer to the term idiot, is a suspect class. Now you're talking about the application of the equal protection clause of the fourteenth amendment.

Prof. Kindred - That's right.

Mrs. Sowle - But I think you were referring, at some point, a little more generally to another constitutional objection and was that due process?

Prof. Kindred - Yes, it's the concept of fundamental rights and that raising a particularly high substantive due process standard. There are a number of cases which I think your staff memo develops that have moved us very close if not to the point of the Supreme Court stating that the right to vote is a fundamental constitutional right. Once having said that it's a fundamental constitutional right, it follows from that that it can only be restricted where the state shows a compelling state interest and the Supreme Court, so far, has been unwilling to ever find compelling state interest except in the incarceration of Japanese-Americans during the second World War. In addition, the concept of fundamental right carries with it a principle that distinctions between the classes in denying a right to some and giving it to others are subjected to a strict scrutiny which means that you've got to have reasons for the distinctions that you draw. I think that argument is an easy argument to make. The case law of the Supreme Court of the United States very strongly

supports it. The second argument I made has not been developed in case law yet. It is developing in the literature. The literature on law and mental retardation is in its infancy and the case law is even more in its infancy but it is developing and one of the arguments that is made in a number of places is that the category of mental retardation when used for purposes of restriction or disfranchisement could be regarded by the Supreme Court as a suspect class. Now, the concept of suspect class has so far been applied to aliens and to racial discrimination. The development of the concept has been that there are groups of people who are born with certain characteristics--aliens and blacks and mentally retarded people are born with the characteristics that they have.

Prof. Kindred - One of the characteristics of the suspect class is that the group defined by this characteristic is a group that has been historically subjected to discrimination and stigma, and that is obviously true of aliens, it's true of minority racial groups, and it's even more true of the mentally retarded. As I say, that argument has not appeared in the case law and I don't think you need that argument. I think the fundamental interest argument is much stronger, but in a sense the second argument gives us a constitutional way of saying that the kinds of provisions we have here have been enacted because of the creation of this group of people of which we have great fears and which we attach great stigma to. And that we have proceeded with respect to them in a highly irrational and prejudiced, in the sense of a prejudged fashion, and that may have constitutional implications. And even if it doesn't have constitutional implications, it has very serious policy implications. It means that when we have a limitation or disfranchisement that we have traditionally placed on this group and it may be something that we have internalized a great deal--we think it makes a great deal of sense. We need to stand back and say: wait a minute - does that only make sense because we've always treated people that we labeled like that as being inferior and dangerous and fearsome, or is there really rational reason for singling this group out and applying this category?

Mr. Carter - Are we still in the old witch-hunt stage, type thing?

Prof. Kindred - That's right.

Mr. Carter - You're saying that the present section 6 of Article V that's now in the Constitution is very likely unconstitutional from the federal standpoint. That's an argument that we of course should use. And we did not have that in our write-up,did we? That this was probably unconstitutional?

Mrs. Eriksson - No, I don't think we did.

Prof. Kindred - You developed the precedents.

Mr. Carter - That could be an important part of our coming back to the Commission with this.

Mr. Aalyson - Surprisingly to me, as one who sat here in the committee and saw no problems, some of the members of the Commission seemed to feel that they wanted to retain this precise language "idiot and insane person" which if nothing else is less than sophisticated.

Mr. Wilson - It's also quite common among the other states' constitutions.

Mrs. Eriksson - Recently, other states have been changing their language too. This of course was the traditional language that appeared in most state constitutional originally.

Prof. Kindred - We still have it here in our marriage statutes. It has an advantage. In the marriage statute, where it says no idiot or insane person can marry, we had a discussion last year as to whether that should be modernized to say mentally retarded or mentally ill person. Well, obviously, those are much broader categories. So the one merit of those categories is that they suggest the extreme case.

Mrs. Eriksson - It was stated that "idiot" is still a psychiatrically valid term, and I didn't think it was. And it's not in our statute having to do with hospitalization. The words "idiot" and "insane" are not used any more.

Prof. Kindred - I can't imagine that in any psychiatric evaluation done on any person you would ever find the word "idiot." I've certainly never seen it. I'd be very surprised if the American Psychiatric Classification Manual uses that term. It is possible to make some rough correlations between modern terminology and these terms. And I don't really think it's a question of terminology.

Mr. Carter - Everything I've heard from our valuable resource here makes me think that what we've just been talking about is pretty good.

Mr. Wilson - I might suggest that we bounce off the professor here this new language that we've come up with in our proposal.

Mrs. Sowle - "The General Assembly shall have power to exclude the privileges of an elector (this is still rough) from any person adjudicated mentally incompetent for the purpose of voting during the period of his incompetency".

Mrs. Eriksson - Such incompetency might make it clear that it refers only to the incompetency for voting.

Prof. Kindred - Indeed that does fit with current movements in the guardianship area as well where the movement is to get away from the notion of declaring somebody incompetent and appointing a guardian and rather to requiring the courts to say for specific purposes. And I suspect the legislature will act on that in the next biennium probably.

Mrs. Eriksson - Some people were objecting because they felt that this would require, as you say, an individual determination in each case and this is not possible to do. The point was raised that this is going to mean that courts are going to have to go back and re-examine everyone who presently is in an institution to decide whether they're competent for the purpose of voting.

Mr. Carter - What the thrust of it is it means that all those persons can vote.

Mrs. Eriksson - Yes, if they're not adjudicated and so he says that you have to go back.

Mr. Carter - But would you have to go back?

Mrs. Eriksson - Well, if you wanted to exclude them . . .

Mr. Carter - But why should you exclude them is what I'm asking?

Mr. Aalyson - Actually, there's nothing to say that mere institutionalization of these people has made them idiots or insane persons.

Mrs. Eriksson - No, but just as a practical matter they have no opportunity to vote.

Mrs. Sowle - But doesn't that vary from one institution to another?

Mrs. Eriksson - If they're voluntary patients, then there is nothing to restrain them. But if they're involuntary, they can't leave.

Prof. Kindred - Even if they're voluntary they can't leave without permission. If they're voluntary, and they wanted to leave, and the director doesn't want them to, he could say no, you can't leave, and file a report.

Mrs. Sowle - My impression, from talking with the League of Women Voters, is that in a given institution the director decides who may vote.

Mrs. Eriksson - That's what Professor Kindred is saying, that the director can deny to a voluntary patient the right to leave. He then has to go to court and try to get an involuntary commitment. But as far as involuntary patients are concerned, they cannot leave without permission.

Mrs. Sowle - I thought that if someone who has been adjudged mentally incompetent is taken to the polls and is not challenged, that person can vote.

Mrs. Eriksson - Once a person is hospitalized involuntarily, his name is sent to the Board of Elections.

Mrs. Sowle - Did I understand you also to indicate that if you don't categorize--narrow it down to incompetency for the purpose of voting--if you don't do that, a provision might be unconstitutional? As overly broad?

Prof. Kindred - Yes, that's right.

Mrs. Eriksson - "Mentally ill" is a very broad term.

Prof. Kindred - It seems to me that that should be statutory. I don't know how else they can do it. But there is a provision which is in this bill (Sub. S. B. 336) and there is a parallel mental health bill, which says that "no person shall be deprived of any civil right solely by having received services voluntarily or involuntarily for mental retardation . . . Any person in custody, voluntarily or involuntarily under the provisions of (this is the institutionalization chapter) retains all rights not specifically denied him under this or any other chapter of the Revised Code." So that that is true under this bill, so that all the people who are in institutions now, if they have been categorically denied the right to vote simply because they are in institutions, if this bill passes, as I think it will, that will no longer be the case.

Mrs. Sowle - Maybe I'm repeating this too much, but this was argued by Commission members; if we said,. . . "and from any person adjudicated mentally incompetent" and just stopped there, it is your opinion that that would be unconstitutional under the federal constitution?

Prof. Kindred - Yes.

Mr. Carter - And I think more important, that what we have now is probably unconstitutional. I think that's very compelling. I think that strengthens our argument.

Mrs. Sowle - And we will appreciate, if at all possible, your presence at the Commission meeting.

Mrs. Eriksson - This is on June 17 at 1:30 p.m. in House Room 11.

Mr. Carter - I would think that you wouldn't be required to make a formal statement, but just to answer questions of Commission members.

Mrs. Eriksson - I believe that some of the people who raised questions will appreciate having an expert there.

Mrs. Sowle - Thank you for your assistance. Is there anything else on the initiative and referendum drafts?

Mr. Carter - Section 6. We were discussing moving the paragraph on properly certified down to after the next to the last paragraph.

Mrs. Sowle - So it would be the penultimate paragraph.

Mr. Carter - I would also like to discuss that paragraph just a little bit if we could. I think its allright but I'd like to discuss it. The petition and signatures shall conclusively be presumed to be in all respects sufficient unless not later than 75 days before the election . . . it shall be otherwise . . . What does <u>it</u> refer to--the petition or the signature or both?

Mrs. Eriksson - Both.

Mr. Wilson - Sufficiency is what is being proved.

Mrs. Sowle - That's right--"insufficiency is otherwise proved"

Mr. Carter - If that is so, then I have a little bit of a problem with the remaining clause "and the remaining number of signatures is insufficient".

Mrs. Eriksson - If the petition is insufficient, there is nothing you can do about it, if they get to that point. But is some signatures are insufficient, there still may be enough remaining signatures that are sufficient--isn't that the intention of it?

Mrs. Sowle - Yes.

Mr. Carter - Yes, I'm sure I understand the intention. I just want to make sure the words say what we want them to.

Mrs. Eriksson - Instead of saying "it is otherwise so proved" perhaps we should say "such insufficiency" or "an insufficiency is otherwise proved." Perhaps "insufficiency" was not a good word to apply to the petition itself. Of course, this again, is the present language.

Mrs. Sowle - It looks like a great problem to me. Of course, I think we all know

what we were trying to do with the remaining number of signatures and insufficiency. The problem was if you prove certain signatures are insufficient you don't want the petition to fail, if the remaining number of signatures is sufficient. But the first part of that perhaps could be changed.

Mr. Carter - I think this is such an important item because, you know, anyone who is against an initiative petition, and there always are strong sides on an initiative, they're going to be attacking this thing in any way they can. And if we don't make it absolutely clear what we're talking about I would be concerned.

Mrs. Sowle - Maybe Ann and I can do some thinking about this. Something like "unless not later than 75 days before the election the petition is proved insufficient and the remaining number of signatures is insufficient? - something like that.

Mr. Wilson - You're talking about two things here--petition and signatures. Petitions may be ruled invalid for some other cause than the signatures. You almost need to come up with language that says that the petition shall be deemed correct or the signatures shall be deemed sufficient.

Mrs. Eriksson - That's right. I'm not sure "insufficient" is a proper word for the petition.

Mr. Wilson - Only as applied to the number of signatures.

Mr. Carter - I would be happy to have you, while you're taking a look at the other thing if we could include that I'm sure it would be satisfactory.

Mrs. Sowle - I think we all agree on moving that paragraph.

Mrs. Eriksson - I think you'd want to have it before you say the secretary of state shall cause to be placed on the ballot.

Mr. Carter - Right, I agree, the second penultimate paragraph.

Mr. Wilson - To bring up a point that Dick made earlier, you possibly could include in this paragraph the discussion of wordage here without changing the other things we're talking about. Following the second comma which is the petition and signatures shall be conclusively presumed to be in all respects sufficient and shall be placed upon the ballot, unless not later than 75 days . . . etc. You insert that there as a repetition.

Mrs. Eriksson - It wouldn't do any harm. It might clarify it somewhat.

Mr. Carter - Maybe what you could do is to combine this paragraph and the present penultimate paragraph. Make the present penultimate paragraph the last sentence of the paragraph we are talking about.

Mrs. Eriksson - Yes, that would make sense.

It was agreed to submit section 4 and to present the initiative and referendum report for public hearing at the next Commission meeting.

The meeting was adjourned.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
July 9, 1974

Summary

The Elections and Suffrage Committee met on July 9 at 9:30 a.m. in the Commission offices in the Neil House. Present were committee members Katie Sowle, chairman, Senator Robert Corts, and Craig Aalyson, and staff members Ann Eriksson, Director, and Brenda Avey.

Mrs. Sowle: There are a number of things we have to review from the Commission meeting, from Mr. Nichols' recommendations.

Mrs. Eriksson: You recall the committee determined that there shouldn't have to be an affidavit on initiative and referendum petitions, and the new legislation also apparently removes the affidavit requirement, but does require that the statement be made that the solicitor's statements are subject to penalties. Peg Rosenfield raised that same question, saying that she was in favor of removing the affidavit requirement but thought that each petition should state that it is subject to penalty for falsification in any respect, and we just didn't include that in here because we assumed that it would be provided for by law, anyway, as it has been. Mr. Nichols feels that it should be in the constitution. He's afraid that if it isn't, the constitution might be deemed to repeal the law that requires a statement of the penalty. I don't see that there is any conflict with the intent of the committee by putting that detail in the constitution.

Mrs. Sowle: Do we agree that our provision would invalidate that statutory provision, and that it needs rewording to take that statute into account? The specific language is "no affidavit or other certification thereto shall be required".

Mrs. Eriksson: Where it says, "the solicitor's certification..." Perhaps at the end of that first sentence add another sentence saying that there shall also appear on each part petition the statement that falsification of the petition is subject to the penalties provided by law, something like that. And then say, "no affidavit or other certification thereto shall be required."

Mr. Aalyson: Or "no affidavit or other certification thereto shall be required, but....the falsification, etc., shall be subject to the penalties as provided by law."

Sen. Corts: Couldn't you accomplish the same thing just be eliminating the sentence, "No affidavit or other certification thereto shall be required"?

Mrs. Eriksson: The committee deliberately put that sentence in so that the statutes could not expand upon the liability of the persons soliciting the signatures. And also to eliminate the requirement of the notary signatures, which is one of the things that presently does hold them up.

All agreed to the addition of a sentence or clause.

Mrs. Sowle: His next point referred to the fourth paragraph on page 23 in the second line. "The petition and the signatures shall be conclusively presumed to be in all respects valid and sufficient...." "We were bothered by the word 'conclusively'. The present statutes does not include the word 'conclusively' and we felt that the word might contradict the requirement in subsequent lines that

unless not later than 75 days before the election, the petition or some of the signatures are proved invalid, and the possibility that some of the signatures might be proved invalid seems to contradict the use of the word 'conclusively'."

Sen. Corts: Conclusively means "irrefutably" I would say, and if those signatures are on the petition and they're deemed conclusively to be valid and sufficient, you can't make any attack on them whatsoever.

Mr. Aalyson: Unless within 75 days they're proved invalid.

Sen. Corts: Yes, but you can't prove they're invalid if they're conclusively presumed to be sufficient.

Mr. Aalyson: But the use of the word "unless". They're conclusively presumed to be sufficient only if within a 75 day period there is no proof offered to rebut that conclusive presumption. Maybe "conclusive" is redundant here.

Mrs. Eriksson: The reason the committee did that was because the present constitution contains an additional sentence and the committee eliminated that and put "conclusively" in there to eliminate the possibility of a challenge being filed to the signatures after the election, which we felt was what this was intended to do. Would the problem be solved by reversing the sentence?

Mrs. Sowle: That might satisfy their objection.

Mrs. Eriksson: Reverse it and say that 75 days before the election you can challenge the signatures, if you don't, then they are conclusively presumed to be valid. Do you think that would do it?

Mr. Aalyson: That might help for the people who were not involved in the discussion. We understand what we wanted to do.

Mrs. Sowle: I think that would be helpful to anyone who felt that way. That was a criticism I didn't happen to agree with, but we certainly want to make it as clear to everybody as we can. It doesn't change the intent.

All agreed.

Mrs. Sowle: He goes on to say, also, "because there are statutory provisions for the secretary of state to transmit these petitions to the boards of elections for checking of the validity of the signatures, we thought that two spots might bear some change. The one is also there on page 23, the second paragraph, the second line, the last word. The secretary of state shall transmit it, and "it" means petition. "It might be better" he says "to say that he should transmit the proposal or words to that effect rather than transmitting the petition because he would be transmitting the petitions to the boards of elections" and I think that's a point well taken.

All agreed.

Mr. Aalyson: How about: the secretary of state shall transmit a <u>copy</u> thereof to the Ohio ballot board.

Mrs. Sowle: Or "a proposal" because all the ballot board needs is the proposal. If the petition means names, the ballot board does not need the names. Just the

language. So "it" could be changed to "the proposal" or something of that nature. He also says "to the same effect is the bottom of page 9 where it says 'The secretary of state shall transmit the petition and the full text of the proposal forthwith to the general assembly.'

Mr. Aalyson: You simply eliminate "the petition" there, and say "the full text of the proposal". He says "presumably the committee expects the signatures to be checked by the boards of elections" and we had discussed that and certainly did. I think it would be easy to clear up both of those.

Mrs. Eriksson: We should read the whole thing over carefully and see if there are other places where we have referred to the petition where we might better refer to the proposal.

Mr. Aalyson: On page 10, on the second full paragraph, there's the word "petition", where it probably should be "within 6 months from the time the full text of the proposal" or whatever.

Mrs. Sowle: On the word "conclusively" again, on page 6 of the Minutes, if you're following the Minutes, in the second paragraph on page 6, Mr. Nichols says "we were concerned also that the use of the word "conclusively" might imply that this was not to go through the normal process of checking the validity of signatures at the board of elections level." Now, looking back at page 23, do you thing that language might have the effect that he's afraid of?

Mrs. Eriksson: I think if you reverse the statement and make it clear that you have 75 days.

Mrs. Sowle: Perhaps the problem is not the word "conclusively" but the language "the petition or some of the signatures are proved invalid".

Mrs. Eriksson: That's the language of the present constitution.

Mrs. Sowle: So we're not recommending any change.

Mr. Aalyson: I think his question is whether by making the presumption conclusive, we eliminate any present requirement for the checking of signatures by the board of elections.

Mrs. Eriksson: It's a statutory requirement.

Mr. Aalyson: I think he's concerned with whether we're eliminating that present statutory requirement by making the presumption conclusive.

Mrs. Sowle: He goes on to say that he's afraid that the burden would be on the protestor of the petition to show their insufficiency rather than this process of checking by the board.

Mrs. Eriksson: There is presently that burden on a protestor to show insufficiency. I don't think you want to change that. On the other hand, we don't want to eliminate the checking by the boards of elections.

Mr. Aalyson: It seems to me that the legislature still has the opportunity to require an election board check if they want an election board check. I don't think we're prohibiting that check.

Mrs. Eriksson: It's presently statutory. It's not provided in the constitution at all, and it didn't occur to me that it could be read that way.

Mr. Aalyson: Since we're only making the presumption conclusive at the end of 40 or 45 days, if the legislature wishes an election board check of the signatures, they could provide for it so long as they did it within that period, which seems to me entirely reasonable. I don't think that we are eliminating the prerogative of the legislature to require the board check, but it must be done before the 75 days. After that, even the election board then could not invalidate signatures.

Mrs. Sowle: Is the board of elections that's doing the checking empowered to say signatures are invalid - is that decision of a board of elections reviewable?

Sen. Corts: I would say yes, without question.

Mrs. Eriksson: Yes, it certainly can be challenged in court. The court will ultimately decide who's right.

Mrs. Sowle: So "proved invalid" is consistent with that.

Mrs. Eriksson: Yes, and as I say, that's the language of the present constitution, and within that context, the present constitution says "no law or amendment submitted....unless not later than 40 days before the election..." and we pushed that back because we're allowing additional time "it shall be otherwise proved". All we've done is changed the "otherwise" to be more specific about the petitions and the signatures.

Mr. Aalyson: This raises a problem in my mind. What do we mean by "proved"? Let us say that somebody challenges certain signatures on the 74th day, and the matter goes into court which obviously cannot dispose of it by the 75th day, does our conclusive presumption destroy the right of the court to make the determination of the validity?

Mrs. Sowle: I would say yes.

Sen. Corts: It wouldn't go to the court first, I don't think. Wouldn't there be a determination by the board of elections that a signature was valid or was not, and I would think the proving would refer to that case.

Mr. Aalyson: I think that's what we intend, and I think we don't intend to destroy the right of appeal to a court.

Sen. Corts: But that's all you have is the right of appeal to a court. You've got to exhaust your administrative remedies first. You must first make your proof before the board of elections. Of that I'm quite sure. You couldn't go to court first.

Mrs. Sowle: You're saying that the process of challenging the signatures can spill over into the 75 days.

Mrs. Eriksson: I think that's very possible, but I think that's possible presently, in fact, it's contemplated that it could spill over beyond the 40 days. But what the present constitution says is in such event 10 additional days shall be allowed for the filing of additional signatures. And that we've eliminated because we felt we had given enough additional time - that you didn't need this 10 additional

days if you didn't have enough signatures. But the process of proving probably could spill over and I don't see why making the presumption conclusive would eliminate that.

Mr. Aalyson: It depends on what you mean by the word "proved". If "proved" means finally adjudicated, and I'm not talking about finally established to the point that there's no further appellate process going on, that's one thing. But if it means "proved" contemplates the idea that it shall be established only at the end of the appellate process which might include the court, then the invalidity has not been proved within 75 days. It's possible that it would not have been proved within 75 days. And then the conclusive presumption would operate at the end of the 75 day period like a guilllotine, it seems to me, so that if the process of proving was still continuing at the end of the 75 day period, the presumption might operate. This is what bothers me now. Let's take a for-instance. On the 80th day, the election board says x-number of signatures are invalid. 79th day - someone files an appeal to court to challenge the determination of the election board. The court obviously is not going to be able to decide this case on the 75th day probably, or we can file on the 75th day for that matter, appeal to the court on the 75th day and the court is not going to be able to answer the question raised. Now, if the court cannot answer the question until after the 75th day, have the signatures been proved invalid or have they not? And if they have not been proved invalid because there is an appellate process going on, does the conclusive presumption operate on the 75th day so as to forestall the court's talking jurisdiction in the matter?

Mrs. Eriksson: I can't answer that question. I would only pose another question. Would a conclusive presumption bring this result more than a simple presumption? Because if a simple presumption would bring the same result then we've not changed the present constitutional provision.

Mr. Aalyson: We intended that the word "conclusive" should have an effect here.

Mrs. Eriksson: I think what we intended was that the word "conclusive" would replace the redundancy of the present constitution which reemphasizes that after the election you could not challenge the petition on the basis of insufficient signatures. But if it had a different kind of effect then perhaps you'd want to reconsider that.

Mr. Aalyson: Maybe we can solve this problem by changing the concept of proved to evidence of invalidity. Maybe not those words but instead of saying "proved" perhaps "challenged".

Mrs. Eriksson: But then that would permit anybody to come in and challenge anything, whether there was a reasonable basis for it or not.

Mr. Aalyson: Right.

Mrs. Eriksson: I think you'd at least want to have a determination by the board of elections of invalidity or insufficiency before the 75 days is up. Then if you want to permit a court challenge to continue in that period you could.

Sen. Corts: I have the trouble you have with the word "proved". I don't have the trouble you have with the 75 days because the only one that can make a determination as to validity is the board of elections, and any other further court action would be an appeal on whether or not their decision was legal or reasonable, I assume.

So that it would date back to the time the board of elections made its determination as to whether the signatures are proper or not. But, even so, you have that problem with the board of elections in determining when somebody proves before them that the signatures are valid. Suppose they make the challenge on the 75th day, and the board of elections can't be called together for 2 or 3 days perhaps, which would be 73, so I think the word "proved" is probably the wrong one. Maybe file a petition, or something of the sort.

Mrs. Eriksson: Well, the people have 40 or 45 days between the time of the final filing of the petition and this 75 days before the election. I think we've allowed 40 days for examining signatures. But I think that it does come down to this question of proved. I have no difficulty in saying that someone who is going to protect the petition must come in and make his challenge and offer his proof. But if the board of elections is routinely examining signatures and says "This guy is not a registered voter in this county" is that proof, then, is that what the constitution means? And the problem of course is that presently the constitution doesn't provde for the board of elections checking signatures - that's purely statutory. So maybe we ought to look at the statutes.

Mrs. Sowle: I'm wondering too, whether we might be well advised to return to the present language instead of eliminating that sentence.

Mrs. Eriksson: And take out the "conclusively" then.

Mrs. Sowle: Because the present provision has not caused any problems, except to remove that 10 day leeway period.

Mrs. Eriksson: It's 3519.15 and it doesn't use the word "proved" at all. It says "whenever any petition has been filed, he (the secretary of state) shall forthwith separate the part petitions by counties and transmit such part petitions to the boards of elections in the respective counties. The several boards shall proceed at once to ascertain whether each part petition is properly verified." Now, that will be changed. "Whether the names are on the registration lists, if it's a registration city, or on the polling lists of such county, whether the persons whose names appear are eligible to vote in such county." That's what the board determines and whether there are duplications of signatures. "The board shall make note opposite such signatures and transmit a report to the secretary of state indicating the sufficiency or insufficiency of such signatures, and indicating whether or not each part petition is properly verified, etc" So that that's simply a transmittal of the report to the secretary of state, and that apparently would be sufficient proof to the secretary of state that there are insufficient signatures which would trigger the present constitutional provision that there are 10 additional days allowed which we've eliminated. In other words, if those reports from the boards of elections indicate insufficient signatures under our proposal, that would be the end of the petition. That would be what the present constitution calls "proved" unless, of course, these reports were challenged, appealed to court.

Sen. Corts: Which the people should have a right to because the boards of elections could never determine from their records those things.

Mrs. Eriksson: The next section provides for protest to the board.

Sen. Corts: The only thing the board of elections can determine is if a person is registered, but they can't determine if he's eligible to vote, because a person

may be registered and he may have moved, and then he signed the petition, and the board of elections has no way of knowing that person's moved from its records. So that would be a case where somebody'd want to challenge signatures on that basis.

Mr. Aalyson: What we were setting out to accomplish, or at least one of the purposes, was that there should be no challenge to signatures after an election. Why don't we say that?

Mrs. Sowle: Let me read the language we took out when we put in the word "conclusively" and maybe we better take "conclusively" out and put this back in. It says "no law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured. Nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency." Maybe we just better go back to that sentence and take out the word "conclusively". We were trying to simplify, not to change any procedure.

Mr. Aalyson: Well, I know that I for one had a lot of difficulty with the original provision because I thought there was some ambiguity in it. I still think there is some ambiguity and inconsistency. We're trying to provide that someone can challenge and then we're saying that possibly, even in the face of a challenge, it seems to me, there could be a law passed in which petitions would be insufficient, and yet it would become law.

Mrs. Sowle: Yes, we wanted certainty at the point of the election, once people have voted on this and passed it the law should not be subject to challenge any longer because of insufficiency of signatures.

Mr. Aalyson: Under the present provision, it seems to me a challenge could be in process and the matter submitted and passed and it could become law even though there was a challenge in process. My problem with the constitutional provision as it presently stands is that it appears that a challenge might be in process, but the proposal might be submitted to the voters and be passed and become law despite the pendancy of the challenge.

Mrs. Sowle: And it was my understanding that in that event the challenge would be null and void. The electors have voted on it, passed the law, made their position known and that expression of voter opinion should be the effective thing, and the court case should at that point go by the board.

Mr. Aalyson: It seems that we have provided the opportunity to challenge.

Mrs. Sowle: But then we place a cut-off date on it.

Mr. Aalyson: But we shouldn't cut off during the pendancy of a challenge, it would seem to me, and I think that's why I had trouble with the section as it presently stands.

Mrs. Sowle: That's a disagreement in what we want to do.

Mr. Aalyson: If a proper challenge to the sufficiency of a petition of the signatures is made, I believe we're all agreed that we want the challenge to be disposed of. But the challenge must be made within a given time period. If it's

not, then you can't come in and challenge it later on. Isn't that what we're aiming for?

Mrs. Eriksson: Perhaps we have not really throught through the question that if a proper challenge is made but hasn't been determined, there's been no final result by the time of the election, what is the effect of both the conclusive presumption and the present language?

Sen. Corts: I don't see a problem, because when you file such an action, you file an action to restrain the secretary of state or the board of elections placing that issue on the ballot and if the court is seriously going to consider the appeal, it's going to allow that injunction and the thing will never appear on the ballot until that law suit is adjudicated finally. And you've provided enough time because all of this has to be done at least 75 days before the election, and these cases get heard within a matter of weeks or days.

Mr. Aalyson: Yes, election questions have preference in the courts so this may be a solution to that.

Sen. Corts: If it would get on the ballot, then the question of insufficient signatures, in my opinion, would be moot, in any case, even under the present law.

Mr. Aalyson: Alright. Have we then said what we want to say, in view of the fact that the court probably can dispose of the things 75 days before the election and prevent it from going on the ballot?

Sen Corts: I think "proved" is a bad word. Unless an action is filed before the proper agency contesting the validity, or however you put that in terms of constitutional language.

Mr. Aalyson: Unless within 75 days an action is filed

Sen Corts: ...contesting the validity of the petition. I'd be talking of an action before the board of elections which I think is the place it has to originate. Or if it can originate in the court.

Mrs. Eriksson: The statute would require that you would have to file your protest first with the board of elections.

Sen Corts: You see, you have two ways of going there. If the board of elections would determine the petition invalid, then you have two options. You could file an administrative appeal from their decision which I think I would not do, or you could file an action in mandamus in a court ordering the secretary of state to put the issue on the ballot. So I think there's a possibility that it might be filed in a court or in a board of elections and it has to be filed before the 75 days as I understand your intent.

Mrs. Eriksson: Let us talk to Mr. Nichols and see exactly how they view that word "proved" at the present time and how they think that fits in with the present statutes, before we make a decision on rewording. I'm not sure at what point they consider it to be proved.

Mr. Aalyson: An additional thought might be, unless the board of elections certifies to the secretary of state that there has been filed with it a protest as provided by law.

Mrs. Sowle: Do they not also find signatures insufficient without a protest being filed?

Mr. Aalyson: Yes, we're going to have to provide for both.

Mrs. Eriksson: Yes they do, and that's the problem, that none of this is in the constitution at the present time, and whatever we write in, we're going to have to either write in the whole procedure or something referring to the whole procedure, or just leave it the way. Maybe the secretary of state's office has a suggestion. Because I think just removing the word "conclusively" isn't going to do anything to that word "proved". You could reach some conclusion on that point at a meeting on the morning of the 23rd.

Mrs. Sowle: Yes. Now, let us look at the Article V Commission discussion. In present section 2a, which would be renumbered section 3, we talked about tandem elections and Mr. Russo and Mr. Mansfield were concerned about the exception for governor and lieutenant governor.

Mrs. Eriksson: We put that in to conform with the already adopted commission recommendation. Now, as it happens, of course, tandem elections has not yet been put to the voters by the general assembly. And it may be that that is confusing to present that as part of this recommendation, although as a matter of fact it's already been adopted by the commission, because the tandem election has been adopted by the commission. You might prefer to take that out with an explanation to the commission that as far as this proposal is concerned it really deals only with the ballot rotation. That's really the point of this proposal was the ballot rotation.

Mrs. Sowle: If the general assembly submits the idea of tandem election to the electorate, should they also submit this at the same time?

Mrs. Eriksson: Yes, as far as this one phrase "other than candidates for governor and lieutenant governor".

Mrs. Sowle: Nobody raised any question about the rest of that "and other than candidates for delegate to a national party convention if such delegates are elected."

Mrs. Eriksson: That is tied in with section 7, which was not agreed to by the commission. And that, of course, ties in with the bedsheet ballot proposal. The bedsheet ballot proposal was not adopted by the commission, so I would suggest maybe just taking out that whole business and at some point if we go back to the bedsheet ballot proposal which is section 7 of Article V, then we would have to renew this, we might have to amend this section again also. Because both of those phrases really deal with things other than the main purpose of the section.

Mr. Aalyson: So you're suggesting that we eliminate all of the capitalized language.

Mrs. Eriksson: Within the parentheses.

It was so agreed.

Mrs. Sowle: Next is the problem on arrest. Senator Corts, you mentioned that you favored perhaps the retention of the section and even the striking of the breach of the peace language. In other words, we have recommended the repeal of the sec-

tion on immunity from arrest because we regarded it as ineffective, that it doesn't mean anything. And never did mean very much, at least the way it's been interpreted. So we were recommending its repeal as a matter of clean-up. But the discussion before the commission indicated there was some feeling of making a substantive change in this section to make it effective to protect voters from arrest on election day.

Sen. Corts: I don't share the fear that this is a necessary and effective provision in the constitution. But if there is going to be in a provision, I would be in favor of protecting you from arrest in all cases except treason and felony and not for breach of peace.

Mrs. Sowle: Breach of the peace has been interpreted to mean every crime.

Mrs. Eriksson: In effect, it means that the section is not effective and Senator Corts' suggestion by rewording that phrase would in fact make it an effective suggestion.

Mrs. Sowle: Would we be making every person in law enforcement frightened by something like this, by removing the power of arrest? Would there be fear among people in law enforcement that this would give some kind of a dangerous immunity to somebody that they found expremely important to arrest?

Mr. Aalyson: The privilege is only invoked while they're going to and returning from elections.

Mrs. Sowle: How do you know if somebody is going to vote, do you just take their word for it?

Mr. Aalyson: If he claims it, I guess.

Mrs. Sowle: And how about going to and returning therefrom? In other words, I've already gone to vote. I'm wanted in 6 states for a felony and I ran a light, and the policeman knows I'm wanted in 6 states but I say "Now, wait a minute, I have voted and I'm returning therefrom, and you can't touch me."

Mr. Aalyson: Then they're going to follow you home and then arrest you. I don't see the efficacy of returning from elections.

Mrs. Eriksson: I don't either, and in fact I would suggest that if you are going to strengthen it, you might eliminate that, because if the person has voted then he has completed that act, and why should he be privileged from arrest? Is it clear what "arrest" means?

Mrs. Sowle: It means "detained". It doesn't mean that you can't be given a ticket or a summons. That's not an arrest.

Sen. Corts: An arrest is taking into custody. It's touching and holding on to, really. Restraining the liberty. It doesn't mean that the officer can't go to court and get a warrant or an affidavit and have the warrant served on the fellow later on.

Mr. Aalyson: I see no hazard in this situation. I don't believe that we're ever going to have sheriffs arresting people and keeping them from going to vote. But conceivably, if we do have that to fear, and if we want a constitutional pro-

vision, shouldn't the inhibition be against detaining? And the highway patrolman could pull you over to the side of the road and talk to you for half an hour about what a bad guy you've been without arresting you and keep you thereby from getting to the election if the election is at 6:30 and he stops you at 6:15.

Mrs. Sowle: But the question then is are you under arrest during that time or are you sitting there voluntarily talking with him.

Mr. Aalyson: If you take off, he's probably going to arrest you.

Mrs. Sowle: Then that's when the arrest takes place. "Arrest" is a term of art in criminal procedure that means detention.

Mr. Aalyson: Is it a felony to leave a police officer while he's talking to you to see if you have committed a felony? Detention seems to me what you're trying to prevent. You're trying to keep the person who is stopping you from holding you and preventing you from going on.

Mrs. Sowle: That's right.

Mrs. Avey: How about if you make a positive statement using "at liberty" such as "all persons shall be at liberty to go to vote and vote unless guilty of a felony or treason"?

Mr. Aalyson: Not "guilty of" - charged with a felony or treason.

Mrs. Avey: When you use "at liberty" that would include detention, but it would also prevent the highway patrolman from pulling you over to the side of the road and giving you a lecture on proper driving habits, because he would be infringing on your liberty to go to the election.

Mr. Aalyson: The section should be repealed.

Mrs. Eriksson: It would also prevent him from giving you a ticket for speeding, if you put it that way. Suppose he didn't really try to detain you, he only wanted to give you a ticket. He would not there be arresting you but that might be too broad a term. It might prevent the officer from just doing his duty.

Mrs. Sowle: Yes, because the officer has the power to detain you for that purpose. That is a detention that isn't an arrest.

Mrs. Eriksson: And if that's all he's doing, he really has the right to do that.

Mr. Aalyson: Unless his purpose really is to keep you from going to vote.

Mrs. Eriksson: But how can you tell that? Suppose you have waited until 6:25 to go to vote, and you are speeding, and he pulls you over and gives you a ticket, and that amount of time may be just the amount of time that prevents you from getting to the polls. And yet he hasn't done anything other than doing his duty, unless he knew you were going to vote and did it deliberately.

Mr. Aalyson: But take the other side of that coin. He knows you're going to vote and he wants to stop you and he says "You were speeding" as they sometimes say when you were not speeding.

Mrs. Eriksson: But how can you write in the constitution...?

Mr. Aalyson: It ought to be repealed.

Mrs. Sowle: Another thing we should consider is what the memorandum points out and that is that in any event the general assembly has ample authority without this provision to legislate such exemptions.

Mrs. Eriksson: I think that is an important point. The general assembly has provided for other persons other than electors, it has provided for court witnesses and jurors, and so forth, this same kind of privilege.

Mrs. Sowle: Does that satisfy your concern at all, Senator Corts?

Sen. Corts: I had no difficulties with removing the whole thing from the constitution.

Mrs. Sowle: Is that your pleasure to go back saying we still feel it ought to be repealed?

Mr. Aalyson: And if not, then remove the "breach of the peace". I see no reason to help anyone returning from elections.

Mrs. Sowle: I can see the theory why they said returning from, but the whole concept is outdated. In other words, I'm in hiding from arrest and in order for me to exercise my right to vote I should be protected during the whole procedure. But the whole concept doesn't fit our current structure. Now we get to the bill of rights for electors and the problem of the felony and the mental incompetency. Brenda has prepared some ideas for a bill of rights, how we would go about providing one. Are there any feelings about a bill of rights for voting?

Mr. Aalyson: Personally, I feel as though we're taking an awfully big bite to try to write a bill of rights for electors. I'm in favor, I think, of something similar to what we have now, what we've come up with already - the mentally incompetent for the purpose of voting seems to me to be a pretty good solution.

Sen. Corts: What are the present provisions of the constitution with respect to these things?

Mrs. Eriksson: Section 1 has an age and residency provision, the commission has already adopted that. Section 1 says that you've got to be 18 and a resident of the state as provided by law. If you were going to go to a bill of rights, you'd have to eliminate that one and start all over again. Then the present constitution has the provision about the military which was recommended for repeal and that's also been adopted. And the "no idiots or insane persons" and the felony provision which this committee is recommending be modified - both of those. We've not been able to find any other state that takes this approach. The whole concept of the franchise has been that it's been expanded and expanded to the point where it's almost universal with certain exceptions where the general assembly is authorized to oppose. It seems much easier to state restrictions than to state rights.

Mrs. Sowle: And safer. In trying to define exactly who may vote, instead of saying everybody may vote except, seems to me to be more restrictive. It seems to me in a sense thatsection 1 is the bill of rights section. Section 1 grants the franchise. Present sections 4 and 6 are the only limitations on the franchise

left in the constitution. It seems to me we're much safer trying to carve out those exceptions to say the general assembly shall have this limited power than to tamper with that very broad grant of the franchise in section 1.

Mr.Aalyson: There was some feeling that we ought to maintain section 6, was there not, rather than remove it and make it a part of section 4?

Mrs. Sowle: Yes, how do you feel about that?

Mr. Aalyson: Well, I think it's alright if it's going to overcome some problems with the commission. I don't see any objection to it.

Mrs. Sowle: It seems to me that although in an organizational sense it would be better to have them together as we recommended, on the other hand, these ideas will be presented to the Commission, if the Commission accepts them, then to the general assembly and then to the voter, and each step of the way there may be different responses to the idea of the felony portion and the mentally incompetent.

Mr. Aalyson: It would be easier to explain a modification of section 6 than a removal to another section.

Mrs. Sowle: And also the voters might vote one up and one down, and we shouldn't have one fail because they don't want the other, it would seem to me.

Mrs. Eriksson: Well, then in that case you could keep section 4 for the felony and then section 5, since that one would be repealed, for the mentally incompetent.

Mrs. Sowle: Are you in agreement with that, Senator Corts?

Sen. Corts: Yes.

Mrs. Sowle: Then shall we talk about the felony portion first? Was there any objection? Mr. Mansfield did say we should change the word "the" to "a" and I thought that did make some sense. Mr. Russo asked why should we discriminate between one who is incarcerated and one who is not. And I pointed out that that's what the statutes do now. The Mr. Russo said, "you have a real constitutional issue there when you have two people who are convicted of the same crime." I don't agree with that.

Mr. Aalyson: I don't either.

Mrs. Sowle: "one serving his time in an institution, one by remedial care. I think you're denying them equal treatment under the law." Dr. Cunningham said "he who is incarcerated may be more subject to duress than he who is at large."

Mr. Aalyson: I have no trouble with that. I don't see any problems with unequal protection. One who is either on probation or who has been released from incarceration through rehabilitation has been determined by the judicial process to have attained a level of rehabilitation, so to speak, or ability to return to society that the one who is still incarcerated has not. And we're trying to get the vote back to that person. I don't think we're discriminating. I think we're expanding, we're trying to get the person. I think we could properly say the vote may be restricted from anyone who has been convicted of a felony. That would give equal protection to everyone. If we then expand and say we're going to give it back to those who have reached a certain level of rehabilitation or what-

ever you might call it, then I think that's not restricting it, that's liberalizing and therefore would not be unconstitutional under equal protection.

Sen. Corts: What have our courts construed to be infamous crimes?

Mrs. Eriksson: Any felony, and that's why we changed the language.

Mrs. Sowle: Just to clarify it, it means the same thing. I felt that there might be logical reasons for keeping the vote from those incarcerated, although that isn't what our provision does. It simply permits the general assembly to do it. One reason is the administrative problem of people who are incarcerated voting. There might at some point be a constitutional decision that they must be able to vote by absentee ballot but that's a different question. So there might be an administrative reason why the general assembly would want to do it. The other one was what Ann was guessing Dr. Cunningham meant by the term "duress" and that would be some such reasoning as a person incarcerated might be under political pressure by those administering the institution. And so that might be another reason.

Mr. Aalyson: I think that's what he meant. Or the possibility that the governmental system is entitled to put more duress on one who is incarcerated than one who is free. Therefore, can restrict the vote as to him.

Mrs. Eriksson: That's right, and that is a response to Mr. Russo's problem that in fact if you have incarcerated a person, you've determined that he should be subject to more restriction than the person on parole even though convicted of the same crime.

Mrs. Sowle: On the felony provision, is it your pleasure then to recommend what we have already recommended for section 4?

Mrs. Eriksson: It says "The general assembly shall have power to deny the privileges of an elector to any person convicted of a felony only during a period of incarceration" It would continue to be section 4.

All agreed to that.

Mrs. Eriksson: The present wording for the mentally incompetent, and this would be section 5 would be "The general assembly shall have power to deny the privileges of an elector to any person adjudicated mentally incompetent for the purpose of voting only during the period of such incompetency." You might present it to the commission that way, with that as being the committee recommendation, and then the alternate recommendation of the committee to repeal, if the commission determines they prefer repeal to this. Or, maybe you just want to change the recommendation to repeal.

Sen. Corts: Would the question of repealing section 5 be one issue that's voted on and the enactment of a new section 5 be another question that the people are voting on? Would those be two separate issues and require two separate votes or could you include the repeal of present section 5 in the enactment of new section 5?

Mrs. Eriksson: I would think you would have to provide them separately because the present section 5 and the new section 5 would not deal with the same subject.

Mr. Aalyson: And you would have to provide a third for the repeal of present section 6.

Sen. Corts: What if old section 5 were not repealed and new section 5 were enacted?

Mrs. Eriksson: You would have to deal with this in the way the resolution is worded, as we did in some of the debt resolutions, saying something to the effect that if section 5 is a blank section and this section is adopted then this section will be numbered section 5. I think we have to work that out in the technique of the resolution itself.

Sen. Corts: Now your question is, am I in favor of repealing section 6?

Mrs. Eriksson: Or do you prefer to recommend, as the committee previously recommended, this language I just read as a replacement for the present section 6?

Sen. Corts: I think I would prefer the latter - the replacement.

Mr. Aalyson: I prefer the replacement.

Mrs. Eriksson: Then maybe you should just present it to the commission that way. If the commission votes it down....

Mrs. Sowle: Then any member of the commission can simply move to repeal section 6. Would you want the committee recommendation to be in the alternative that if the commission did not want to replace it with this, then as an alternative the committee recommends the repeal?

Mr. Aalyson: I prefer that approach. I don't think this thing should remain in the constitution, either get it out entirely or modify it.

Senator Corts agreed.

Mrs. Sowle: It will be the committee recommendation that if they do not accept the replacement, then we are recommending the repeal. So that way, the committee will present both of those. And of course then, we will explain to the Commission that we have considered the concept of the bill or rights, and that we think that it would be a very difficult thing to write and a very hazardous thing, probably, trying to spell out every condition, you may be actually limiting voting rights. I think those were all the issues that were raised.

The committee set a date for the next meeting on July 23 at 9:30 a.m. in the Commission offices in the Neil House. In addition to remaining elections matters, if time permits, the committee will begin to consider the memorandum on corporations.

This document (s) that follows was not published with the original volume. It was inserted into this volume held by the LSC Library. It is related to the topic of this volume, but it is unknown why it was not published with the original volume.

Ohio Constitutional Revision Commission
Finance and Taxation Committee
July 20, 1972

Comments
Article VIII, Section 13

The changes proposed in Section 13 of Article VIII would permit the state, its political subdivisions, taxing districts, or public authorities, to engage in projects for pollution abatement or prevention, waste disposal, enhancement of the quality of the environment, and housing and related facilities intended primarily for use by persons and families of low or moderate income, by acquiring or constructing and disposing of property, structures, equipment, and facilities, and by making or guaranteeing loans for such purposes. The state etc. could borrow money and issue bonds or other obligations to provide money either for making or guaranteeing loans or for the acquisition or construction or equipping of facilities for such purposes.

Similar authority was granted to the state and the enumerated units for industry, commerce, distribution, and research by the adoption of Section 13 by the voters in 1965.

An additional provision proposed in these changes, with relates only to the new purposes and would not apply to industry, commerce, distribution, and research, would permit the bonds or other obligations, guarantees, and loans, to be secured by a pledge of reserves which could be funded by appropriations made by the General Assembly, which would result in obligating tax money to secure the payment of these obligations. The General Assembly would not be required to appropriate such funds.

The proposed changes in the section would also eliminate some obsolete language.

Ohio Constitutional Revision Commission
Elections and Suffrage Committee
February 27, 1974

Committee Report

Primary Elections (Section 7 of Article V)

In order to remove from the Ohio Constitution the provisions requiring the designation of all candidates for delegate to national party conventions on the primary ballot, and to remove the unnecessary provisions for the election of United States Senators, the committee recommends the following amendments to Section 7 and to Section 2a of Article V.

Article V

Section 7. All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law; ~~and provision shall be made by law for a preferential vote for United States senator;~~ but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. ~~All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate; but the name of no candidate for the presidency shall be so used without his written authority.~~ THE GENERAL ASSEMBLY SHALL PROVIDE BY LAW THE OPPORTUNITY FOR THE ELECTORS TO VOTE FOR THEIR CHOICE OF CANDIDATES FOR NOMINATION FOR THE PRESIDENCY, AND SUCH VOTE MAY BE EITHER DIRECTLY FOR SUCH CANDIDATE OR FOR DELEGATES TO A NATIONAL CONVENTION WHO MAY BE IDENTIFIED ON THE PRIMARY BALLOT SOLELY BY THEIR CHOICE OF CANDIDATE.

Section 2a. The names of all candidates for an office at any general election shall be arranged in a group under the title of that office, and shall be so alternated that each name shall appear (in so far as may be reasonably possible) substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs. Except at a Party Primary or in a non-partisan election, the name or designation of each candidate's party, if any, shall be printed under or after each candidate's name in lighter and smaller type face than that in which the candidate's name is printed. An elector may vote for candidates (other than candidates for electors of President and Vice-President of the United States AND OTHER THAN CANDIDATES FOR DELEGATE TO A NATIONAL PARTY CONVENTION IF SUCH DELEGATES ARE ELECTED) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate.

Note: The committee has other recommendations for Section 2a, dealing with ballot rotation, which will be presented at a later time.

History and Background of Section 7

Section 7 was added to the Ohio Constitution in 1912. The Proceedings and Debates of the Constitutional Convention of 1912 reveal that there was widespread distrust and dissatisfaction with the method of nominating candidates that obtained at that time, namely the state convention.

Theodore Roosevelt, addressing the Convention, said:

> I believe in providing for direct nomination by the people, including therein direct preferential primaries for the election of delegates to the national nominating conventions. Not as a matter of theory, but as a matter of plain and proved experience, we find that the convention system, while it often records the popular will, is also often used by adroit politicians as a method of thwarting the popular will. In other words, the existing machinery for nominations is cumbrous, and is not designed to secure the real expression of the popular desire. (Debates, p. 382)

J. W. Tannehill, of Morgan County, the author of what is now the first half

of Section 7, admonished the Convention:

> The chief cause of the frequent failure of representative government lies in the corrupt, boss-controlled, drunken, debauched, and often hysterical nominating convention. The convention must go. (Debates, p. 1239)

The Debates report that many other persons concurred with Mr. Tannehill in his proposal to exchange the state convention method of nominating candidates for a primary system. In his original proposal, Mr. Tannehill's language permitted nomination by direct primary elections or by petition as provided by law. His thought in including petitions was to permit nominations of schools boards and judges by petition if it was desired to keep those offices out of politics. Concerning relief of township officers and officers of small towns, he suggested that the direct primary is useful only where the office is sought after and nobody wants a township office. A primary in those instances would be a needless expense.

John D. Fackler of Cuyahoga County offered an amendment to the proposal concerning delegates to national conventions. The language of the amendment, is, verbatim, the last part of the present Section 7: "All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate shall be so used without his written authority."

The amending language was neither explained nor discussed in the Debates. Apparently, the amendment was made in response to President Roosevelt's remarks.

Prior to 1913, United States Senators were selected by the state legislatures, pursuant to Article I, Section 3 of the United States Constitution which read as follows:

> The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years, and each Senator shall have one vote.

In his address to the 1912 Convention, President Roosevelt stated that he

favored the election of United States Senators by direct vote of the people. One delegate to the Convention observed:

> For a great many years there has been a continuous scandal in the congress of the United States over the manner in which some senators have been elected. I believe it was simply because they were elected by the bosses and cliques within the parties, and not because the people had any voice in it at all. (Debates, p. 1245)

Mr. Thomas offered an amendment to the original language of Mr. Tannehill's proposal to include U.S. Senators among the offices for which nominations shall be made at direct primary elections. Apparently a movement had been underfoot for some years before the convention, as one senator alluded to the failure of his amendments to the Bronson Primary Bill to provide for the nomination of U.S. senators and congressmen as well as other officials below the governor by the primary method. He observed that the legislature was unwilling to take positive action on the matter, and added:

> You cannot get any matter in the senate that affects their own standing. We have been standing for a good many things that were purely legislative and this is one of them, but if you cannot reach a thing through the legislature, you will have to reach it here. (Debates, p. 1243)

Arguments were heard on the inconsistency of Mr. Thomas' proposal with Article I, Section 3 of the federal Constitution. Others expressed the view that although the U.S. Constitution provided for the manner of electing U.S. Senators, the manner of nominating them was an open question. One gentleman offered the view that "the amendment simply provides that we have senatorial primaries for nomination, and then when the people express their choice the legislature will obey the will of the people and elect the senator thus designated."

Mr. Thomas changed the wording of his amendment to the present language of the Ohio Constitution, "and provision shall be made by law for a preferential vote for United States senator."

Problems and Suggested Solutions

The provision in Section 7 that all delegates to national political party con-

ventions be chosen by direct vote of the electors has resulted in the unwieldy "bedsheet" ballot, which is an expensive method and one that is fraught with problems. One such problem occurred in the May, 1972 primary when, as a result of the names of Democratic Party candidates for delegate being so numerous, voting machines could not contain all the delegates' names. Paper ballots had to be used many places where they are not ordinarily used, and both time and expense were serious problems.

In addition, Section 7 requires a primary only if a party holds a national convention. If a party selects its candidates in some other manner, the primary is not required. Section 3505.10 permits smaller parties to omit the primary, and have their candidates placed directly on the November ballot. As a result of a recent decision, the restrictive definition of "political party" which prevented qualification by a group of voters to hold a primary election, and, by Section 7, send delegates to a national convention, was declared in violation of the Equal Protection Clause of the 14th amendment.

It is the thought of the committee that the primary election process is an adequate safeguard against the corruption and bossism of state political conventions. However, the framers of the constitutional language seem to have included needlessly complicated requirements for that safeguard. The primary election method may be retained without leading to the bedsheet ballot or discriminating against smaller political parties.

The Secretary of State has suggested a solution to the complicated mechanism of Section 7 in S.J.R. 5. This proposal would eliminate the listing of delegates' names on the primary ballot, and would require, instead, that the delegates be identified only by the name of their first choice for the presidency.

The committee believes, however, that S.J.R. 5 is not flexible enough to accommodate all possible methods of selecting delegates and that it would write into the Constitution provisions which are essentially statutory in nature. One example

of a method which would not fall within the terms of S.J.R. 5 is the election of a certain percentage of the delegates and the selection of the remainder according to party rules. S.J.R. 5, like present Section 7, specifies the manner of selecting all delegates.

The most flexible procedure, and that is one of the major goals of the committee in writing constitutional language, would be to permit the General Assembly to provide the means by which electors express their presidential preferences. The suggested language incorporates this flexible procedure, and in addition permits a choice of means to that end. "The General Assembly shall provide by law the opportunity for the electors to vote for their choice of candidates for nomination for the presidency, and such vote may be either directly for such candidate or for delegates to a national convention who may be identified on the primary ballot solely by their choice of candidate."

The suggested language: (1) eliminates the requirement of the bedsheet ballot; (2) permits either a presidential preference primary or a primary to select delegates; (3) leaves to the General Assembly the flexibility to change procedures as needs change; (4) does not tie the hands of the political parties to run essential party business.

The constitutional requirement for laws to be made to provide a preferential vote for U.S. Senator appears to be no longer needed. U.S. Senators are now elected in November by the people and nominated at the primary, just as are congressmen and all elected state officials. The 17th amendment to the U.S. Constitution ratified in 1913, states:

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote.

The amending language to Section 2a of Article V is for the purpose of excepting elected delegates to the national party conventions from the requirements of that section that "An elector may vote for candidates (other than candidates for electors of President and Vice- President of the United States) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate." If the primary ballot indicated delegates solely by their choice for president, the elector would be unable to indicate his vote for each candidate separately, and would, therefore, be unable to do what Section 2a indicates must be done.