STATE OF OHIO

OHIO CONSTITUTIONAL REVISION COMMISSION

RECOMMENDATIONS FOR AMENDMENTS TO THE OHIO CONSTITUTION

PART 6

THE EXECUTIVE BRANCH

MARCH 15, 1975

Ohio Constitutional Revision Commission
41 South High Street
Columbus, Ohio 43215

STATE OF OHIO

OHIO CONSTITUTIONAL REVISION COMMISSION

RECOMMENDATIONS FOR AMENDMENTS TO THE OHIO CONSTITUTION

PART 6

THE EXECUTIVE BRANCH

MARCH 15, 1975

Ohio Constitutional Revision Commission
41 South High Street
Columbus, Ohio 43215


national
graphics
CORPORATION

Ohio Constitutional Revision Commission

41 South High Street
COLUMBUS, OHIO 43215
TEL. (614) 466-6293

Ann M. Eriksson, *Director*

April 1, 1975

To: The General Assembly of the State of Ohio

The Constitutional Revision Commission presents herewith Part 6 of its Report to the General Assembly. This report covers the Executive Branch of Government in Ohio. Earlier this year, we submitted a summary of this report that set forth only those sections with respect to which we had recommendations for change or repeal. This completed report, however, covers all sections in Article III of the Constitution, as well as the three sections in Article XV we believe should be repealed.

We look forward to cooperating closely with the General Assembly as these proposals are reviewed in anticipation of submitting them to the voters of Ohio for their final action.

Sincerely yours,

Richard H. Carter

Richard H. Carter
Chairman

RHC/ba

TABLE OF CONTENTS

MEMBERS OF THE
OHIO CONSTITUTIONAL REVISION COMMISSION

March 15, 1975

General Assembly members

Appointed by the President Pro Tem of the Senate:

Senator Douglas Applegate
Senator John T. McCormack
Senator Neal F. Zimmers, Jr.

Appointed by the Minority Leader of the Senate:

Senator Paul E. Gillmor
Senator William H. Mussey
Senator Thomas A. Van Meter

Appointed by the Speaker of the House of Representatives:

Representative Eugene Branstool
Representative Francine M. Panehal
Representative Marcus A. Roberto

Appointed by the Minority Leader of the House of Representatives:

Representative Richard F. Maier
Representative Alan E. Norris
Representative Donna Pope

Public Members

(appointed by the General Assembly members)

CRAIG AALYSON
Columbus, Ohio

JOSEPH W. BARTUNEK
Cleveland, Ohio

NOLAN W. CARSON
Cincinnati, Ohio

RICHARD H. CARTER *(Chairman)*
Fostoria, Ohio

ROBERT CLERC
Cincinnati, Ohio

WARREN CUNNINGHAM
Oxford, Ohio

CHARLES E. FRY
Springfield, Ohio

RICHARD E. GUGGENHEIM
Cincinnati, Ohio

EDWIN L. HEMINGER
Findlay, Ohio

ROBERT K. HUSTON
Cleveland, Ohio

FRANK W. KING
Columbus, Ohio

D. BRUCE MANSFIELD
Akron, Ohio

DON W. MONTGOMERY
Celina, Ohio

MRS. ALEXANDER ORFIRER *(Vice-chairman)*
Cleveland, Ohio

ANTHONY J. RUSSO
Mayfield Heights, Ohio

JAMES W. SHOCKNESSY
Columbus, Ohio

JOHN A. SKIPTON
Findlay, Ohio

MRS. CLAUDE SOWLE
Columbus, Ohio

PAUL UNGER
Cleveland, Ohio

JACK D. WILSON
Piqua, Ohio

STAFF

Ann M. Eriksson, *Director*
Julius J. Nemeth

Ellen H. Denise
Brenda S. Avey

Consultant For This Report
Sara R. Hunter, Esq., Cleveland

EXECUTIVE BRANCH

Summary of Recommendations

The Commission recommends to the General Assembly the following amendments to the Constitution of Ohio:

Article III	Section 15	Amend
	Section 16	Repeal and Enact a New Section
	Section 17	Repeal and Enact a New Section
Article XV	Section 2	Repeal
	Section 5	Repeal
	Section 8	Repeal

This report is based on a comprehensive study of the executive branch of state government in Ohio by the Commission's Legislative-Executive Study Committee. That committee, chaired by Mr. John A. Skipton, met regularly over the period of one and one-half years for the consideration of staff research materials dealing with structure, organization, and operation of the executive department and consultation with experts in the field of state government.

A. Gubernatorial disability and succession

A major contribution that the Commission makes by way of the recommendations in this report is a proposed constitutional procedure for dealing with the death or disability of the Governor and succession to the Governor's office.

A vacancy in the office of Governor for an indefinite period of time, for whatever reason, is a potential threat to the normal functioning of state government. State programs may suffer as a consequence of controversies arising out of inadequate or ambiguous provisions concerning the gubernatorial office, especially where the problem involves executive disability or succession. Ohio's provisions, unfortunately, are incomplete and ambiguous. This led the committee to examine the many facets of vacancy, disability, and succession, including:

(1) the determination of a successor in the event of the death, inability to serve, or disqualification of the Governor-elect;

(2) the determination of a successor in the event of the death, resignation, or removal of the chief executive and the designation of a temporary successor in the event of gubernatorial disability;

(3) the determination of procedures for establishing the existence of a gubernatorial disability; and

(4) clear provisions for the term, salary, and status of the successor in case of gubernatorial vacancy or disability.

Amendments recommended

Specifically the Commission's recommendations for constitutional amendments dealing with gubernatorial disability and succession would do the following:

. . . Establish a procedure for the determination of disability in the office of Governor and confer jurisdiction upon the Supreme Court to determine all questions concerning succession; provide for initiation of a disability question by the General Assembly through joint resolution requir-

ing a two-thirds majority vote; mandate a Supreme Court decision within 21 days of the resolution's presentment; call for a public hearing to determine whether the disability continues, upon written declaration of the Governor.

. . . Distinguish between succeeding to the office of Governor when it becomes vacant and serving as Governor when the Governor is unable to discharge the duties of office by reason of disability, and eliminate ambiguities in the present succession provisions in this regard; retain but restate the line of succession to the office of Governor, from Lieutenant Governor to President of the Senate and finally to the Speaker of the House of Representatives.

. . . Require the election of Governor and Lieutenant Governor when a vacancy occurs in both offices prior to expiration of the first 20 months of a term.

. . . Extend disability and succession provisions to cover a Governor-elect.

The succession recommendations assume repeal of the present designation of the Lieutenant Governor as President of the Senate, as well as replacement of legislative duties which the designation implies with provision for assignment of executive responsibility. These two proposals were included in Part I of the Commission's recommendations to the General Assembly. They complement the succession recommendations in this Report because both view the chief role of the Lieutenant Governor to be that of assistant and understudy to the Governor. Both are designed to assure continuity of political philosophy and program when the Governor is prevented from discharging the duties of office.

B. Obsolete provisions

The committee examined the history of the executive article and other constitutional provisions which affect the operation of the executive branch. This examination resulted in a Commission recommendation that three sections in Article XV, the miscellaneous article of the Ohio Constitution, be repealed as obsolete. All originated in 1851 and were adopted to meet specific problems of that period. Their incorporation as part of the fundamental law can hardly be justified in the first place because the subject matter of the sections in question has to do with matters transitory in nature and clearly within the legislative province.

Amendments recommended

Specifically the Commission's recommendations for constitutional amendment to eliminate obsolete constraints upon the executive branch would do the following:

. . . Repeal as obsolete and unnecessary provisions affecting the executive department located outside Article III, concerning (1) authority to contract public printing of have it done directly in the manner prescribed by law; (2) ineligibility of duelists to hold public office; and (3) authority to establish a bureau of statistics in the office of the Secretary of State.

* * * * * *

Other topics considered with no amendments recommended involve the following sections of Article III of the Ohio Constitution:

Section	Subject
Section 1	Executive department
Section 2	Term of office limitation on term
Section 5	Executive power of governor
Section 6	Reports from executive officers
Section 7	Governor's recommendations to general assembly
Section 8	When and how governor convenes general assembly
Section 9	When governor may adjourn general assembly
Section 11	Executive clemency
Section 12	Seal of state
Section 13	How grants and commissions issued
Section 14	Ineligibility to office of governor
Section 20	Officers to report to governor
Section 21	Appointments subject to advice and consent of senate

The effect of these recommendations is to:

. . . Retain present officers as members of the executive department with constitutionally elective status.

. . . Continue without change: the four-year term for executive officers and the term limitation upon the period of gubernatorial service; the vesting of supreme executive power in the Governor; the authority of the Governor to require reports from executive officers, make legislative recommendations, and convene and adjourn the General Assembly under certain circumstances; a requirement that executive officers and officers of public institutions make reports to the Governor prior to each legislative session; provisions for the state seal and the issuance of grants and commissions; the prohibition against simultaneously serving as Governor and holding other public office; the power of the Governor to grant reprieves; commutations, and pardons; the provisions for appointments subject to advice and consent of the Senate when required by law.

. . . Defer discussion of provisions having to do with Governor as commander-in-chief of the state militia, for consideration with Article IX, on the militia.

. . . Defer discussion of provision for compensation of members of the executive department, for consideration by another committee in conjunction with similar provisions relating to other public officers.

. . . Recognize that provisions having to do with election returns (Section 3), declaration of election results (Section 4) and the filling of vacancies in certain executive offices (Section 18) are the subject of another report to the General Assembly.

This Report calls for no alterations in structure or organization of the executive department. The Commission's conclusions that no change should be made in the constitutional composition of the executive department, elective status of officers, or constitutional enumeration of powers and duties were reached after in depth examination of the functions of the various executive offices and their relationships to each other and to other branches of government. Every executive office holder was invited to attend meetings of the Commission and frequently sent representatives. Their views on whether their respective offices should have constitu-

tionally elective status and the extent to which responsibility and authority ought to be described in the Constitution were of especial interest.

The present constitutionally elective executive department consists of the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General. The Commission finds no basis for concluding that the existence of these independent, elective officers interferes with the Governor's duty to govern and to see that laws are faithfully executed.

The Commission cites as an important advantage of retaining the present method of selecting executive officers a belief that responsibility in government has been achieved by their direct election. It supports the contention that election increases, the prestige of and respect for these offices. From a practical point of view it finds merit in the assertion that election attracts young and aggressive candidates, thus enlarging popular participation in government and providing experience for higher office. Politically speaking, election to any other executive office provides an opportunity to be judged as a potential candidate for Lieutenant Governor or Governor.

The Commission makes this recommendation cognizant that some commentators have favored reducing the number of independently elected officials in the interests of a shorter ballot. However, the Commission does not believe that the voter faces a confusing ballot at the state level in Ohio and rejects the position that fewer elective officers would significantly enhance gubernatorial accountability or result in greater administrative efficiency.

The basic question of which executive officers should be prescribed by the Constitution and the corollary question of whether they should be elective or appointive officers, generated lively discussion and debate, evidenced by the proposal for an executive article offered by Dr. Warren Cunningham, a member of the Legislative-Executive Committee. His proposal introduced at the beginning of the Study Committee's Consideration of Article III, consists of a substitute draft for an executive article, along with commentary. If appears as Appendix A to this report.

Many sections in which no change is recommended have to do with administrative authority of the Governor and with powers and duties involved in the exercise of executive power. The report includes the Commission's rationale for favoring retention of these sections without change where that is the recommendation.

In addition to reasons for all recommendations the report summarizes some alternatives considered by the Commission, and in some instances it expresses the hope that the General Assembly will consider some further exploration of suggestions made to the Commission that it considered to be in the legislative and not constitutional domain.

Finally, this report also discusses some areas of further constitutional revision that future changes in state needs might justify.

CHAPTER I

A. Gubernatorial Succession And Disability

Introduction

The purpose of adequate provisions on gubernatorial succession and disability is to avoid the confusion resulting from disputes over succession and to assure continuity of policies that the voters approved. The provisions on succession in the Ohio Constitution have gaps, leaving much open to interpretation. In certain situations, the Constitution is wholly inadequate. It is not clear, for example, whether the Lieutenant Governor, when succeeding to the gubernatorial office, becomes the Governor in fact, or if the Lieutenant Governor serves as acting Governor. The Constitution is silent on how to compensate the Lieutenant Governor who assumes gubernatorial office or who temporarily exercises gubernatorial duties. What happens if a Governor-elect cannot assume office is a question of potential complexity. A strict interpretation applied to the limitation of two consecutive terms in the office of Governor conceivably could mean that Ohio would be without a legal chief executive should the Governor-elect die prior to assuming office while a Governor in office was constitutionally prevented from further service. A 1947 opinion of the Ohio Attorney General said that the term "Governor" as it appears in the Ohio Constitution does not include the "Governor-elect," so that when that person dies, the office cannot be assumed by the Lieutenant Governor.

Gubernatorial disability also would pose a problem if it occurred in Ohio. Past experience of several states indicates that some method of determining whether a Governor is incapable of performing the duties and functions of office is needed to avoid disconcerting experiences.

The federal experience also offers evidence of the need for disability provisions. Until the 25th Amendment was adopted, the Federal Constitution lacked a procedure for determining the question of disability, with the result that in two instances of disability, those of Presidents Garfield and Wilson, the former continued in office until his death, and other, after his partial recovery, until the end of his term.

Passage of the 25th Amendment in 1967 provided a constitutional mechanism for determining disability. Under this provision, the Vice-President becomes Acting President whenever (a) the President transmits to the Senate and to the House of Representatives a declaration of disability to discharge the duties of office; or (b) the Vice-President and a majority of the principal officers of the executive departments or of another body named by Congress transmit to the two houses a similar declaration. A resumption of powers by the President follows the same procedure with the addition that a two-thirds vote of Congress resolves a dispute over the President's recovery.

Ohio law lacks procedures for raising and for determining disability questions. The Commission proposes to amend Section 15, to repeal Sections 16 and 17, and to enact two new sections in Article III in order to supply procedures for contingencies not covered under the present succession provisions and to remove ambiguities as to the status of one who serves in the capacity of Governor under varying situations.

The recommendations assume repeal of the present designation of the Lieutenant Governor as President of the Senate, in accordance with Part 1 of the Commission's recommendations to the General Assembly. In that

part of its Report, the Commission called for tandem election of the Governor and Lieutenant Governor and the amendment of Section 16, not its repeal. The substance of the Section 16 amendment in Part I—to require the Lieutenant Governor to perform such duties in the executive department as are assigned by the Governor and to exercise such powers as are prescribed by law—could be incorporated as a new section in Article III to eliminate apparent conflicts in these two parts of its recommendations with respect to the Lieutenant Governor. The intent of the revision of Sections 15, 16, and 17 of Article III, as proposed in this Report, is not to alter the substance of the proposal contained in Part I.

RECOMMENDATIONS

ARTICLE III

Section 15

Present Constitution

Section 15. In case of the death, impeachment, resignation, removal, or other disability of the Governor, the powers and duties of the office, for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

Commission Recommendation

Section 15. (A) In case of the death, conviction on impeachment, resignation, or removal of the Governor, the Lieutenant Governor shall succeed to the office of Governor.

(B) When the Governor is unable to discharge the duties of office by reason of disability, the Lieutenant Governor shall serve as governor until the Governor's disability terminates.

(C) In the event of a vacancy in the office of governor or when the Governor is unable to discharge the duties of office, the line of succession to the office of governor or to the position of serving as governor for the duration of the Governor's disability shall proceed from the Lieutenant Governor to the President of the Senate and then to the Speaker of the House of Representatives.

(D) Any person serving as governor for the duration of the Governor's disability shall have the powers, duties, and compensation of the office of governor. Any person who succeeds to the office of governor shall have the powers, duties, title, and compensation of the office of governor.

(E) No person shall simultaneously serve as Governor and Lieutenant Governor, President of the Senate, or Speaker of the House of Representatives, nor shall any person simultaneously receive the compensation of the office of governor and that of the lieutenant governor, president of the senate, or speaker of the house of representatives.

Commission Recommendation

The Commission recommends the amendment of Section 15 of Article III as follows:

Section 15. (A) In the case of the death, CONVICTION ON impeachment, resignation, OR removal, of the Governor, the Lieutenant Governor SHALL SUCCEED TO THE OFFICE OF GOVERNOR.

Divisions (B), (C), (D), and (E) in the Commission's recommendation, set forth in full above, are new language.

Effect of change

In its revision of Section 15, the Commission distinguishes between succeeding to the office of Governor, in case of the Governor's death, conviction on impeachment, resignation, or removal, and serving as Governor in the event of the Governor's disability. Under present Section 15 much is left to interpretation of the provision whereby powers and duties of office "devolve upon" the Lieutenant Governor in the event of either gubernatorial removal or disability. The recommendation separates gubernatorial disability and makes it the subject of division (B). Under division (A), the Lieutenant Governor would become Governor where the Governor dies, resigns, or is removed from office; under division (B) the Lieutenant Governor would serve as Governor on a temporary basis in the event of gubernatorial disability.

Division (D) of the revised section further develops this differentiation in the status of a successor. It eliminates uncertainty concerning authority, compensation, and title by providing that a person who acts as Governor for the duration of a disability succeeds to the powers, duties and

compensation of that office. In case of a gubernatorial vacancy, division (D) provides for the additional succession to the title of Governor.

Another effect of the revision of Section 15 is to specify that **conviction** on impeachment results in removal from office. Impeachment, under both the Federal and Ohio Constitutions, is a proceeding against a public officer instituted by one house of the legislative branch (in each case the House of Representatives) through articles of impeachment, which serve a purpose similar to an indictment for criminal activity. The House of Representatives in each case must pass upon the articles of impeachment, which allege the complained-of misconduct of the particular officer.

Once the articles of impeachment are passed by the House, the impeachment is presented to and prosecuted before the other house (in each case the Senate). If two thirds or more of all Senators vote for conviction, the party impeached is found guilty of the charges contained in the articles of impeachment and is thereby removed from office. The amendment to Section 15 would recognize more clearly than does the present language that a vacancy occurs at the point of conviction on the articles of impeachment.

Under division (A), if a vacancy occurs in the office of Governor, the Lieutenant Governor becomes Governor, and a vacancy in the office of Lieutenant Governor is created. This vacancy would not be filled unless, as provided in proposed Section 17, within the first 20 months of a term a second vacancy occurs in the office of Governor, through the death, conviction on impeachment, resignation, or removal of the successor Governor (former Lieutenant Governor) or unless initially a simultaneous vacancy occurred in the offices of Governor and Lieutenant Governor within such 20 month period. Under either situation proposed Section 17 calls for the election of a new Governor and Lieutenant Governor for the unexpired portion of the term.

The present line of succession would be retained but restated. Present Section 17 would be replaced by division (C) of Section 15, which provides that the line of succession from Lieutenant Governor goes first to the President of the Senate and then to the Speaker of the House. The President of the Senate would be the President elected by that body, consistent with the Commission's other recommendations concerning the Lieutenant Governor.

Under division (E) of new Section 15, no person could simultaneously serve in or receive compensation from the office of Governor and other offices in the line of succession.

Comment

The Commission believes that it is proposing to fill a major gap in the present succession provisions by recommending a distinction between succeeding to the governorship on the one hand and becoming an acting governor on the other. By coupling this distinction with a specific procedure for determining the existence of a disability and for reinstating the Governor upon its termination, the Commission seeks to avoid difficulties that result when the chief executive resists displacement or when a successor is reluctant to exercise certain powers because of uncertainty over status. Other jurisdications have encountered such problems and have, through similar kinds of constitutional revision, sought to strengthen constitutional provisions on succession.

The Commission examined a variety of possibilities for a line of succession to the office of Governor and concluded that the present order should be retained. History reinforces its view that the Lieutenant Governor should succeed to the office of Governor. One important reason for creation of that position by the Constitutional Convention of 1850 was that a successor should be elected on the same statewide basis as the Governor. If the Lieutenant Governor is to be elected on the same party ticket as the

Governor — as the Commission recommends and as is done in some 19 other states — the successor would presumably have political philosophy harmonious to that of the Governor.

The present line of succession in Ohio further calls for assumption of gubernatorial duties by the President of the Senate or, if the President of the Senate is incapable of performing such duties, by the Speaker of the House. The Commission favors retention of this lineal succession because it has not been demonstrated to be unsuccessful and because, short of a catastrophe, these two legislative positions could always be filled.

Such a line of succession thus assures the availability of a designated office holder who can be expected to be very knowledgeable about the affairs of state and hence well equipped for succession. A contrary view questions the advisability of having legislative leaders in the line of succession because a legislator represents a smaller segment of the state's population than another official elected on a statewide basis. The Commission holds, however, that because of their selection by elected bodies at large as legislative leaders, presiding officers of the Senate and House are recognized on a statewide basis. Finally, the Commission maintains the line of succession should be definite and certain.

The Commission has chosen not to attempt a definition of the limits of disability. The intention is to treat as a disability any condition of circumstance that renders the Governor "unable to discharge the duties of his office." Some states, having had a problem with an absent governor, have provided for temporary succession every time that the Governor is absent from the state. Because modern transportation and communications can keep a Governor in close touch with state affairs, the Commission found no basis for making absence a ground for temporary succession in Ohio.

ARTICLE III
Section 16

Present Constitution

Section 16. The Lieutenant Governor shall be President of the Senate, but shall vote only when the Senate is equally divided; and in case of his absence, or impeachment, or when he shall exercise the office of Governor, the Senate shall choose a President pro tempore.

Commission Recommendation

Section 16. The supreme court has original, exclusive, and final jurisdiction to determine disability of the governor or governor-elect upon presentment to it of a joint resolution by the general assembly, declaring that the governor or governor-elect is unable to discharge the powers and duties of the office of governor by reason of disability. Such joint resolution shall be adopted by a two-thirds vote of the members elected to each house. The supreme court shall give notice of the resolution to the governor and after a public hearing, at which all interested parties may appear and be represented, shall determine the question of disability. The court shall make its determination within twenty-one days after presentment of such resolution.

If the governor transmits to the supreme court a written declaration that the disability no longer exists, the supreme court shall, after public hearing at which all interested parties may appear and be represented, determine the question of the continuation of the disability. The court shall make its determination within twenty-one sion to the office of the governor or to its powers and duties.

The supreme court has original, exclusive, and final jurisdiction to determine all questions concerning succesdays after transmittal of such declaration.

Commission Recommendation

The Commission recommends the repeal of Section 16 of Article III and enactment of a new section, as shown above.

Effect of Change

Proposed Section 16 sets forth a procedure by which a disabled Governor may be officially declared disabled by the successive actions of the General Assembly and the Supreme Court. It designates a legislative joint resolution, adopted by a two-thirds majority of elected members, as the mechanism for initiating the question of whether a gubernatorial disability exists and gives the Supreme Court original, exclusive, and final jurisdiction to determine questions of gubernatorial disability and succession.

Section 16 does not attempt a definition of disability, and it is so worded that disability is a factual question. The Court would determine the existence of disability by finding that any condition exists which renders the Governor unable to discharge the powers and duties of the office.

The Court would be required to give notice of the joint resolution to the Governor, hold a public hearing, allow interested parties to appear and be represented, and determine the question of disability within 21 days of the resolution's presentment.

The second paragraph of the proposed new Section 16 allows the Governor to initiate a proceeding to determine whether the disability has ceased to exist. It would further guarantee notice, public hearing, and the right to be represented in proceedings to determine continuation of a disability.

The Present Section 16 is unrelated in subject matter. Its history and background are explored in Part I of the Commission's Report to the General Assembly. The recommendation in Part I that the Lieutenant Governor be removed as President of the Senate and be given executive duties and powers is not abrogated by this recommendation. The Lieutenant Governor's executive status and duties should be the subject of a new section 1a in Article III to eliminate sectional numbering conflict.

Comment

The Commission recognizes that determinations of when a state of gubernatorial disability exists and when that state no longer exists are highly sensitive actions. For that reason it believes that an adequate constitutional procedure must cover both initiation of a disability question and its final resolution. The Ohio Constitution is silent on both points. The constitutional provisions of some states designate a final forum for decision but fail to specify how a disability question is to be raised. Where a given court has jurisdiction to make the determination about a disability but the Constitution is silent on the question of who can raise the issue, either the legislature may provide by law for the commencement of disability proceedings or standing to raise the issue must be developed by the courts in a traditional case by case method. The Commission rejects either alternative because of the uncertainties that they introduce into the procedure.

The Commission decided to recommend joint resolution of the General Assembly as the triggering mechanism for inquiry into the disability question because it feels that the question should not be frivolously raised. The requirement is designed to protect the Governor from spurious action. The Commission believes that a reasonable prerequisite to judicial hearing is to require that a body composed of elected representatives of all the people go on record in this matter. The necessity of a special majority for legislative action is deemed to be an appropriate way in which to reduce political motivations. The two-thirds majority selected is chosen for consistency with other constitutional requirements. It is the same majority as that required by Article II Section 1d to pass emergency legislation or by Article II Section 15 to dispense with three separate considerations of pending legislation.

The Commission opted to give the state Supreme Court original, exclusive, and final jurisdiction to determine questions of gubernatorial dis-

ability and succession because it is impressed with the reasoning that all issues relating to succession under the state Constitution will evenually reach that court anyway. Giving the Court original and exclusive jurisdiction represents an effort to allow disability cases to be disposed of with promptness and finality so as to minimize the disruption which results from the Governor's disability.

In designating the Court rather than the General Assembly as final arbiter, the Commission sought to avoid the introduction of irrelevant political concerns. Participation of the Supreme Court in the procedure is considered by the Commission to be vital to protect the Governor from irresponsible action by a legislative majority of the opposing political party.

The inclusion of a procedure whereby the Governor may raise the question of the disability's continuance is considered important because it evolved out of Commission dissatisfaction with proposals to put a limit upon temporary succession. In some jurisdictions, for example, a vacancy in office occurs if gubernatorial disability does not terminate within a given period, such as six months. The Commission, recognizing that impairment of faculties may be a temporary condition, feels that the Governor should not be foreclosed from seeking reinstatement. In its view constitutional specificity on this point is considered imperative to assure that the disability procedure is fair to the interests of all parties concerned. The provision for transmittal by the Governor of a declaration that the disability no longer exists has a federal parallel in the constitutional procedure for determining presidential disability.

Finally, the Commission's intentions in setting forth requirements that disability hearings be public, that all interested parties be permitted to appear and be represented, and that determinations be made within 21 days of the initiation of court action, are to guarantee procedural due process in disability proceedings and to define a reasonable time limit for their determination.

ARTICLE III

Section 17

Present Constitution

Section 17. If the Lieutenant Governor, while executing the office of Governor, shall be impeached, displaced, resign or die, or otherwise become imcapable of performing the duties of the office, the President of the Senate shall act as Governor, until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

Commission Recommendation

Section 17. When for any reason a vacancy occurs in both the office of governor and lieutenant governor prior to the expiration of the first twenty months of a term, a governor and Lieutenant governor shall be elected at the next general election occurring in an even-numbered year after the vacancy occurs, for the unexpired portion of the term. The officer next in line of succession to the office of the governor shall serve as governor from the occurrence of the vacancy until the newly elected governor has qualified.

If by reason of death, resignation, or disqualification, the governor-elect is unable to assume the office of governor at the commencement of the gubernatorial term, the lieutenant governor-elect shall assume the office of governor for the full term. If at the commencement of such term, the governor-elect fails to assume the office by reason of disability, the lieutenant governor-elect shall serve as governor until the disability of the governor-elect terminates.

Commission Recommendation

The Commission recommends the repeal of Section 17 of Article III and enactment of a new section, as shown above.

Effect of Change

New Section 17 would establish a special procedure should the offices of both Governor and Lieutenant Governor become vacant with a substantial

part of the term still to run. The vacancies would be filled by election to office for the unexpired portion of the term at the next general election occurring in an even-numbered year after the vacancy occurs. As is the case with filling vacancies in the state Senate, the procedure would apply where the vacancies occur prior to the expiration of the first 20 months of a term. Prior to election the gubernatorial vacancy would be filled temporarily by the officer next in line of succession, namely either the President of the Senate or the Speaker of the House. The temporary vacancy in the office of Lieutenant Governor would not be filled.

The second paragraph of new Section 17 provides that if for any reason the Governor-elect is unable to assume the office of Governor at the commencement of the gubernatorial term, on the second Monday of January after the election, the Lieutenant Governor shall do so, either as Governor or acting Governor, depending upon the circumstances. In the event of death, resignation, or disqualification at commencement of the term, the Lieutenant Governor-elect would assume the full status and title of Governor; in the event of disability, the Lieutenant Governor would serve as Governor until the disability of the Governor-elect terminates.

Present Section 17 provides for a line of succession if the Lieutenant Governor, while executing the office of Governor, is removed, resigns, dies, or becomes disabled. The President of the Senate would act as Governor until the vacancy is filled or the disability removed, and if the President of the Senate for any of such reasons becomes incapable of performing gubernatorial duties, they devolve upon the Speaker of the House.

Present Section 17 would be repealed. The line of succession which it establishes is retained in new Section 15, and therefore Section 17 becomes unnecessary. As rewritten in Section 15, the equivocal provision for duties to "devolve" upon a successor would be replaced by the clear and concise provisions as to status, title, and compensation.

Comment

The decision to provide a special procedure should the office of Governor and Lieutenant Governor both become vacant early in the term was motivated by a feeling that an officer elected to represent the constituency of a legislative district instead of the state at large should not hold the office of Governor for longer than a stated period. Without such a provision either the President of the Senate or the Speaker of the House would succeed to the governorship. An appropriate and consistent precedent appears to be the provision for filling a senatorial vacancy by election of the people if it occurs within the first 20 months of a senator's four-year term.

The second paragraph of Section 17 assures a ready successor in the event of the death, resignation, disqualification, or disability of the person elected to become Governor between the November election and the second Monday in January, when the gubernatorial term begins. Because of authority to the effect that the term "Governor" as it appears in the Ohio Constitution does not include Governor-elect, a special succession provision is considered necessary to avoid a problem that could arise when the Governor-elect is unable to assume office and the incumbent Governor is unable to hold over because of the constitutional limitation on serving more than two consecutive terms.

Under Article II legislative sessions commence on the first Monday or Tuesday in January and under Article III the Governor's term commences on the second Monday in January. Actually, there is no one with "Governor-elect" status until the results are declared in January, although the term of office of the past Governor continues until a successor is elected and qualified. The Commission's intent is to assure smooth transition when for any reason the Governor-elect is unable to assume the office on the second Monday in January. The provision is designed to ensure that

the state will never be without a chief executive because of the dual effect of non-application of succession provisions to a Governor-elect and the limitation in Section 2 of Article III that might prohibit the out-going Governor from continuing in office if has already served two successive terms.

B. REPEAL OF OBSOLETE MATTER

Introduction

Article XV, the miscellaneous article of the Ohio Constitution, contains three sections that pertain to the executive branch and that have for such a long time outlived their usefulness as to be obsolete. All originated in 1851, and in every instance published proceedings of the Constitutional Convention disclose that the provisions were adopted to meet specific problems of that period. Two of the three provisions authorize legislative action and may, therefore, be said to violate the principle that state legislative power is plenary in the absence of specific constitutional limitation.

The Commission's purpose in recommending repeal is threefold: (1) to remove from the Constitution provisions that are clearly dated and hence archaic; (2) to remove provisions authorizing the General Assembly, by law, to prescribe solutions to problems that are not related to governmental operations of the 20th century; and (3) to remove provisions which could be misconstrued as limitations on legislative power.

The sections recommended for repeal are Sections 2, 5, and 8 of Article XV. The text of each section is set forth below, along with the specific reason for recommending its repeal.

RECOMMENDATIONS

ARTICLE XV

Section 2

Present Constitution

Section 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law.

Commission Recommendation

Repeal

Comment

Section 2, having been proposed in 1851 to require that public printing be let on contract and amended in 1912 to allow alternatively that it be done directly by the state, is no longer a limitation upon the legislature and as an authorization is unnecessary. It was reportedly adopted originally for purposes of economy and to end fierce legislative contests over selection of a printer and the fixing of printing costs. By 1912 a department of public printing had been established, but because Section 2 still required that printing contracts be let by executive officers, it was amended to eliminate the out-of-date requirement.

Public printing is governed by adequate provisions in long established statutory law. The constitutional provision serves no purpose. Its original incorporation in the Ohio Constitution of 1851 is an example of the excess of detail in constitutions of the nineteenth century, reflecting popular distrust of state lawmaking bodies because of legislative excesses and abuses.

ARTICLE XV

Section 5

Present Constitution

Section 5. No person who shall hereafter fight a duel, assist in the same as second, or send, accept, or knowingly carry, a challenge therefor, shall hold any office in this State.

Commission Recommendation

Repeal

Comment

The section on dueling is wholly obsolete. The section is unnecessary in view of other qualifications that have been established by a statute for the holding of public office. Furthermore, Section 5 of Article XV can be viewed as a redundancy in view of Section 4 of Article V, which recognizes the power of the General Assembly to prohibit felons from holding office. Section 4 of Article V provides: "The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of bribery, perjury, or other infamous crime." The Commission recommends, in another report that "a felony" replace "bribery, perjury or other infamous crime" in this section.

The legislature has inherent power to regulate eligibility to office by statute. Statutory material should be deleted from the Constitution unless compelling reason exists for making an exception to that rule. The Com-

mission submits that in the case of eligibility of duelists and their accomplices to public office none exists.

Little can be anticipated in the way of opposition to the removal of a dueling provision in a modern constitution.

ARTICLE XV

Section 8

Present Constitution	Commission Recommendation
Section 8. There may be established in the Secretary of States* office, a bureau of statistics, under such regulations as may be prescribed by law.	Repeal

Comment

Section 8 is plainly one that violates the principle that state legislative power is plenary in the absence of specific constitutional limitation. Unnecessary detail in the Constitution often restricts legislative innovation. The General Assembly has ample power to create a statistical bureau, and the affirmation of powers already possessed is unwise because it may be interpreted as limiting such action to the office of the Secretary of State. The creation of any kind of state agency to collect statistics of any sort is not a matter of fundamental nature. The provision is obsolete, and the 1850 Convention debate concerning its inclusion because of the failure of the state board of agriculture to collect and disseminate agricultural information is illustrative of its datedness.

*So in the original on file in the office of the Secretary of State.

CHAPTER 2

Structure And Administration of The Executive Department

Introduction

The Commission through its Legislative-Executive Committee has taken a close look at the structure and administration of the Ohio executive department and has determined that no constitutional revision is necessary. Aware of concerns in some quarters that the 20th century chief executive is constitutionally shackled by executive fragmentation on the one hand or a dominating legislature on the other, the Commission has focussed attention upon the relationship of the Governor's office to other executive offices and to other branches of state government. Its conclusion that structure of the executive department should not be altered followed extensive deliberation upon the following basic questions: Which executive officials should be provided for in the Constitution? Which officials should be elected? What powers and duties, if any, should be specified in the Constitution for these officials?

Section 1 of Article III states that the executive department in Ohio consists of the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General. Under Section 2 all of them are elected for terms of four years. For none of these offices does the present Constitution contain any general statement of powers and duties. Some specific executive responsibilities are contained in Article III and are discussed in this Report. The Constitution contains various references to individual officers, naming them to various boards and agencies of government and involving them in specific governmental procedures.

The Legislative-Executive Committee considered a variety of options for each office before making its recommendation to the Commission. In addition to the question of retaining constitutionally elective status, it considered revising the scope of responsibilities by constitutional directive, limiting the authority of the General Assembly to prescribe powers and duties, and finally, identifying the basic function of the office with a descriptive term that suggests the scope of its responsibility, subject to constitutional recognition of legislative authority to delineate specific powers and duties.

The committee found that the powers and duties of each office are statutory in this state. The Commission recommends no change in this format. Although the committee proposed for each office the addition of a statement of basic function, intended to allow the General Assembly free reign to assign authority and responsibility, the Commission did not adopt the proposal because it does not feel that the need for such an addition has been demonstrated and does not wish to limit legislative flexibility to assign powers and duties as needs arise.

The Commission has, of course, already recommended that the nature of the duties of the Lieutenant Governor be spelled out very generally in Article III and that the Lieutenant Governor be elected jointly with the Governor. To replace the constitutional designation of Lieutenant Governor as President of the Senate the Commission has recommended the following statement of authority: "The Lieutenant Governor shall perform such duties in the executive department as are assigned to him by the Governor and exercise such powers as are prescribed by law."

RECOMMENDATIONS

ARTICLE III

Section 1

Present Constitution

Section 1. The executive department shall consist of a governor, lieutentant*governor, secretary of state, auditor of state, treasurer of state, and an attorney general, who shall be elected on the first Tuesday after the first Monday in November, by the electors of the state, and at the places of voting for members of the general assembly.

Commission Recommendation

No change

*So in the original file in the office of the Secretary of State.

Comment

The Commission recommends no change in the composition of the executive department nor in its constitutionally elective status.

In its examination of the executive department structure the Commission confronted some conflicting assertions about independent election of officials other than the Governor and Lieutenant Governor and concerning ways of maximizing administrative efficiency. Its conclusion to recommend no change was reached after study of research materials from a variety of sources, as well as testimony, discussion and debate on the issues involved.

The Commission approached the question of whether any existing office ought to be retained as an independent elective one with the premise that need for change is demonstrated only if the election of a given official obstructs the effective functioning of state government. Thus in discussion of each office one test applied was: Is the Governor's authority in any manner handicapped by the constitutional provision for election? Commission concern over whether the *status quo* hinders the exercise of the Governor's duty to govern was prompted by a recognition that some constitutional revisionists have called for a shorter ballot, out of concern that fragmentation of executive power through the elective process weakens the chief executive, and that the voters are not able to make intelligent selections for offices if they are faced with too many.

The Commission concluded that no need for change was demonstrated as compelling, in spite of claims made that the resulting "long ballot" reduces gubernatorial accountability, causes administrative inefficiency, and confuses the voter. Not finding the state ballot confusingly long, the Commission found the following reasons for retaining it in its present form more convincing: increased prestige and importance attached to elective offices; responsibility is best achieved by direct election; elective offices provide a training ground for higher public responsibilities.

The controversy over whether each executive office should be appointive or elective was thoroughly debated, and resolution of the conflicting views was deliberative. In opposition to the Commission's conclusion, it was urged that officeholders other than Governor *should* be responsible to the voters but that in reality the voters hold the Governor responsible, even where the Governor has little power to control administrative structure. That position is recognized in Dr. Warren Cunningham's alternative draft and commentary, included as Appendix A to this Report. Dr. Cunningham departs from the Commission recommendation with respect to elective status because he views the function of the office in question to be essentially administrative in character. His thesis is that voters have neither the time nor competence to make decisions in areas which require

a high degree of expertise. Therefore, in his view, administrative officers should be appointed by and be responsible to the Governor, and the chief executive should be responsible for the conduct of officers with administrative responsibilities.

Set forth below are highlights of the debate resulting in a decision to recommend retention of each of the executive offices (in addition to the Governor and Lieutenant Governor) as a constitutionally elective post.

A. Secretary of State

Perhaps originally viewed as a purely ministerial or clerical post under duties prescribed by the Ohio Constitution of 1802, the office of Secretary of State has long since evolved into one whose duties go far beyond that of mere keeper of official records and documents.

In examining the function of the office of the Secretary of State and its relationship to state government the Commission concluded that the Secretary should continue to be elected, particularly if the duties of office include being chief election officer, as is prescribed by statute. The Commission adopts the position that the election function constitutes an important function of state government and is an appropriate place to separate executive authority.

In view of the Secretary's additional and varied functions — as filing officer under both the Ohio corporations law and the Ohio Uniform Commercial Code, as compiler of the session laws of the General Assembly, and as constitutional member of the apportionment board — the Commission recognizes important growth in secretarial responsibilities beyond the custodial and housekeeping duties which originally constituted the office's *raison d'etre*. The Commission believes that consequently the Secretary of State exercises an important policy making function and that therefore selection by popular election is very appropriate. It adopts a view of the office as a logical place to assign diverse duties, often on a temporary basis, and rejects the opposing view of the office as that of secretary in the strict dictionary sense.

Furthermore, believing in the general proposition that a definition of the duties attached to executive officers has no place in the Constitution and is better left to legislation, the Commission endorses no addition to Article III to define by way of general statement the duties that inhere in the office or to limit the General Assembly in this respect. It recognizes that historically the office of state Secretary of State has been assigned supervisory obligations for miscellaneous endeavors that have subsequently assumed an importance sufficient to justify their independent status. The Secretary's involvement has consequently been temporary, and the Commission finds such flexibility desirable.

Although it makes no proposal for constitutional revision, the Commission bases a recommendation for review of existing statutory duties on information brought to its attention in regard to the difficulty experienced in finding the correct office for certain state records. The Commission submits that the Secretary of State should be the keeper of all official records. It believes that the Secretary's office should be the ready source of certified copies of all official documents or of information regarding the status of any entity or activity which requires state approval. It finds, however, that an interested party often has difficulty finding the correct office for even related records.

Inasmuch as the Secretary of State is popularly regarded as the chief depository of records for the state, the Commission hopes that the General Assembly will review all such record keeping duties as are presently disbursed and consider assigning them to the Secretary of State, in keeping with its view of the office as the proper one for record centralization.

B. Auditor of State

The Commission recommends that the office of Auditor of State be retained as a constitutionally elective one and that the powers and duties of office continue to be prescribed by statute. It does so after extensive study of the office and exchange of ideas about it.

Under the test applied to each office — i.e., whether independent election hampers the operation of the chief executive — the Commission found no basis for concluding that the Auditor of State should be selected in any other manner. In fact, of all six executive officers only the Auditor was given a four year term in Constitution of 1851; not until 1954 were the terms of the Governor and other executive officers extended from two to four years. The political rationale for independent election is particularly appropriate in this case because the office of Auditor has long been a valuable stepping stone of experience for prospective candidates to higher office.

The belief expressed in the Convention of 1850 that the credit of the state itself depends upon the efficiency and good conduct of the Auditor, is one that has long had public support. It was the basis of the unique four-year term at that time. The Commission acknowledges the popularity of the view that an independently elected auditor provides a valuable means of validating the legality of public expenditures. Legality is assured through dual statutory responsibility to: (1) approve and verify vouchers and issue all warrants upon the state treasury; and (2) examine the fiscal accounts of all public offices. Although the terms "pre-audit" and "post-audit" are not used in the Code, experts refer to functions falling under the first category as "pre-audit" and under the second category as "post-audit" responsibilities.

Although some proponents of change in the Auditor's status have termed the pre-audit function as purely administrative in character and have argued that it could be handled by an appointive office, the Commission endorses retention of an independent Auditor to check on fiscal operations of state government. The Commission finds merit in the position that the presence of an independently elected Auditor provides a valuable means of checking on the honesty of public officials. The contrary argument that an appointive rather than elective Auditor guarantees professionalism in office, fails to take into account, in the Commission's view, the important check and balance that is achieved through an elective Auditor. Furthermore, because of the history of the office and the statutory responsibility that attaches to it, any recommendation to substitute an appointive for an elective Auditor would be difficult to explain to voters. Having been designated by law as the chief accounting officer of the state, the Auditor is regarded as the watchdog of the treasury.

The Commission has considered and rejected proposals to substitute a legislatively appointed auditor for an elected executive official. Although it recognizes the value of performance auditing, whereby an official determines whether moneys were expended in line with legislative policy and for the purposes for which they were appropriated, it regards such a function as appropriate for the legislature to establish through the creation of an additional post.

The Commission considered a variety of proposals for describing the responsibilities of the Auditor of State and concluded that the powers and duties of office are better developed by law than by Constitution. It concluded that the term "Auditor General," suggested to emphasize greater development of post-audit authority, is not appropriate. The Commission's intent in making its recommendation regarding the Auditor of State is to retain the present procedure whereby the General Assembly makes the determination of audit powers, both as to the funds subject to

audit and the duties to be exercised in the audit function. The recommendation recognizes the General Assembly's authority to provide for performance auditing, including the examination of the manner in which executive officials have discharged their responsibilties to faithfully, efficiently, and effectively administer programs under their direction.

C. Treasurer of State

The Commission recommends that the constitutionally elective office of Treasurer of State be retained. Although some critics of this position argue that because the office of Treasurer is an administrative post it should be responsible to the Governor, the Commission has applied the test of whether any compelling reason exists for changing the present method of selection. Its analysis of the traditional functions of the office reveal no characteristics requiring the exercise of gubernatorial control over their execution. In the absence of a concrete basis for designating the office as one that is subordinate to that of the chief executive, the Commission rejects abandonment of a long tradition of direct responsibility to the electorate. To label the office ministerial only does not, in the Commission's view, justify major change in structure. The Commission concludes that election is valid even where the office in question lacks an extensive policy making role.

Specifically, too, the Commission finds no need to alter the way in which state funds are presently handled and in which the Treasurer's office operates. The legislature has always prescribed the powers and duties that attach to the office, and the Commission sees no reason to depart from this practice by attempting the virtually impossible task of making a general statement of duties in the fundamental law that might serve little but to restrict the General Assembly in its future consideration of the office. It has rejected overly detailed statements of the Treasurer's responsibilities as statutory in nature and as thereby intruding upon the province of the General Assembly.

D. Attorney General

The Commission is committed to the position that the Attorney General should continue to be an independent elective officer because if the Attorney General were appointed by the Governor, as some have proposed, the office would become subordinate to the Governor. The Commission notes that such a position would be contrary to the long standing role that the Attorney General has played in Ohio as state's attorney, responsible through many statutory provisions to protect interests and rights of the people and the state. Some have characterized an Attorney General's role as unique because of the executive status of the office, its special advisory relationship on questions of law to the legislature, and the quasi judicial character of opinions of law which the office is called upon to issue. Certainly, the diversity of important responsibilities that the General Assembly has seen fit to confer upon the office since its creation by law in 1846 is persuasive evidence, in the Commission's opinion, that to make the post dependent upon gubernatorial approval would be contrary to the traditional development of its function in this state.

The Commission is further committed to the position that fear of loss of office should not deter the Attorney General from issuing opinions that should be rendered solely on the basis of law and not as counsel for a particular administration.

As is the case with other members of the executive department, the Commission finds no necessity to define the nature of the Attorney General's authority in even the most general of constitutional terms. From the inception of the office in Ohio the powers and duties of office have been the subject of statutes specially conferring them. The Commission

is aware that in some states courts have held that the office of a state attorney general is clothed with powers not expressly defined by law but belonging to the office as result of its common law development. Although the Ohio Attorney General, in advocating recognition of retained common law powers, referred to the historical development of the office in colonial America and the degree to which its character was influenced by an English counterpart, the Commission believes that the only powers possessed by the Ohio Attorney General are powers derived through the Constitution of this state.

In recent years, a number of programs and recommendations for improving the administration of criminal justice have incorporated proposals for enhancing the role of the state attorney general and have called for greater coordination between that office and local prosecutors. The Committee examined the conclusions of a variety of other studies calling for greater state leadership in the development and implementation of reforms. Whatever changes in the office are made as a result of increasing emphasis upon cordinating the Attorney General's role with that of local prosecutors and broadening of prosecutorial and investigative powers, particularly in the area of organized crime, should, the Commission believes, come about as a result of legislative not constitutional mandate. The Commission would defer to legislative discretion to further specify the prosecutorial and other functions of the office.

CHAPTER 3-OTHER RECOMMENDATIONS

ARTICLE III

Section 2

Present Constitution

Section 2. The Governor, Lieutenant Governor, Secretary of State, Treasurer of State, and Attorney General shall hold their offices for four years commencing on the second Monday of January, 1959. Their terms of office shall continue until their successors are elected and qualified. The Auditor of State shall hold his office for a term of two years from the second Monday of January, 1961 to the second Monday of January, 1963 and thereafter shall hold this office for a four year term. No person shall hold the office of Governor for a period longer than two successive terms of four years.

Commission Recommendation

No Change

Comment

The Commission recommends no change in four year executive terms nor in the limitation upon holding the office of Governor for a period longer than two successive terms of four years.

The limitation, having been adopted on November 2, 1954, is relatively new. Judicial interpretation of the provision is even more recent. Prior to a holding of the Ohio Supreme Court in May, 1973, the Ohio limitation was regarded by many as ambiguous on the basis that it was subject to two possible interpretations — one, that a person who has served two successive terms may be elected Governor again after the intervention of one or more terms; and two, that two successive terms is an absolute limit on the number of terms a person may serve as Governor. In *State ex rel. Rhodes v. Brown,* 34 Ohio St. 2d, 101, the Court held that the section permits persons to serve as many four-year terms as they are able to achieve, so long as not more than two of them are sought to be served successively. The Commission deferred consideration of the pro's and con's of having a term limitation because litigation was pending to settle the interpretation question.

The question of whether the number of terms to which a person may be elected Governor should be prescribed in a Constitution is a difficult one. On the one hand, any prescribed limitation restricts the people's choice of persons that they could elect Governor by eliminating from a gubernatorial contest any candidate who had just served two terms as Governor. It has been alleged that this removes from the election the candidate who is most familiar to the voters and denies them an opportunity to pass judgment at the polls on the immediate governor's past administration.

Conversely, it has been argued, political experience indicates that it is often difficult to defeat an incumbent governor who is seeking re-election even though he may not be the most qualified candidate. Thus a two-term restriction upon a governor's tenure is believed by some to offer the best protection against "bossism."

ARTICLE III

Sections 5 Through 9

Present Constitution	Commission Recommendation
Section 5. The supreme executive power of this State shall be vested in the Governor.	No Change
Section 6. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed.	No Change
Section 7. He shall communicate at every session, by message, to the General Assembly, the condition of the State, and recommend such measures as he shall deem expedient.	No Change
Section 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matters incidental thereto.	No Change
Section 9. In case of disagreement between the two Houses, in respect to the time of adjournment, he shall have power to adjourn the General Assembly to such time as he may think proper, but not beyond the regular meetings thereof.	No Change

Comment

The Commission recommends retention of these sections because, from study of the executive department, it has determined that they serve useful purposes. Although the Commission recognizes that were it dealing with a clean slate, it might not conclude that all of these sections are essential or be entirely satisfied with the arrangement of provisions they contain, it finds no good reason for changing them substantively. Unless a constitutional provision is in some way hindering the operation of government or creating other problems, and in the absence of specific reasons for repeal, such as obsolescence, it is better left in the Constitution.

Section 8 provides for the Governor's power to call special sessions. This corresponds to the similar power of legislative leaders to call special sessions, as provided in Article II Section 8. The latter power emanated from a Commission recommendation to the legislature. The two powers do not conflict, and their coexistence is intended. The Legislative-Executive Study Committee noted that the power of the Governor to call special sessions could also be used when the General Assembly was in recess if the Governor felt that something needed immediate consideration.

The Commission calls particular attention to the importance of retaining Section 6, which authorizes the Governor to require that executive officers furnish written information relating to their offices. Along with Section 20 of Article III, requiring that they report to the Governor prior to each legislative session, Section 6 is judged by the Commission to be of especial value to insure appropriate communication between independently elected officials. In its view Sections 6 and 20 are essential to minimize the possible adverse effects of independence.

ARTICLE III

Section 11

Present Constitution

Section 11. He shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offences,* except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law. Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the General Assembly, at its next meeting, when the General Assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the General Assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with his reasons therefor.

*So in the original on file in the office of the Secretary of State.

Commission Recommendation

No change

Comment

The Commission recommends no change in the Governor's power after conviction to grant reprieves, commutations, and pardons for all crimes and offenses except treason and cases of impeachment, upon such conditions and subject to such statutory regulations as are provided for in Section 11. It finds that among states with recently adopted, amended, or revised constitutions, or in which constitutional revision was studied in the past decade, there has been no discernible trend toward standardization of pardoning practices. It notes that Ohio, like most states, makes use of a pardoning authority, to assist the Governor in the discharge of clemency powers.

In Ohio the matter of clemency has been the subject of legislative development, and no problems were called to the attention of the Commission that could not be solved by statute, in its view. Among the suggestions presented to the Study Committee was that treason be removed as a stated exception to the pardoning power, on the basis that treason convictions might be inconsistent with the Federal Constitution. The reference to treason may be obsolete inasmuch as only two cases have been uncovered of completed treason prosecutions by a state. However, Ohio statutes recognize the crime of treason against the state.

No justification has been established for revising the present provision governing executive clemency in Ohio. The Commission believes that no case has been made for affixing constitutional permanency to pardon authorities.

ARTICLE III

Sections 12 and 13

Present Constitution

Section 12. There shall be a seal of the State, which shall be kept by the Governor, and used by him officially; and shall be called "The Great Seal of the State of Ohio."

Section 13. All grants and commissions shall be issued in the name, and by the authority, of the State of Ohio; sealed with the great Seal; signed by the Governor, and countersigned by the Secretary of State.

Commission Recommendation

No change

No change

Comment

In recommending no changes in Sections 12 and 13, relative to the great seal of Ohio and the issuance of grants and commissions, the Commission recognizes the historical significance of these provisions. Although it believes that these two sections are not essential to modern state government, it also observes that they create no problems. The Commission views the seal as basically a tradition, a symbol of state authority, and surmises that in 1802 its use was probably considered essential to give grants and commissions of the state official authority.

The Commission reasons that if there is to be a seal of the state, it is a matter of constitutional importance. It believes that constitutional recognition of the seal prohibits its abolition by executive or legislative authority and discourages frequent changes in design.

ARTICLE III
Section 14

Present Section	Commission Recommendation
Section 14. No member of congress, or other person holding office under the authority of this state, or of the United States, shall execute the office of the Governor, except as herein provided.	No Change

Comment

Like Sections 5, 7, 8, and 9 of Article III, Section 14 does not impede the operation of the executive department of government. The Commission finds merit in the constitutional inhibition upon simultaneously serving as Governor and holding other public office.

This recommendation is consistent with the Commission's earlier recommendation that members of the General Assembly should not hold other public office. The section appears to have given rise to no serious question, and, therefore, in accord with the approach taken throughout this report, the Commission finds no reason to suggest its revision or repeal.

The final exception to the ban on executing the office of Governor by a public office holder — "except as herein provided" — is included to cover a case where there has been succession to the governorship by another public official — i.e. the Lieutenant Governor, President of the Senate, or Speaker of the House — on a temporary or permanent basis.

ARTICLE III
Section 20

Present Constitution	Commission Recommendation
Section 20. The officers of the executive department, and of the public State Institutions shall, at least five days preceding each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly.	No Change

Comment

The Commission recommends the retention of Section 20 because, together with Section 6, it provides for necessary communication between independently elected officials in the executive department and the Governor.

ARTICLE III

Section 21

Present Constitution

Section 21. When required by law, appointments to state office shall be subject to the advice and consent of the Senate. All statutory provisions requiring advice and consent of the Senate to appointments to state office heretofore enacted by the General Assembly are hereby validated, ratified and confirmed as to all appointments made hereafter, but any such provision may be altered or repealed by law.

No appointment shall be consented to without concurrence of a majority of the total number of Senators provided for by this Constitution, except as hereinafter provided for in the case of failure of the Senate to act. If the Senate has acted upon any appointment to which its consent is required and has refused to consent, an appointment of another person shall be made to fill the vacancy.

If an appointment is submitted during a session of the General Assembly, it shall be acted upon by the Senate during such session of the General Assembly, except that if such session of the General Assembly adjourns sine die within ten days after such submission without acting upon such appointment, it may be acted upon at the next session of the General Assembly.

If an appointment is made after the Senate has adjourned sine die, it shall be submitted to the Senate during the next session of the General Assembly.

In acting upon an appointment a vote shall be taken by a yea and nay vote of the members of the Senate and shall be entered upon its journal. Failure of the Senate to act by a roll call vote on an appointment by the governor within the time provided for herein shall constitute consent to such appointment.

Commission Recommendation

No change

Comment

Section 21 of Article III was adopted by the electorate in November, 1961, and establishes some procedural requirements governing advice and consent of the Senate on appointments to state office when required by law. Because of its recent origin and the absence of evidence that the requirements have been unsatisfactory, the Commission recommends no change.

Remaining Sections in Article III

Sections 3, 4, and 18 of Article III were referred to the Committee studying Elections and Suffrage which also considered, in conjunction with its study of Article XVII, the constitutional provisions for filling vacancies in public offices. Recommendations with regard to those sections are found in the report on Elections and Suffrage, Part 7 of the Commission's report to the General Assembly.

Section 19, compensation of executive officers, has been referred to a committee studying other sections dealing with compensation of public officers and Section 10, which designates the Governor as commander-in-chief of the military and naval forces of the state, has been referred to a committee studying Article IX, concerning the militia generally.

CHAPTER 4

Other Proposals Considered

Among the proposals presented to the Commission's Legislative-Executive Committee were ones to expand the executive article by incorporating provisions dealing with the following subjects: (1) Executive reorganization; (2) The budget as an executive responsibility; and (3) Executive enforcement of compliance with law.

Commission Recommendation

The Commission makes no recommendations as to the adoption of proposals for executive reorganization, an executive budget, or executive enforcement of compliance with law. It recognizes that they involve some changes in the structure and operation of the executive department that may serve useful purposes but sees no reason to recommend constitutional change at this time for their implementation. Although these proposals have not resulted in recommendations, widespread interest in the subject matter prompts the Commission to call them to the attention of the General Assembly. In some instances the commentary suggests that the goals sought could be accomplished by legislation instead of constitutional amendment.

1. Executive Reorganization

A twentieth century administrative revision movement has resulted in the popularity of recommendations for:

(A) Constitutional authority for the Governor to initiate reorganization of executive department and agencies, subject to legislative veto;

(B) A Constitutional ceiling (commonly 20) on the number of executive departments that may be established.

A. Reorganization powers

While legislatures have long established the statutory shape of state administration, only after World War II did the sharing of this role with the executive really begin in the states, although federal sharing or reorganization powers between President and Congress began as early as 1932. An illustration of how authority might be conferred upon the governor to initiate administrative reorganization can be found in the National Municipal League's Model State Constitution. Section 5.06 of that model recognizes a legislative function to prescribe, modify and reallocate the powers and duties of various state departments and agencies but specifically provides as well that "the governor may make such changes in the allocation of offices, agencies, and instrumentalities, and in the allocation of such functions, powers, and duties, as he considers necessary for efficient administration." Under that proposal, if the changes affect existing law, they must be set forth in executive orders and have the force of law within 60 days after submission to the legislature unless modified or disapproved. The governor would have broad powers, but legislative participation would be required to effectuate recommended changes in the law.

States with constitutional provisions comparable to the MSC approach include Alaska, Illinois, Michigan, Massachusetts, Maryland, Kansas, North Carolina, and Virginia. Rejected constitutions in Arkansas (1970), Idaho (1968), and New York (1967) offered reorganization plans that called for executive initiative and legislative veto.

From various discussions of administrative reorganizaton emerge three basic arguments favoring executive initiative powers subject to legislative rejection or amendment:

1. The governor is primarily accountable for and is better equipped than the legislature to oversee administration; therefore, the governor should have the authority, subject to legislative veto, to reorganize the administrative units under his direction.

2. The legislature would retain effective power over reorganization because no reorganization could be made without its consent.

3. The power would assist the executive branch in carrying out efficiently the administrative functions assigned to it.

On the other hand, the alternative to executive consolidation of administrative operations is to retain statutory allocation of government departments, without constitutional incorporation of an executive role. The position favoring such legislative reorganization relies upon the following arguments:

1. The structure of government is properly a legislative responsibility, so the legislature should have the principal role in framing departmental structure to assure that the policies of government are being executed and accomplishing the desired results.

2. Experience shows that executive and legislative branches can work cooperatively to reorganize when the constitutional power is vested in the legislature.

3. Existing provisions have achieved the objective of preventing proliferation of governmental units in many states.

The Commission notes that Ohio governors presently propose changes in administrative structure through individual bills introduced by legislators for that purpose. Departmental reorganizations have taken place from time to time for the purpose of coordinating activities in major current problem areas. Ohio governors have realigned functions by the transfer of personnel and in such a way have effected administrative changes by executive action. Furthermore, legislation has been introduced in Ohio to provide the Governor with statutory authority to reorganize executive agencies, subject to legislative veto. Such legislation has not been adopted in Ohio, but similar reorganization activity has taken place in other states by virtue of legislation, without constitutional change. States which have at one time enacted either permanent or temporary reorganization statutes of executive initiative include: Georgia, Kentucky, Missouri, Rhode Island, New Jersey, New York, and Vermont. Reportedly of the 12 states where significant restructuring has occurred in the last decade, four of those states effected such reorganization by act of the legislature without constitutional mandate.

B. A ceiling on executive departments

Cogent reasoning has been advanced both for and against a constitutional limitation on the number of executive departments. Proposals for this purpose have been offered as a result of concern over wasteful duplication and bureaucratic conflict. A summary of arguments that have been advanced for amending state constitutions to limit the number of departments that may be created would emphasize the following points:

1. The provision helps insure that the legislature cannot create executive branch departments at will and thus helps protect the power of the Governor to administer state government.

2. The provision protects the legislature from undue pressure to create new departments.

3. The provision helps to insure that the Governor has a manageable span of control over departments and helps to limit the number of departments and units reporting directly to him, thereby increasing governmental efficiency and accountability of officials.

4. A maximum of 20 departments appears to be the trend in other states in their attempts to prevent proliferation of departments and being sound management principles to the operation of government.

In opposition it has been said:

1. The limit on the number of departments may result in an inefficient grouping of unrelated activities and interfere with efforts to achieve flexibility in administraton.

2. The existence of a limit has contributed to a proliferation of divisions, special agencies, boards, commission, and offices.

3. A limitation of twenty departments is wholly arbitrary.

4. A specific limit should not be in the Constitution; the objectives could be achieved by statute which would have the advantage of greater flexibility. The Commission notes that authorities are in considerable disagreement as to the appropriate number of departments, with some committed to 12 as the only means of precluding executive fragmentation and others calling 20 unduly restrictive. Moreover, an implementation problem has been noted as to what agencies are to be included within the limitation. In at least one state the limitation has been considered to be ineffective.

The Commission reports developments in this area because it realizes that principles and models of state reorganization are receiving increasing attention.

2. The Budget as an Executive Responsibility

Although Section 7 of Article III requires the Governor to "communicate at every session, by message, to the General Assembly, the condition of the state and recommend such measures as he shall deem expedient," the Ohio Constitution lacks explicit provision for an executive budget. Section 107.03 of the Revised Code requires that the Governor make appropriate recommendations for all the state's activities and revenue estimates under existing and proposed legislation.

Research has disclosed a trend toward providing for the budget function in the state constitution. Authorities on state government have called for a strong executive budget, granting the Governor full authority for preparing a budget that covers all administrative operations, and for a clear constitutional delineation of the fiscal relationship between the Governor and the General Assembly. *State Government for our Times*, the 1970 Report of the Wilder Foundation on the Ohio Constitution, for example, recommends that the duty to submit a *balanced* budget be constitutionally imposed on the Governor. Such a system, it reasons, would help prevent buckpassing and fighting between the two branches of government in times of revenue shortages.

Others have called for the substitution of an annual for a biennial budgetary system. The number of states with annual budgets rose from five in 1949 to a reported 33 in 1972. In Ohio the budget is adopted biennially, but appropriations are made for each year of the biennium separately.

The Commission recognizes that notwithstanding administrative merits the question is a political one. Reducing the frequency of legislative-executive confrontations frees the executive from financial dependence on the legislature for longer period, and the effect is to advance executive power. On the other hand, annual budget systems correspond with annual legislative sessions.

3. Executive Enforcement of Compliance with Law

A third question is whether the Governor should be empowered to investigate any part of the executive department and enforce compliance with law by proceeding against officers.

Although under Section 6 of Article III the Governor "shall see that the laws are faithfully executed," some state constitutions have specifically recognized a constitutional duty to investigate possible misconduct. Alaska and New Jersey have done so by incorporating provisions for the enforcement of compliance with law, and comparable authority is included in the National Municipal League's Model State Constitution. Section 5.04 of the 1963 edition of that model not only makes the governor responsible for the faithful execution of the laws but provides further that the governor may bring actions in the name of the state to enforce compliance with law or to restrain violations by officers, departments, agencies, or divisions of the state. According to the Commentary accompanying this section, the effect of such a provision is to enable the governor to initiate proceedings or to intervene in proceedings on behalf of the people of the state or on behalf of any individual, even in situations where the interest of the state is not directly involved and to give the governor standing to sue where the state itself has nothing to gain or lose by the litigation.

There are conflicting views as to whether executive authority ought to be expanded to encompass a duty to enforce compliance with the law. Advocates for constitutional incorporation of such authority maintain that it would enhance the executive power of the governor and even extend it into general law enforcement areas. In *State Government for Our Times* the point is made that constitutional affirmation of a duty on the part of the governor to investigate possible misconduct can prevent unnecessary conflict between the governor and the legislature. Other commentators have questioned the necessity of such a device to help the governor enforce executive policy and hold that existing powers furnish ample basis for leadership.

Although the Commission has taken no position regarding executive reorganization, the budget as an executive responsibility, or executive enforcement of compliance with law, its rationale for describing developments in these areas is a recognition that changes in state needs may justify their further consideration at some future time.

APPENDIX A

SUGGESTED ARTICLE UPON THE EXECUTIVE FOR THE CONSTITUTION OF THE STATE OF OHIO

Prepared and submitted for the consideration
of the Legislative-Executive Committee of
the Ohio Constitutional Revision Commission
by: W. Cunningham, Miami University.

ARTICLE III
The Executive and Administrative Department

Sec. 1—**Executive Department**

Par. 1—The supreme executive power shall be vested in a governor.

Par. 2—The executive department shall consist of all state elective and appointive officials and employees except the officials and employees of the legislative and judicial department.

Par. 3—In addition to the governor and lieutenant governor, there shall be a secretary of state, attorney general, auditor, and such additional officers and departments of government over which they shall preside, not to exceed . . , as may hereafter be established by law.

Par. 4—All present or future boards, bureaus, commissions, and other agencies of the state exercising administrative or executive authority shall be assigned by the governor to the department to which their respective powers and duties are, to him germane.

Par. 5—There shall be a lieutenant governor who shall have the same qualifications as the governor. The lieutenant governor shall be the *administrative assistant of the governor* and shall perform such duties in the integration and coordination of administrative departments and functions of government as the governor shall delegate to him, or which shall be fixed for him by the legislature in the Administrative Code of the state. (Suggested by writer.) The lieutenant governor shall be appointed by the governor and shall be responsible to him in the performance of his duties of office, and his term of office shall be indefinite at the pleasure of the governor. The governor may delegate any or all of his administrative powers to the lieutenant governor as administrative assistant to the governor. The lieutenant governor shall be assisted by such aides as may be provided by law, but all such aides shall be appointed and shall hold office in accordance with the civil service regulations fixed by the legislature.
It is suggested that if the General Assembly and/or electorate prefer the "tandem" election of a lieutenant governor with the Governor for his term to act as administrative assistant to perform "such duties as provided by law" other than preside in the Senate, this writer would compromise with this suggestion, as alternate to the provisions above for an appointed Lieutenant Governor.

Par. 6—The secretary of state, attorney general, auditor, and directors of such additional departments as may hereafter be established by law shall be appointed by, and may be removed by, the governor, and they shall hold office at the pleasure of the governor and shall continue in office until removed or a successor has been appointed to succeed to the office.

Sec. 2—**Term of Office and Qualifications for Governor**

Par. 1—The governor shall hold office for four years. His office shall commence on the second Monday of January next after his election which shall take place in odd numbered years, and shall continue until his successor is elected or otherwise qualified.

Par. 2—The term of governor under this constitution shall commence on the second Monday in January, in the year nineteen hundred and ....., (an even numbered year), and on the same day every four years thereafter. (This section may be placed in the SCHEDULE if any are appended to the Constitution.)

Par. 3—The governor shall be at least ..... years old and shall have been a citizen of the United States for at least ..... years and a resident and elector of the state at least ..... years next before his election. (It is questioned whether such specific qualifications are desirable other than that he be an elector of the state. It is to be noted that any qualifications will automatically apply to lieutenant governor. If they are adopted, then a similar provision should be made to apply to the lieutenant governor.)

Par. 4—No member of Congress, or other person holding office under the authority of this state, or of the United States, shall execute the office of governor or lieutenant governor, except as herein provided. (O-III, 14)

Sec. 3—**Succession to the Governorship**

Par. 1—In the event of the death, impeachment, resignation, removal, continued absence from the state, or other disability of the governor, the powers and duties of the office, for the residue of the term, or lesser time as herein provided, or until his disability shall be removed shall devolve upon the lieutenant governor.

Par. 2—Within ..... months of the death, impeachment, resignation, removal, continued absence from the state, or other disability of the governor, the legislature shall convene in special session upon the notice given to the members thereof by the presiding officer of the senate if the legislature is in session, or by the presiding officer of the senate immediately last past if the legislature is in adjournment, at which time and place the legislature shall fix a time for holding a general election at which the question of whether the lieutenant governor shall succeed to the governorship shall be submitted to the electorate. If the electorate shall vote against the continuation of the lieutenant governor in office to succeed to the governor for the unexpired term, a successor to the office of governor for the unexpired term shall be provided as in the election for governor, as provided by law. (Suggested by the writer to take care of the transition from administrative appointive officer to that of executive elective officer.) It is suggested that if the General Assembly and/or electorate prefer the "tandem" election of a Lieutenant Governor with the Governor for his term to act as administrative assistant to

perform "such duties as provided by law" other than preside in the Senate, this writer would compromise with this suggestion, as alternate to the provisions above for an appointed Lieutenant Governor.

Par. 3—Should the lieutenant governor be authorized to succeed to the office of governor for the unexpired term as herein provided, it shall be his duty to appoint a successor to the office of lieutenant governor as herein provided. (Suggested by the writer to provide a new administrative assistant.)

Par. 4—In the event of the death, impeachment, resignation, removal, continued absence from the state, or other disability of the governor, in the absence of a lieutenant governor duly appointed to the office, the president of the senate shall act as governor; and if the president of the senate shall be rendered incapable of performing the duties pertaining to the office of governor, the same shall devolve upon the speaker of the lower house of the legislature, until the next general election, at which time a successor to the office shall be elected as provided by law for the unexpired term.

Sec. 4—**Legislative Powers of the Governor**

Par. 1—The governor shall communicate at the beginning of every general session of the legislature, and during each general or special session as he may deem necessary, by message the condition of the state and may then and there recommend such measures as he shall deem expedient.

Par. 2—The power of veto shall be reserved to the governor over legislation as herein provided. (Suggested as a reference section to the Article on the legislature.)

Par. 3—The governor shall have power to convene the legislature in special sessions when he deems it advisable, by proclamation, stating therein the purpose for such session. The legislature shall not be restricted thereby to consider, when so convened, those matters contained in the proclamation. This power shall not restrict the legislature, in the absence of such proclamation to be convened upon its order as herein provided. (Procedure for the convention of the legislature in special sessions upon its own motion would be set forth in the Article on the legislature.)

Par. 4—The governor shall have power to adjourn the legislature in case of disagreement between the two houses in respect to the time for adjournment, but in no instance shall he adjorn it beyond . . . . . .

Par. 5—The governor, the lieutenant governor, and the directors of the administrative departments shall be entitled to seats in the legislature, may introduce bills therein, and may take part in the discussion of measures in which they are interested, but shall have no vote. (This is highly controversial and should be thoroughly discussed as to policy.)

Sec. 5—**Judicial Powers of the Governor**

Par. 1—The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, subject to such regulations as may be prescribed by law.

Sec. 6—**Grants, Appointments, and Commissions**

Par. 1—All grants, appointments, and commissions shall be issued in the name and by the authority of the State of Ohio, signed by the governor and countersigned and sealed by the secretary of state.

Par. 2—There shall be a Great Seal of the State of Ohio which shall be provided by law, which shall remain in the custody of the secretary of state and affixed by him to all grants, appointments, and commissions executed by the governor.

Par. 3—The grants, appointments, commissions and other instruments of the state which shall be so executed shall be fixed by law. (Suggested.)

Par. 4—The governor shall make such other appointments, other than those specifically herein referred to, as provided by law.

Sec. 7—**Compensation**

Par. 1—The officers mentioned in this article shall, at stated times, receive a compensation for their services to be established by law.

NOTE: It is to be noted that the following sections of the current constitution have been omitted.

Art. III, sec. 6—*He May Require Written Information,* has been omitted as unnecessary.

sec. 10—*Commander-in-chief of Militia,* has been omitted since he is this anyway since the Adjutant General or similar department is one of his administrative departments over which he has administrative control. (It is the belief of the writer that no state department should be maintained for this purpose. He believes that a Department of Penology should perform the state police function and that national defense should be Federal in character. The state geographically might be a FEDERAL MILITARY RESERVE DISTRICT or two or more states be joined for that purpose. Others may disagree with the suggestion.)

sec. 3 and 4—*Election Returns,* has been omited since it should be in the section on elections. (It is suggested that all election returns should be deposited with the secretary of state and that a canvass board in lieu of the legislature be substituted.)

sec. 11—*Reprieves, Commutations and Pardons,* has been materially modified and restated so that the procedure for reprieves, commutations and pardons may be provided by the legislature so that the matter will not be left to the discretion of the executive.

sec. 18—*What Vacancies Governor to Fill,* is not necessary as stated. Vacancies and appointments have been taken care of in the sections above.


national
graphics