

Pt. 1
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STATE OF OHIO

**OHIO CONSTITUTIONAL
REVISION COMMISSION**

**Recommendations for Amendments to
the Ohio Constitution**

PART I

Administration, Organization, and Procedures

of the

GENERAL ASSEMBLY



December 31, 1971

Ohio Constitutional Revision Commission

20 South Third Street, Room 212

Columbus, Ohio 43215

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31. December 1971

The Ohio General Assembly
State House
Columbus OH

Gentlemen:

I have the honor of submitting this report of the Constitutional Revision Commission, containing the first group of Commission recommendations to the General Assembly and to the people of Ohio.

The Commission was established by the General Assembly for the primary purpose of studying the Ohio Constitution and recommending amendments. Since January 1971, when we organized for this task, we have held meetings nearly every month and committees created to study particular subjects have also been meeting monthly. Our meetings are all open to the public, and public participation has been encouraged.

The recommendations contained in this report are the result of the work of the committee named to study constitutional provisions relating to the legislative and executive branches of government. Each issue was carefully researched and studied in great detail, from the perspective both of history and of current practices and needs. Each recommendation represents many hours of study, discussion and debate.

Since this first group of recommendations represents only a small portion of the total task, a great deal of arduous work still faces the Commission. Commission members, legislators and public members alike, have devoted much time and effort to their assignment and are committed to the job of providing the General Assembly and the people of this state with the very best recommendations for constitutional revision possible. Our goal is a Constitution which will meet present and future needs of the people of a growing and dynamic state without destroying practices and institutions which have served us well in the past, and continue to serve us well now.

The Ohio General Assembly
31 December 1971
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We are proud to be associated with this endeavor in Ohio, and offer this report as evidence of our belief that our system of government can be improved through careful consideration of problems and thoughtful suggestions for solutions.

Respectfully submitted on behalf
of the Commission members,

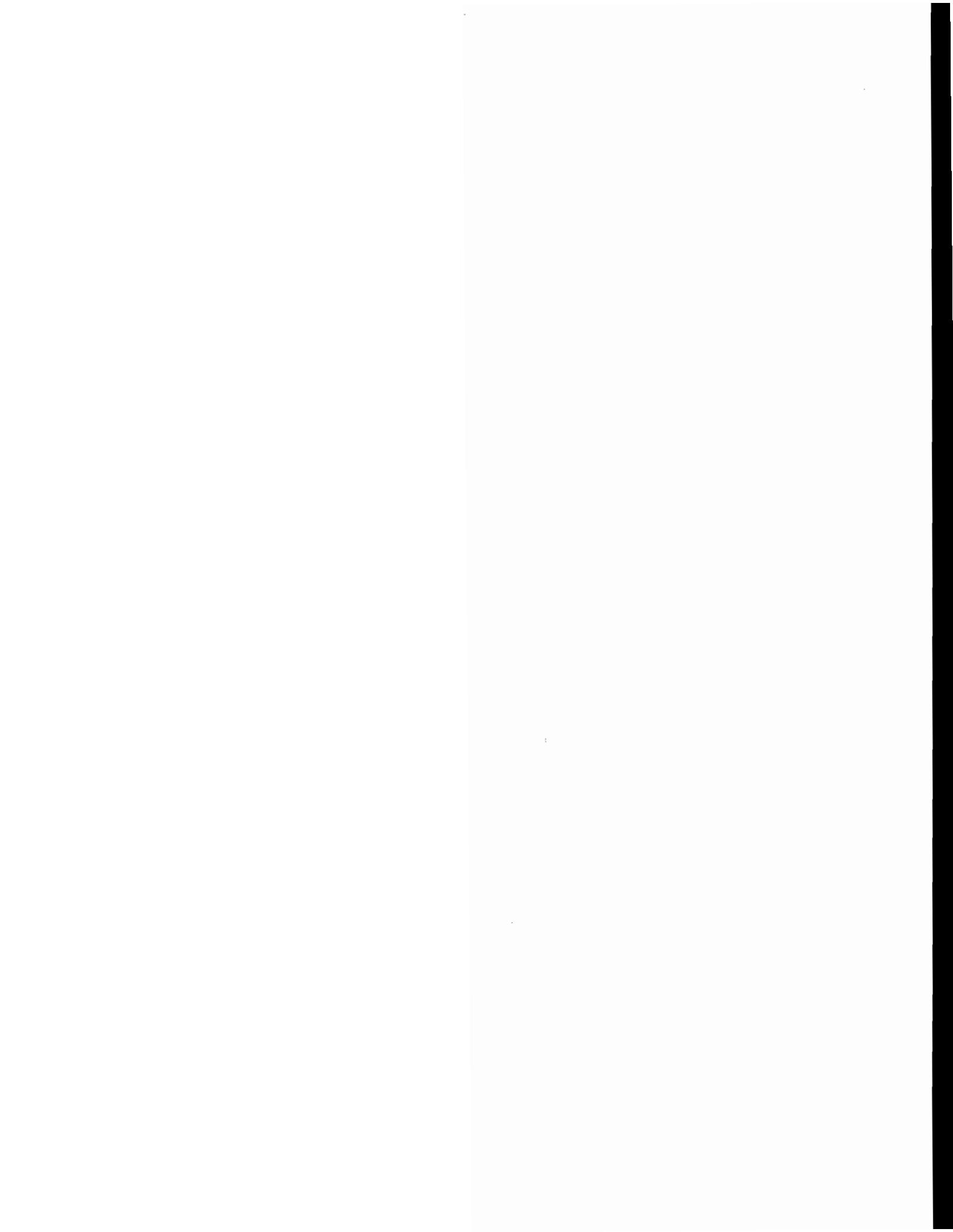
A handwritten signature in black ink that reads "Richard H. Carter". The signature is written in a cursive, flowing style.

Richard H. Carter
Chairman

RHC/hes

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INTRODUCTION

The 108th General Assembly (1969-70) created the Ohio Constitutional Revision Commission and charged it with these specific duties:¹

- (A) studying the Constitution of Ohio;
- (B) promoting an exchange of experiences and suggestions respecting desired changes in the Constitution;
- (C) considering the problems pertaining to the amendment of the Constitution;
- (D) making recommendations from time to time to the General Assembly for the amendment of the Constitution.

The Commission is composed of thirty-two members, of whom twelve are members of the General Assembly and twenty are not legislators. The twenty public members are chosen by the General Assembly members. After all members had been selected, the Commission organized, selected a Director, and has held regular monthly meetings (except in June and July) since January, in 1971. Commission meetings are open to the public.

The Commission elected Mr. Richard H. Carter as Chairman and Mrs. Alexander Orfirer as Vice-Chairman. In his remarks accepting the chairmanship, at the February meeting, Mr. Carter stated that the sizeable task of constitutional revision in Ohio would call for the best efforts of all Commission members and emphasized the nonpartisan nature of the job. He also noted that a major chore of public education lay ahead if the Commission's work is to be successful. Four committees were created in order to establish a format and procedures for Commission operations.

The Organization and Administration Committee was composed of the following members: Senator Applegate, Chairman; Mr. Ostrum, Vice-Chairman; Representative White; and Messrs. Carter, Duffey, Guggenheim, King, and Skipton. This committee reviewed the Commission budget, handled subject-matter committee assignments, and prepared Rules for Commission consideration. The Rules were discussed, amended, and adopted as amended at the April 22 Commission meeting.

The Committee on Liaison with Governmental and Public Groups was composed of the following members: Representative Fry, Chairman; Mr. Bartunek, Vice-Chairman; Senators Calabrese and Leedy; Representative Russo; and Messrs. Carson, Hovey, and Ingler. This committee made a number of recommendations with respect to contacts with governmental and other organizations. As a result of these recommendations, letters ex-

plaining the organization and purposes of the Commission were sent to all members of the General Assembly, the head of each state department or agency and the Chief Justice of the Ohio Supreme Court. In addition, professional and business organizations were contacted.

The Public Information Committee was composed of the following members: Mr. Ross, Chairman; Mr. Heminger, Vice-Chairman; Senator Dennis; Representative Quilter; and Messrs. Bell, Montgomery, Pokorny, and Wilson. The committee made several recommendations to the Commission, including proposing information seminars for members of the Commission to acquaint them with the problems of constitutional revision generally, standards for the content and drafting of state constitutions and information on the various subjects undertaken for study by the Commission or its committees. The committee also proposed meetings or seminars to be held for the purpose of providing public information on subjects of Commission study or for explaining Commission recommendations to the public and offering an opportunity for public comment or testimony.

The Subject Matter Committee was composed of the following members: Senator Taft, Chairman; Mr. Brockman, Vice-Chairman; Senator Ocasek; Representatives Mallory and Thorpe; and Mr. Cunningham, Mrs. Orfirer; and Mr. Schroeder. This committee recommended that the Commission be divided into four committees to begin studies of four different constitutional topics as follows: The Legislature, the Executive Branch, Local Government, and Finance and Taxation. This plan was adopted by the Commission, and the Subject Matter Committee then indicated to each committee the particular portions of the Constitution which appeared to fall within the scope of the committee assignment.

Pursuant to its statutory duties, the Commission, early in its deliberations, considered "the problems pertaining to the amendment of the Constitution," particularly whether it was necessary to seek an amendment to the Constitution to broaden the purposes for which subsequent amendments could be placed before the voters. After a review of the amending provisions of the Ohio Constitution (Article XVI), precedents, and court interpretations of these provisions and precedents, the Commission reached a consensus that its work could be effectively accomplished within the present constitutional provisions, and an amendment to the amending procedures need not be sought.

The Commission then proceeded to the specific task of studying the Constitution and proposing recommendations for amendments to the General

¹Section 103.52 of the Revised Code. See Appendix A for the entire enabling legislation.

Assembly. The original four committees were composed of the following members:

The Legislature: Mr. Skipton, Chairman; Representative Mallory, Vice-Chairman; Senators Applegate and Taft; and Messrs. Guggenheim, King, Montgomery and Schroeder.

Local Government: Mr. Duffey, Chairman; Senator Leedy, Vice-Chairman; Representatives Fry and Russo; Messrs. Brockman, Heminger, and Ingler, and Mrs. Orfirer.

Finance and Taxation: Mr. Carson, Chairman; Senator Ocasek, Vice-Chairman; Representatives Quilter and White; and Messrs. Bartunek, Carter, Hovey, and Wilson.

The Executive Branch: Mr. Pokorny, Chairman; Representative Thorpe, Vice-Chairman; Senators Calabrese and Dennis; and Messrs. Bell, Cunningham, Ostrum, and Ross.

Following several resignations the committees were reorganized into three committees as follows:

Legislative-Executive: Mr. Skipton, Chairman; Mr. King, Vice-Chairman; Senators Applegate and Taft; Representative Thorpe; and Messrs. Bell, Cunningham, and Montgomery.

Local Government: Mrs. Orfirer, Chairman; Mr. Ostrum, Vice-Chairman; Senators Calabrese and Leedy; Representatives Fry and Russo; and Messrs. Heminger, Pokorny, Ross, and Schroeder.

Finance and Taxation: Mr. Carson, Chairman; Mr. Guggenheim, Vice-Chairman; Senators Dennis and Ocasek; Representatives Mallory and White; and Messrs. Bartunek, Carter, Hovey, and Wilson.

Committees have been meeting monthly since March, 1971. Committee meetings are also open to the public.

At Commission meetings in October, November, and December, 1971, the Legislative-Executive Study Committee made recommendations concerning various matters in the Constitution dealing with the organization, administration, and procedures of the General Assembly. After debate, amendment, and occasional redrafting, the Commission adopted most of the committee recommendations. These recommendations are presented to the General Assembly and to the public in this report, which contains a summary of the recommendations and a detailed description of the contents and background of each section.

Speakers were invited to Commission meetings during 1971 to share with Commission members and the public their experiences in constitution-making efforts in other states, to give a general overview of the Ohio Constitution, and to explain standards generally accepted of a "good" state

Constitution and compare provisions of the Ohio Constitution with these standards. These speakers included such distinguished persons as Dr. John P. Wheeler, Jr., of Hollins College, Virginia, who had an active role in recent constitutional revision in several states, including Maryland and Virginia; Dr. Harvey Walker,¹ retired Ohio State University political science professor and a noted Ohio constitutional expert; and Dr. Albert L. Sturm, University Research Professor of Political Science at Virginia Polytechnic Institute and State University, a national expert on state constitutional revision.

The Honorable John J. Gilligan, Governor of Ohio, addressed the Commission at its May meeting. The Governor emphasized the importance of the work of the Commission and indicated his concept of the task ahead with these words:

Thus, what you here today have been charged with by the people of Ohio is a responsibility perhaps far deeper and far more significant than many had anticipated. I would urge you then to start with this question: if we had no kind of government at all, what kind of government would we construct in Ohio? What kind of government would we create that would protect our liberties and yet enable us to solve the massive problems we face? That, I suggest, you might regard as your task. Not to paste and patch and mend but to start afresh with the fundamental question of what kind of basic framework should we have for our society? Having made that decision, the second decision follows, how?—whether all in one big gulp and one big jump we achieve it or do we achieve it piecemeal over a long period of time? Unless we know where we want to get how will we ever recognize whether or not the steps that we take along the way are in the direction of our final goal or just up some kind of a constitutional blind alley? A lot of us are going to be waiting for the answers you'll be producing.

Finally, in November, the Commission co-sponsored with the Ohio State University College of Law and the Ohio Municipal League, a local government seminar, focusing on a number of problems of local government with emphasis on their constitutional aspects. Many outstanding speakers participated in this seminar, headed by Jefferson B. Fordham, retired Dean of the University of Pennsylvania Law School and now a University Professor there, and a leading national expert on local government and home rule. The program for the seminar is included as Appendix B of this report.

¹Dr. Walker's sudden death in the Spring of 1971, was noted with sadness by members of the Commission.

MEMBERS OF THE OHIO CONSTITUTIONAL REVISION COMMISSION

Terms ending January 1, 1972

General Assembly Members

Appointed by the President pro tem of the Senate:

Senator Max H. Dennis
Senator James K. Leedy
Senator William W. Taft.

Appointed by the Minority Leader of the Senate:

Senator Douglas Applegate
Senator Anthony O. Calabrese
Senator Oliver Ocasek

Appointed by the Speaker of the House of Representatives:

Representative Charles E. Fry
Representative James E. Thorpe
Representative Walter L. White

Appointed by the Minority Leader of the House of Representatives:

Representative William L. Mallory
Representative Barney Quilter¹
Representative Anthony J. Russo

Public Members

(Appointed by the General Assembly members)

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Cleveland, Ohio

NAPOLEON A. BELL
Columbus, Ohio

NORBERT BROCKMAN, S. M.²
Dayton, Ohio

NOLAN W. CARSON
Cincinnati, Ohio

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

WARREN CUNNINGHAM
Oxford, Ohio

JOHN DUFFEY³
Columbus, Ohio

RICHARD E. GUGGENHEIM
Cincinnati, Ohio

EDWIN L. HEMINGER
Findlay, Ohio

HAROLD A. HOVEY
Columbus, Ohio

CHARLES W. INGLER⁴
Dayton, Ohio

FRANK W. KING
Columbus, Ohio

DON W. MONTGOMERY
Celina, Ohio

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

DEAN G. OSTRUM
Cleveland, Ohio

FRANK R. POKORNY
Cleveland, Ohio

RAY ROSS
Columbus, Ohio

OLIVER SCHROEDER, JR.
Cleveland, Ohio

JOHN A. SKIPTON
Findlay, Ohio

JACK D. WILSON
Piqua, Ohio

STAFF

Ann M. Eriksson, *Director*
Julius J. Nemeth
Ellen H. Denise

Consultant to Legislative-Executive Committee
Sara R. Hunter

1. Resigned October 6, 1971
2. Resigned June 12, 1971
3. Resigned September 15, 1971
4. Resigned October 19, 1971

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The Ohio Constitution: A Brief History

The present Constitution of Ohio was adopted by the people in 1851. It is not the oldest state constitution still in effect today, but not many are older. The present Indiana Constitution was adopted the same year and that of Wisconsin three years earlier; only the constitutions of five of the six New England states (Massachusetts, New Hampshire, Vermont, Maine and Rhode Island) surpass these three midwestern ones in age.

Although the basic Ohio document has not been entirely rewritten for more than 120 years, it has been amended. Amendments agreed to by the voters have included proposals placed on the ballot from all three sources authorized by the Constitution—the General Assembly, a convention, and initiative petition.

In November, 1972, the voters will be asked to answer "yes" or "no" to the question: Shall there be a convention to revise, alter, or amend the constitution? Twice before in this century (1932 and 1952) and once in the last (1891), Ohio voters answered "no" to that question, which is placed on the ballot every 20 years pursuant to a constitutional directive adopted in 1851. In 1871 and again in 1910, the voters approved a convention call, but the new constitution proposed by the 1874 convention was rejected at the polls and the 1912 Convention submitted separate amendments for voter action rather than a new constitution. Thus the 1851 Constitution, as amended, remains today Ohio's basic government document.

The 1851 Constitution is the state's second. The first was written and adopted by a convention of elected delegates in 1802, when Ohio became the first state carved out of the northwest territory. The Northwest Ordinance, adopted by Congress in 1787, provided for the government of the northwest territory ("the territory of the United States northwest of the River Ohio") prior to statehood and is, in many respects, the territory's first constitution. It provided for the government of the territory in two stages, and looked forward to the day when not less than three nor more than five states would be formed in the territory and admitted to the union "on an equal footing" with the original states, with their own "permanent" constitutions, with republican forms of government, and in conformity with the principles expressed in the Ordinance.

The first stage of government in the territory under the Northwest Ordinance consisted of the appointment by Congress of a Governor, a Secretary, and three judges. When the free male adult inhabitants in the territory numbered 5,000,

a representative assembly was to be chosen, (one representative for each 500 free male inhabitants) and the lawmaking authority, previously vested in the Governor and the judges, would then be given to the Assembly, which consisted of the elected representatives, the Governor, and a legislative council of five persons chosen by Congress from a list of 10 names submitted by the representatives, each of the ten to be possessed of a freehold in 500 acres and resident of the district. By 1798, the population of the territory had increased to the point of at least 5,000 free male adult inhabitants (although slavery was prohibited in the territory by the provisions of the Northwest Ordinance, runaway slaves from other states were reclaimable, and therefore all men were not free) and the first Assembly was elected and met in Cincinnati early in 1799. Not too long thereafter, Congress divided the territory into two parts—Ohio and Indiana—and the residents of the Ohio portion elected their own territorial assembly. Finally, in 1802, Congress enacted a law enabling the people of Ohio to "form a constitution and state government" and be admitted to the union as a state.

The push for statehood may have been premature under the terms of the Northwest Ordinance, which required 60,000 free inhabitants in order to form a state. The 1800 census showed a population of 45,365 in the entire Ohio portion of the territory, with an additional 5,000 or so in the Indiana portion. However, Governor St. Clair, who was reappointed several times as Governor of the territory, was very unpopular, and those opposed to him and his regime prevailed upon Congress to pass the law providing for a constitutional convention, for the admission of Ohio as a state, and defining the state's boundaries to separate it from the remainder of the Ohio portion of the already-divided Northwest Territory.

The 1802 constitutional convention met in Chillicothe on November 1, 1802 and had drafted and adopted a Constitution before the month was ended. It was not submitted to the people for their approval, although there is little reason to believe it would not have been approved if it had been submitted. In establishing a framework of government for the new state, the Constitution shows clearly the unpopularity of St. Clair which, together with "the general distrust of executives during the post-colonial period, and . . . the Democratic tendencies of the Jeffersonians"¹ resulted in greatly restricting the Governor's powers. Under the Northwest Ordinance, for example, the Governor had an absolute veto over all legislative acts; the new Constitution gave him

¹Roseboom, Eugene H. Weisenburger, Francis P. "A History of Ohio" 2d Ed. Columbus: The Ohio Historical Society, 1967, p. 69.

no veto power whatever. He was stripped of practically all powers of appointment; these were to be exercised, instead, by the General Assembly.

Many excellent histories of Ohio review the content of the 1802 Constitution and the state government which resulted from its provisions, and these matters will not be discussed here. The Constitution formed the basis for government for nearly fifty years, during which time the state increased in population, in agriculture, in commerce and in industry to an extent not envisioned at the beginning of the century. The Constitution itself provided no method of amendment except by the calling of a convention, and the only convention call in the fifty-year period was rejected by the people in 1819. By the middle of the century, the serious deficiencies in the judicial system, the size of the state debt, and other matters led to such public dissatisfaction that the general Assembly again submitted to the electors the question of calling a convention, and this time it was approved. The convention of elected delegates began meeting in 1850 and completed its work in March, 1851. A new Constitution was drafted and approved by the voters at a special election in June, 1851.

The new Constitution was notable for greatly restricting the operations of the legislature without granting the Governor substantial additional powers. Additional state executive officials were provided for, to be elected by the people, and existing powers of appointment were taken away from the legislature. Judges were now elected rather than appointed by the legislature, and the judicial system was changed substantially. Among the limitations placed on the legislature were prohibitions against special laws conferring corporate powers, and a debt limit of \$750,000. Other limitations in the article on debt were designed to prohibit further state and local involvement in private enterprises such as railroads. General laws were required to be of uniform application, and retroactive laws were prohibited; the legislature was expressly forbidden to grant divorces or exercise judicial power. Taxes were required to be uniform on both real and personal property. The question of holding a convention to revise, alter or amend the Constitution was to be submitted to the people every 20 years (a Jeffersonian principle) but the new Constitution also provided for amendments to be proposed by $\frac{3}{5}$ of the members of the General Assembly and then submitted to the voters. A majority of those voting at the election was required for approval of the amendment. This latter provision made amending the Constitution still a difficult job, since those who voted at an election but failed to vote either for or against the constitutional amendment were, in effect, casting negative votes. Between 1851 and the next convention, in 1873-74,

the legislature had seven proposed constitutional amendments placed on the ballot, and all failed, although six of them received the approval of a majority of those voting on the amendment.

The 20-year convention was put to the voters in 1871 and was approved. At least part of the success in securing a favorable convention call in both 1871 and 1910 is attributable to the party ballot or straight party voting when the party has designated a position for or against a convention. Prior to 1912, few amendments were successful at the polls, and those that were adopted secured the necessary votes by the same method of voting.

Although the convention call was approved in 1871, the new Constitution submitted to the voters in 1874 was rejected. The 1851 Constitution, not yet successfully amended, continued to form the basis of government in Ohio. In the years following 1874, and prior to the 1912 convention, 25 amendments were submitted to the voters, and nine of these were adopted. Some of these were changes which had been proposed in the 1874 Constitution. The nine amendments adopted included providing for a Supreme Court Commission to "dispose of such part of the business on the dockets of the Supreme Court" as might be transferred to it by the Court; a major issue in calling the 1873-74 convention was the general lag in the judicial system, especially in the Supreme Court, in disposing of pending cases. The number of judges was increased, and other changes in the judicial system were effected by constitutional amendment. The date of the general election for state and county officers was changed from October to November, to coincide with the date for the election of federal officials. The famous—or infamous—"Hanna" amendment was adopted in 1903, giving each county at least one representative in the Ohio House of Representatives, and thus destroying the approximation of equal representation which had existed prior to that time. The Governor was given the veto power, also in 1903—a political issue which had been debated for 100 years in Ohio, ever since the 1802 Constitution failed to give the Governor this power. Double liability of corporate stockholders was prohibited by amendment in 1903, and in 1905 public bonds were exempted from taxation, and state and county elections were changed to the even-numbered year. The people defeated the convention call when it appeared on the ballot in 1891.

The convention call would have appeared automatically on the ballot again in 1911, but the General Assembly did not wait. The question was submitted to the voters in 1910 and approved. The following year the General Assembly passed the necessary enabling legislation, and delegates were elected to the convention, which took place

in 1912. The 1912 convention has been called "the most outstanding single event in the political evolution of the state of Ohio"¹ and the convention call was supported by diverse groups of people, advocating such "progressive" platforms as the initiative and referendum, recall of public officials, woman suffrage, compulsory workmen's compensation and other provisions designed to benefit workers, home rule for cities, direct primaries, and civil service. Business groups wanted a classified property tax, temperance groups wanted a liquor license system and other groups wanted other things. Political party endorsement of the convention call undoubtedly helped to increase the votes in favor.

The delegates to the 1912 convention determined to submit separate amendments to the people rather than an entirely new Constitution. Forty-one amendments were adopted by the convention and placed on the ballot; 33 of these were approved. The convention and the subsequent ratification of its results "took place in a mood of public excitement, the climax of the Theodore Roosevelt-Woodrow Wilson-Robert M. LaFollette Progressive era."² The progressives and the unions predicted the arrival of the millenium as a result of the approval of measures such as the initiative and referendum, assuring the people an opportunity to participate directly in the enactment of laws, and compulsory workmen's compensation, which shifted some of the burden of industrial injuries from the worker to the employer. Conservatives predicted disaster.

The 1851 Constitution was further changed in 1912 by the inclusion of a merit system requirement for employment in the civil service of the state, counties, and cities; by the enactment of Article XVIII, which provides for municipal home rule; by giving the Governor veto power over items in the appropriation act; by reducing from $\frac{2}{3}$ to $\frac{3}{5}$ the number required to override a gubernatorial veto; by establishing an eight-hour day on public works and authorizing laws regulating hours and working conditions, and fixing minimum wages for employees; by authorizing laws to encourage forestry and to conserve natural resources; and others. Among the defeated proposals were woman suffrage and removing the word "white" from the description of those entitled to vote; also defeated was the abolition of capital punishment.

A significant change to the amending procedures adopted in 1912 was enabling a majority of those voting on the question to amend the Constitution. That change, together with the provisions for the initiative and referendum, has resulted in

increasing both the number of constitutional amendments submitted to the people and the number adopted in the years since 1912. Prior to 1920, 14 initiated constitutional amendments were placed on the ballot; four of these were adopted. Use of the initiative tapered off over the years, but submission of amendments by the General Assembly increased. Since 1912, and prior to 1972, the General Assembly has submitted 79 proposals to amend the Constitution to the voters, and 53 of these have been adopted.

Significant changes in Ohio's Constitution since 1912 include: application of the uniform rule of taxation to real property only; property taxation limited to one per cent of true value without vote; income and inheritance taxes required to be distributed, in part, to local governments; authorization of debt for various purposes — capital improvements, industrial development, soldiers' bonuses; permitting counties to adopt charters and acquire "home rule" powers; reapportionment of both houses of the General Assembly following the one man-one vote decisions of the United States Supreme Court; major changes in the court system pursuant to the "modern courts" amendment adopted in 1968; prohibition of the use of motor vehicle related taxes for other than highway purposes; elimination of straight party voting by requiring that electors must vote individually for a candidate for office; creation of the state board of education; four-year terms for elected state executive officials and senators and limiting the Governor to two successive terms. This list is, of course, incomplete; many other changes have been adopted which may be just as significant to particular subjects as those listed. The liquor question, for example, generated controversy and issues of various types over the years, some adopted and some defeated. As a constitutional issue, however, it no longer seems as significant as it was in the past.

Twice since 1912 the voters have rejected the proposal to call a constitutional convention — in 1932 and again in 1952. In 1932, little interest seems to have developed for calling a convention in Ohio; both government and governed were preoccupied by economic conditions. Prior to 1952, a flurry of interest in the convention question was shown by the publication by The Stephen H. Wilder Foundation of Cincinnati of "An Analysis and Appraisal of the Ohio State Constitution, 1851-1951." Articles on various portions of the Constitution were prepared for this booklet by members of the Social Science Section of the Ohio College Association, and edited by Dr. Harvey Walker, of Ohio State University. The Ohio Program Commission created a Constitutional Convention Committee and printed a short history of the development and content of the Ohio Constitution written by its Executive Secretary, Lauren

¹Glosser, Lauren A., "Ohio's Constitution in the Making," Ohio Program Commission, 1950

²Downes, Randolph C., unpublished speech, February 1968, LWV, Toledo

A. Glosser. The history was designed "to give the average person an understanding of the Constitution." The *Ohio Bar*, in 1949 and 1950, carried articles concerning the calling of a convention, including one by Jefferson B. Fordham, Dean of the College of Law at Ohio State University, entitled "Some Aspects of Constitutional Revision in Ohio."

Groups such as the League of Women Voters and the Ohio Chamber of Commerce studied the Constitution and the convention question prior

to the 1952 vote, as they are doing today. The Wilder Foundation has published, in 1970, a new look at Ohio's Constitution, "State Government for Our Times" prepared by W. Donald Heisel, Director and Iola O. Hessler, Research Associate of the Institute of Governmental Research of the University of Cincinnati, and the Ohio Constitutional Revision Commission, pursuant to its legislative directive, is studying Ohio's much-amended 1851 Constitution and making recommendations for amendments to the General Assembly.

Summary of Recommendations

as of December 31, 1971

The Commission recommends to the General Assembly the following amendments to the Constitution of Ohio:¹

Article II	Section 4	Amend
	Section 5	Repeal
	Section 6	Amend
	Section 7	Amend
	Section 8	Repeal and Enact a New Section
	Section 9	Amend
	Section 11	Amend
	Section 14	Amend
	Section 15	Repeal and Enact a New Section
	Section 16	Amend
	Section 17	Repeal
	Section 18	Repeal
	Section 19	Repeal
	Section 25	Repeal
Section 31	Amend	
Article III	Section 1a	Enact
	Section 3	Amend
	Section 16	Amend
Article IV	Section 15	Repeal
	Section 22	Repeal
Article V	Section 2a	Amend

These recommendations all deal with the administration, organization, and procedures of the General Assembly, and include such matters as the process of enactment of laws, compatibility of membership in the General Assembly with simultaneous holding of other public office, annual and special sessions, designation of the presiding officers of both houses from the membership and assignment of duties other than presiding over the Senate to the Lieutenant Governor, payment of allowances for reasonable and necessary legislative expenses to members of the General Assembly, elimination of a requirement of extraordinary majorities in certain instances, and other similar matters.

Mr. John A. Skipton was chairman of the Legislative-Executive Committee whose study resulted in these recommendations. The committee

has been meeting at least monthly since March, and has consulted with many persons knowledgeable about the legislature and the legislative process in Ohio. The committee has also consulted texts and experts in the field of state legislatures, as well as examining the history of the Ohio constitutional provisions relating to the General Assembly and the practical operation of those provisions today. Committee proposals were distributed to groups which expressed an interest and public hearings were held to receive the opinions of those who had studied the subjects. Some of the proposals were modified after the receipt of such expert opinion and public testimony, and several proposals were reconsidered by the committee after their initial presentation to the Commission, in order to consider questions and problems raised by members of the Commission.

In more detail, the recommendations would do the following things:

- Rewrite sections dealing with procedures for enactment of laws and gubernatorial veto, including the following substantive changes:
 - eliminate the requirement that a bill must be read on three different days and require, instead, consideration of a bill on three different days
 - prohibit passage of a bill until it has been reproduced and distributed to members of the house in which it is pending, and require that copies of amendments be made available if requested

¹A joint resolution incorporating the recommendations was introduced in the Ohio Senate on January 5, 1972 (S. J. R. 24 sponsored by Senators Taft, Applegate, Dennis, Ocasek, Calabrese, Gillmor, Gray,

and Maloney) and in the Ohio House of Representatives on January 5, 1972 (H. J. R. 44 sponsored by Representatives Fry, Thorpe, White, Russo, Mallory and Quilter).

eliminate the requirement that bills which have been passed be signed "publicly" by the presiding officers and require, instead, that they simply be signed, and that the signing is for the purpose of certifying that the procedural requirements for passage have been met

- Permit payment of allowances for reasonable and necessary expenses to members of the General Assembly
- Repeal a section prohibiting persons guilty of a specific felony from holding public office, since persons guilty of felonies generally are excluded from office-holding because they are not electors, and prohibiting certain persons from membership in the General Assembly since such persons can easily be excluded under other constitutional or statutory provisions
- prohibit a member of the General Assembly from holding any other public office, whether "lucrative" or not
- Require the General Assembly to meet annually
- Permit the presiding officers of the two houses to call the General Assembly into special session (in addition to the authority, already in the Constitution, of the Governor to call special sessions)
- Permit adjournment of one house of the legislature for five days (instead of two) without the consent of the other
- Make corrective changes in sections dealing with filling vacancies and organizing each house
- Require both houses of the General Assembly to choose presiding officers from their own membership and designate the presiding officers, the President of the Senate and the Speaker of the House of Representatives. Presently, the Lieutenant Governor is the President (the presiding officer) of the Senate
- Require that the Governor and the Lieutenant Governor be elected as a team, and that the General Assembly provide by law for the joint nomination of candidates for Governor and Lieutenant Governor
- Permit the Governor to assign duties in the executive department to the Lieutenant Governor, and the legislature to prescribe powers for him
- Repeal section 15 of Article IV which requires a $\frac{2}{3}$ legislative majority to increase or decrease the number of judges and to establish courts other than the Supreme Court or the Court of Common Pleas. This section is considered obsolete and inconsistent with other powers of the General Assembly
- Repeal section 22 of Article IV which requires a $\frac{2}{3}$ legislative majority to create a commission to dispose of accumulated business of the Supreme Court. The last such commission was created in 1883 and the section is now considered obsolete

The following detailed description of each section includes:

1. The section as it presently reads and, next to it, the section as it would read if adopted by the General Assembly and the voters as proposed by the Commission.
2. The Commission recommendation, which shows a draft of the section with the material to be omitted stricken through with a horizontal line and new material shown in capital letters, conforming with Ohio bill drafting rules.
3. History and Background of Section.
4. Effect of Change.
5. Rationale of Change.
6. Intent of Commission.

RECOMMENDATIONS

ARTICLE II

Section 4

Present Constitution

No person holding office under the authority of the United States, or any lucrative office under the authority of this State, shall be eligible to, or have a seat in, the General Assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia.

Commission Recommendation

No member of the general assembly shall, during the term for which he was elected, hold any public office under the United States, or this state, or a political subdivision thereof; but this provision does not extend to notaries public or officers of the militia or of the United States armed forces.

No member of the general assembly shall, during the term for which he was elected, or for one year thereafter, be appointed to any public office under this state, which office was created or the compensation of which was increased, during the term for which he was elected.

Commission Recommendation

The Commission recommends the amendment of Section 4 of Article II as follows:

Section. 4. ~~No person holding office under the authority of the United States, or any lucrative office under the authority of this State, shall be eligible to, or have a seat in, the General Assembly~~ MEMBER OF THE GENERAL ASSEMBLY SHALL, DURING THE TERM FOR WHICH HE WAS ELECTED, HOLD ANY PUBLIC OFFICE UNDER THE UNITED STATES, OR THIS STATE, OR A POLITICAL SUBDIVISION THEREOF; but this provision shall DOES not extend to ~~township officers, justices of the peace, notaries public, or officers of the militia~~ OR OF THE UNITED STATES ARMED FORCES.

NO MEMBER OF THE GENERAL ASSEMBLY SHALL, DURING THE TERM FOR WHICH HE WAS ELECTED, OR FOR ONE YEAR THEREAFTER, BE APPOINTED TO ANY PUBLIC OFFICE UNDER THIS STATE, WHICH OFFICE WAS CREATED OR THE COMPENSATION OF WHICH WAS INCREASED, DURING THE TERM FOR WHICH HE WAS ELECTED.

The Commission recommends the concurrent repeal of Section 19 of Article II.

History and Background of Section

The proposed amendment of Section 4 of Article II includes a consolidation of Sections 4 and 19 of Article II. Section 4 originated in the Convention of 1851.

Section 19 was preceded by Section 20 of Article I of the Constitution of 1802, which provided:

No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased, during such time.

Section 19, as adopted in 1851, expanded the ban against a legislator's being appointed to civil office that was created or the emoluments of which were increased during his term to extend it "for one year" after term. The section as revised in 1851 provides as follows:

No Senator or Representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this State, which shall be created or the emoluments of which, shall have been increased, during the term, for which he shall have been elected.

Section 19 is patterned after Section VI of Article I of the United States Constitution, providing in part:

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

The compatibility of one public position with another has been the subject of innumerable Attorney General opinions and court decisions. Under Section 4 of Article II the Attorney General and the courts have had to make determinations of whether the holders of various public positions were eligible to membership in the General Assembly by deciding whether the other position held was "an office under the authority of the United States" or "a lucrative office under the authority of this state." The term "eligibility" for this purpose has been used interchangeably with the term "compatibility." The opinions and decisions have articulated various tests for determining whether a particular position is an office, as opposed to a "mere employment."

Often cited as a good exposition of what constitutes an office as opposed to employment is an 1892 Ohio Supreme Court decision, dealing not with Section 4 or 19 but with Sections 1 and 2 of Article X, then requiring all county officers to be elected. Being challenged was a statute providing for appointment by the clerk of courts of a stationery storekeeper for Hamilton county, giving him the duty to purchase and have charge of various office supplies, fixing an annual salary to be paid from the county treasury, and requiring bond. The Court held that this constituted an office to be filled by appointment and therefore conflicted with the then provisions of Article X. The Court stated the test in the following terms:

"It is not important to define with exactness all the characteristics of a public office, but it is safely within bounds to say that where, by virtue of law, a person is clothed, not as an incidental or transient authority, but *for such time as denotes duration and continuance, with independent power to control the property of the public, or with public functions to be exercised in the supposed interest of the people, the service to be compensated by a stated yearly salary, and the occupant having a designation or title, the position so created is a public office.*" *State ex rel. Brennan*, 49 Ohio St. 33, 38 (1892) (Emphasis added)

In addition to the office-employment distinction, Section 4 has called for the determination of whether a particular office under authority of the state was a "lucrative" office. Illustrative of the ambiguity of this term and the inconsistency involved in its application are the following opinion summaries. Statutory "compensation and mileage" for a delegate to a constitutional convention made the office a lucrative one. 1911 Ohio Atty. Gen. 49. Membership on a township board of education was termed a lucrative office, without citation or rationale. 1912 Ohio Atty. Gen. 11. The position of village health officer was lucrative because statutes authorized the village council to establish a salary and provided that if a municipality failed to establish a board of health, the state board could appoint such an officer and fix his salary. 1912 Ohio Atty. Gen. 10. Membership on village board of education is not a lucrative office because statute provided no compensation. 1912 Ohio Atty. Gen. 13. County coroner holds lucrative office because statutes provide for "fees." 1914 Ohio Atty. Gen. 687. Member of city board of education was not lucrative despite statutory provisions for "compensation"—not to exceed \$3 per meeting, so the legislative intent was to pay expenses only. 1955 Ohio Atty. Gen. 684.

Furthermore, when is an office established "under authority of this State"? In 1964 the Ohio Attorney General said that by force of Section 4 an appointive officer of a charter city is ineligible to serve as a member of the General Assembly because charter cities are authorized under Section 7 of Article XVIII. 1964 Ohio Atty. Gen. 879.

Early in its deliberations the committee concluded that so many occasions for interpreting Section 4 have arisen that a clarification of the section is in order. Among alternatives considered was a provision similar to one included in the new Illinois Constitution that provides:

No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for the term during which he is in attendance as a member of the General Assembly. Section 2(e) Art. IV, III. Const.

Another was to substitute the term "public office" as a more concise and better understood term than office "under the authority of" the state or federal government.

The committee favored the second alternative. Public employment would not be a disability. Public officers, whether or not compensated, could not serve in the General Assembly. In choosing a provision prohibiting members from holding "any public office under the United States, or this state or a political subdivision thereof," without further qualification, the committee decided that it was making more certain the eligibility of larger numbers of public servants.

As first proposed Section 4 of Article II read simply as follows:

NO MEMBER OF THE GENERAL ASSEMBLY SHALL, DURING THE TERM FOR WHICH HE IS ELECTED, HOLD ANY PUBLIC OFFICE UNDER THE UNITED STATES OR THIS STATE OR A POLITICAL SUBDIVISION THEREOF.

This version eliminated the exception under present Section 4, that the provision does not extend to "township officers, justices of the peace, notaries public, or officers of the militia."

Among questions raised in committee was whether the prohibition against eligibility to the General Assembly should apply to officers of the Armed Services reserves. The present exception for "officers of the militia" has been applied to the state militia. By statutory definition this term includes the Ohio National Guard but it does not include a commissioned officer in the United States Armed Forces.

A very recent federal court decision involved the prohibition of Article I, Section VI, Clause 2 of the United States Constitution that no person holding any office under the United States shall be a member of either house during his continuance in office. In *Reservists Committee to Stop the War v. Laird*, 323 F. Supp. 833 (1971) a federal district court held that this provision makes a member of Congress ineligible to hold a commission in the Armed Forces Reserve during his continuance in office. The specific question was whether a Reserve commission is an office under the United States, and Judge Gesell ruled that it was. The framers of the Constitution, he wrote, "erected an inflexible barrier against Congressmen holding or being appointed to any other office under the United States. Moreover, given the enormous involvement of Congress in matters affecting the military, the potential conflict between an office in the military and an office in Congress is not inconsequential." The judge declined to issue an order requiring the 118 Senators and Representatives holding commissions in the reserves, standby or retired, to give them up immediately and said that he expected his decision to be appealed.

The committee examined comparable provisions in other state constitutions and found a common exception from incompatibility provisions to be an officer in the national guard or in a reserve component of the armed

forces of the United States. Pa. Const. Art. 2, Sec. 6; Calif. Const. Art. IV, Sec. 13; Mich. Const. Art. 4, Sec. 8; New York Const. Art. 3, Sec. 7; Mo. Const. Art. 3, Sec. 12. The committee also concluded that its purpose in recommending amendment was to allow large numbers of public servants to aspire to the General Assembly. Failure to include a military exception, it reasoned, could impose unexpected burdens. The ultimate determination of the federal question involved in *Reservists Committee* may have a bearing upon the application of Section 4 of Article II of the Ohio Constitution if the exception is not made as explicit as possible. Furthermore, the committee could find no rationale for eliminating the present exception for officers of the militia. The Ohio Attorney General has ruled that the exception does not apply to an officer in the United States Armed Forces, and both the Attorney General and the Ohio Supreme Court have interpreted the express exemption for the *state* militia to mean that federal military office is incompatible under Section 4 and compatibility statutes.¹ The committee decided that an exception for the state militia that covers the Ohio National Guard but not reserve components is without justification. The committee's position is that if one class of officers is to be excluded, no logic applies to not excluding the other. Upon this basis the committee decided to expand the exception to include holders of commissions in the United States armed forces. The term "reserve component" was rejected as unduly restrictive in view of the possibility that reserves will be eliminated.

Present Section 4 also excepts application of its provisions to township officers, justices of the peace and notaries public. The Commission recommends elimination of the exemption of township officers as one without current grounds because the Commission considers the holding of *any* public office as incompatible with General Assembly membership. The term "justices of the peace" is clearly obsolete because the office has been abolished. Finally, the Commission has retained the exemption for notaries public. Notaries are defined by case law in Ohio as public officers for several other purposes,² and therefore the exception on this point is appropriate to retain.

Effect of Change

In recommending revision of Section 4 of Article II the Commission recognizes that it cannot eliminate the necessity of interpretation through application of the prohibition on a case by case basis. Therefore the Commission examined the tests that have been established by judicial decision in order to set forth in this commentary the attributes of public office that it has intended to adopt by use of the term.

A public officer, as defined by Ohio cases, means an individual who has been appointed or elected in a manner prescribed by law, has a designation or title given him by law, and exercises functions of government, concerning the public, assigned to him by law. 44 Ohio Jur. 2d *Public Officers* 484. A frequently reiterated test of an office is that the holder "is invested by law with a portion of the sovereignty of the state." Public office connotes one who is in a policy making position.

The *Brennan* case cited above emphasized that public office is characterized by *duration and continuance* of authority and *independent power to control public property*. 49 Ohio St. 33, 38. In that case, the Court noted further that "emolument, though an ordinary incident, is not a necessary one . . ." and cited holdings that membership on a board of health and presidency of a city council were offices although no pay attached to either.

An often cited case of 1857 held that the exercise of the power of appointment and removal of state officers and the filling of vacancies which may occur in state offices "is a high public function and trust, and not a

¹1917 Ohio Atty. Gen. Ops. 1087; *State ex rel. Cooper v. Roth*, 140 Ohio St. 377 (1942)

²*State ex rel. Atty. Gen. v. Adams*, 58 Ohio St. 612 (1898); *State ex rel. Smith v. Johnson*, 12 Ohio App. 2d 87 (1967)

private, or casual, or incidental agency; and the officers of a board so created by statute, to exercise these public functions, are vested with official state power and hold a public office." Here no fees, salary or other compensation attached to the exercise of the statutory duties, but the court disposed of argument on this point by holding, although compensation is a usual incident to office, "that it is a necessary element in the constitution of an office is not true." *State v. Kemon*, 7 Ohio St. 547, 549.

A bond and oath are generally though not always required as a pledge for the faithful performance of the duties of public office. The fact that no oath of office is prescribed does not preclude the position from being a public office.¹

The Commission also recognizes that the General Assembly will have the authority to define public office for purposes of the constitutional provision. When the legislature creates an office, by its description of that office it determines whether it is a public office. The General Assembly has by statute, defined certain types of positions prohibited to members of the legislature, and its authority to do so in the future would not be altered by the proposed revision of Section 4. Section 101.26 of the Revised Code, as last amended in 1965, reads as follows:

No member of either house of the general assembly except in compliance with this section, shall:

(A) Be appointed as trustee, officer, or manager of a benevolent, educational, penal, or reformatory institution of the state, supported in whole or in part by funds from the state treasury;

(B) Serve on any committee or commission authorized or created by the general assembly, which provides other compensation than actual and necessary expenses;

(C) Accept any appointment, employment, or office from any committee or commission authorized or created by the general assembly, or from any executive, or administrative branch or department of the state, which provides other compensation than actual and necessary expenses.

Any such appointee, officer, or employee who accepts a certificate of election to either house shall forthwith resign as such appointee, officer, or employee and in case he fails or refuses to do so, his seat in the general assembly shall be deemed vacant. Any member of the general assembly who accepts any such appointment, office, or employment shall forthwith resign from the general assembly and in case he fails or refuses to do so, his seat in the general assembly shall be deemed vacant. This section does not apply to members of either house of the general assembly serving an educational institution of the state, supported in whole or in part by funds from the state treasury, in a capacity other than one named in division (A) of this section, school teachers, township officers, notaries public, or officers of the militia.

The committee considered adding to the Constitution a provision to cover the general area of conflict between the private interests and public duties of members of the General Assembly. However, the committee concluded that the matter of ethics, if it should be incorporated in the Constitution, should be considered in the broader context of public officers generally and therefore recommended to the Commission that the topic of conflict of interest and ethics be referred to the committee of the Commission charged with studying public officers generally.

The second paragraph of Section 4 represents a transfer of the provisions of Section 19 of Article II in slightly revised form. The transfer is recommended because the subject matter of each section is related to the other. Section 19 prohibits appointment of a legislator to an office either

¹44 Ohio Jur. 2d *Public Officers*⁸

created or the "emoluments of which . . . have been increased" during his term. Modern constitutions commonly combine this prohibition with provisions governing compatability of office with membership in the legislative branch.

The Commission did not consider abandoning the one year rule in Section 19, prohibiting appointment to office for one year after term. It noted that the Citizens Conference on State Legislatures in its general recommendations for the States has favored the prohibition against a legislator's accepting appointment to other state office during the term for which elected and within a period of time after termination of his service.¹

The Commission has substituted the term "public office" for "civil office" in the portion of the section that derives from Section 19 because, military office having been excluded, definitions of the two terms have been interchangeable.

The provisions from Section 19 have been rewritten to make style changes consistent with other parts of the Constitution by the elimination of the "shall" construction where it is not used in a mandatory sense. The phraseology has been revised to make it consistent with the first paragraph of the section, and thus the expression that refers to "no senator or representative" has been changed to read, "no member of the General Assembly." The ambiguous and archaic term, "emoluments" has been replaced by the term "compensation." According to Black's Law Dictionary, the term "emolument" means profit arising from an office or employment and includes, besides salary or fees, any perquisite, advantage, or gain. In recommending the substitution of "compensation" for "emoluments," the Commission intends no change in the meaning of the restriction. The term "compensation" was selected as one that covers remuneration in salary or other form.

Rationale of Change

The Commission seeks to minimize the interpretation problems that have plagued the Ohio Attorney General and the Ohio courts in applying the prohibitions of Section 4 to specific fact situations. It has replaced ambiguous terminology with the more concrete, better understood term of "public office." The Commission recognizes that this term may be the subject of constitutional definition as the Commission continues its review of the Constitution. It has attempted in this Report to describe its understanding of the attributes of public office as articulated by judicial decision. The Commission further recognizes that the legislature by creating a particular public position determines whether that position is a public office. The Commission has rewritten Section 4 in such a way as to reduce the number of incompatible positions.

The Commission reasoned that Sections 4 and 19 of Article II belong together and suggests this change as a part of its general overhaul of Article II for the purpose of consistency and readability.

Intent of Commission

The revision of Sections 4 and 19 of Article II is essentially nonsubstantive. Purposes of the revision are corrective, as described in the discussion of the effect of the changes proposed and the rationale for their proposal. The wisdom of prohibiting public conflicts is acknowledged by the retention of these two sections in modified and combined form. The object of the Commission was to delete illogical and obsolete exceptions and terminology and facilitate interpretation of the substantive provisions.

¹Burns, John *The Sometime Governments*, Bantam Books, Inc., p. 166

ARTICLE II

Section 5

Present Constitution

No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this State; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the General Assembly, until he shall have accounted for, and paid such money into the treasury.

Commission Recommendation

Repeal

Commission Recommendation

The Commission recommends the repeal of Section 5 of Article II, which reads as follows:

Section 5. No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this State; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the General Assembly, until he shall have accounted for, and paid such money into the treasury.

History of Section and Background of Section

The second clause of this section, prohibiting membership in the General Assembly by persons holding public money until accounted for and paid, had its origin in Section 28 of Article I of the Ohio Constitution of 1802. The prohibition against the holding of any office by persons convicted of embezzlement was adopted by the Convention of 1851. The Debates of the Convention carry little debate on either clause and none that reveals the particular evils at which they may have been aimed.

Prohibitions comparable to Section 5 appear in a dozen or so state constitutions, but, as in Ohio, have a nineteenth, rather than a twentieth, century origin.

Effect of Change

In its deliberations the Commission faced two questions: (1) whether removal of Section 5 would enable the General Assembly to enact more restrictive measures for eligibility to office than are prescribed by this section; and (2) whether removal would deny to the General Assembly the power to restrict eligibility. It concluded that the repeal of Section 5 of Article II does not affect in either manner the authority of the General Assembly to prescribe eligibility standards for public office or membership in the General Assembly. Section 5 can be viewed as a redundancy in view of Section 4 of Article V, which recognizes the power of the General Assembly to prescribe qualifications for voting and for holding office, as follows:

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.

Moreover, Section 4 of Article XV provides:

No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector.

The General Assembly's authority to enact more restrictive qualifications has been recognized in statutes declaring as ineligible for elector status persons convicted of a felony in this state and persons who have been imprisoned in the penitentiary of any other state under sentence for the commission of a crime punishable in Ohio by penitentiary imprisonment.¹

Rationale of Change

Section 5 is considered unnecessary in view of other qualifications that have been established for holding public office and becoming a member

¹Sections 2961.01 and 2961.02 of the Revised Code

of the General Assembly and because of the inherent power of the legislature to regulate eligibility to office by statute, within the constitutional framework governing elector status. Presence in the Constitution of statutory material is undesirable because of the rigidity it affixes to the public policy of a past period in history. The essential framework of state government must be provided in the Constitution, but details are better left to experience and legislation.

It is within the province of the legislature to adopt statutory requirements in conformance with changing times and mores and to adopt specific definitions of the coverage intended. The inclusion of such statutory material in the fundamental law may, through judicial or even legislative interpretation of its terms, operate to restrict legislative competence to deal with qualifications for officeholding under unforeseen and unpredictable circumstances.

Intent of Commission

By proposing the removal of Section 5 of Article II as an obsolete provision on a subject better left to statute, the Commission does not intend to expand or limit the authority of the General Assembly to enact laws governing eligibility to office.

ARTICLE II

Section 6

Present Constitution

Each House shall be judge of the election, returns, and qualifications of its own members; a majority of all the members elected to each House, shall be a quorum to do business; but, a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law.

Commission Recommendation

Each House shall be judge of the election, returns, and qualifications of its own members. A majority of all the members elected to each House shall be a quorum to do business; but, a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law.

Each House may punish its members for disorderly conduct, and, with the concurrence of two-thirds of the members elected thereto, expel a member but not the second time for the same cause.

Each House has all powers necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

Commission Recommendation

The Commission recommends the amendment of Section 6 of Article II as follows:

Section 6. Each House shall be judge of the election, returns, and qualifications of its own members, ~~and~~ a majority of all the members elected to each House, shall be a quorum to do business; but, a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law.

EACH HOUSE MAY PUNISH ITS MEMBER FOR DISORDERLY CONDUCT, AND, WITH THE CONCURRENCE OF TWO-THIRDS OF THE MEMBERS ELECTED THERETO, EXPEL A MEMBER BUT NOT THE SECOND TIME FOR THE SAME CAUSE.

EACH HOUSE HAS ALL POWERS NECESSARY TO PROVIDE FOR ITS SAFETY AND THE UNDISTURBED TRANSACTION OF ITS

BUSINESS, AND TO OBTAIN, THROUGH COMMITTEES OR OTHERWISE, INFORMATION AFFECTING LEGISLATIVE ACTION UNDER CONSIDERATION OR IN CONTEMPLATION, OR WITH REFERENCE TO ANY ALLEGED BREACH OF ITS PRIVILEGES OR MISCONDUCT OF ITS MEMBERS, AND TO THAT END TO ENFORCE THE ATTENDANCE AND TESTIMONY OF WITNESSES, AND THE PRODUCTION OF BOOKS AND PAPERS.

History and Background of Section; Rationale of Change

Section 6 of Article II is included in the resolution for the sole purpose of organization and rearrangement of material in Article II.

The origins of both Sections 6 and 7 of Article II can be found in Section 8 of Article I of the Constitution of 1802, which provided:

The senate and house of representatives, when assembled, shall each choose a speaker and its other officers; be judges of the qualifications and elections of its members, and sit upon its own adjournments; two-thirds of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members.

In the development of the Commission's recommendation that the presiding officer of each house be elected from its membership, the committee at first considered an amendment to Section 8 of Article II for this purpose. The placement appeared logical—Section 8 presently requires that each house choose its own officers. However, when the proposed amendment to Section 8 was debated before the full Commission, it was recommitted to committee for further study because of conflicts with Section 16 of Article III, a section that designates the Lieutenant Governor as President of the Senate.

Upon reconsideration the committee re-examined Section 8 of Article II and decided that the section already contains provisions on two widely differing subjects. That portion of Section 8 dealing with choice of officers is logically related to the subject matter of Section 7 of Article II—organization of each house—and has been transferred in the amendment to Section 7 of Article II.

The remaining provisions of Section of Section 8—right of punishment and expulsion and powers to obtain information, through committee or otherwise—are further powers of each house, the subject of Section 6, and are therefore transferred from Section 8 to Section 6. It is to effect this transfer that Section 6 is included in the proposals.

Effect of Change

The effect of the change is to transfer provisions from Section 8 to Section 6. However, the Commission has included one language change in the portion transferred. Section 8 says that a member can be expelled upon "concurrence of two thirds." Whether this percentage is intended to be applied to total membership or to members present is not specified. In the transfer of this provision from Section 8 to Section 6 the Commission has interpreted the intent of this section to require concurrence of two-thirds of the membership.

Intent of Commission

The Commission intends no substantive change in proposing the inclusion of Section 6 of Article II in its recommendations. The revision came about because of the change affecting presiding officers. It represents a step toward improved organization of Article II.

ARTICLE II

Section 7

Present Constitution

The mode of organizing the House of Representatives, at the commencement of each regular session, shall be prescribed by law.

Commission Recommendation

The mode of organizing each house of the general assembly shall be prescribed by law.

Each house shall choose its own officers, including a presiding officer to be elected from its membership, who shall be designated in the senate as president of the senate and in the house as speaker of the house of representatives.

Each house may determine its own rules of proceeding.

Commission Recommendation

The Commission recommends the amendment of Section 7 of Article II as follows:

Section 7. The mode of organizing the House of Representatives, EACH HOUSE OF THE GENERAL ASSEMBLY at the commencement of each regular session, shall be prescribed by law.

EACH HOUSE SHALL CHOOSE ITS OWN OFFICERS, INCLUDING A PRESIDING OFFICER TO BE ELECTED FROM ITS MEMBERSHIP, WHO SHALL BE DESIGNATED IN THE SENATE AS PRESIDENT OF THE SENATE AND IN THE HOUSE AS SPEAKER OF THE HOUSE OF REPRESENTATIVES.

EACH HOUSE MAY DETERMINE ITS OWN RULES OF PROCEEDING.

History and Background of Section

The section in its present form was adopted as part of the Constitution of 1851. In the prior Constitution, Section 8 of Article I, in part a comparable provision, had read as follows:

The senate and house of representatives, when assembled, shall each choose a speaker and its other officers; be judges of the qualifications and elections of its members, and sit upon its own adjournments; two-thirds of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members.

Why the Convention of 1851 made this change and failed to include the Senate in its provision for organizing at the commencement of the session is clear when the original purpose of Section 7 is understood. Debates of the Convention reveal that a section was proposed to be added to the report on the legislative department as follows:

"On the first day of each session of the General Assembly, the Secretary of State shall call the House of Representatives to order, and preside until a Speaker be elected." 2 *Debates* 214 (Dec. 31, 1850). The original proposition to amend had been: "That it is expedient so to amend the constitution as that the Secretary of State, or some other State officer, elected by the whole people, shall preside over the House of Representatives at the commencement of each session, until they shall have elected a speaker." 1 *Debates* 71 (May 14, 1850).

Arguments in favor of creating the office of Lieutenant Governor in the Convention of 1851 were "that the Lieutenant Governor might be made an ex officio presiding officer of the Senate, thus securing a prompt and effective organization of that body." Reference was frequently made in debate over creation of the new office to "all the difficulty touching organization which had taken place in the past." The difficulty would be obviated in the House, it was assumed, by the proposal to have the Secretary of State preside for purposes of organization. One opponent of creating the new office of Lieutenant Governor argued in favor of having the Au-

ditor of State act in the same capacity as was proposed for the Secretary of State until the President of the Senate was elected. 2 *Debates* 301 (June 5, 1850).

When it came to considering the proposal for amending the report on the Legislative department by adding provision for organization of the House by having the Secretary of State preside, opponents argued that "the mode of organizing the Legislature should be left to that body." One spokesman for the opposition said that he understood that the idea had been borrowed from New York where by custom the Secretary of State acted in such a fashion but that the matter should be handled by legislative not constitutional enactment. 2 *Debates* 214 (December 31, 1850). A motion to have the "senior member present" call the house to order was defeated before the section, virtually in present form, was adopted as follows: "The mode of organizing the House of Representatives at the commencement of each session *and until a Speaker is elected*, shall be prescribed by law." The underlined language had been removed in the final report of the Convention's Committee on Revision, Arrangement and Enrollment, and there was no discussion on this point.

Effect of Change

The effect of the amendment proposed in the first paragraph of Section 7 of Article II is to include the Senate in a constitutional provision which presently authorizes only the House of Representatives to organize, and to remove a phrase concerning the time for organization that refers to the "commencement of each regular session."

The original omission of the Senate from Section 7 is historically understandable from a reading of the Debates of the Convention of 1851 on this point. However, because the General Assembly has long prescribed the mode of organizing both House and Senate by statute, supplemented by rule, this portion of the amendment of Section 7 is seen as one of logic, to conform practice to constitutional language. It is an amendment of form, not substance. The removal of the phrase relating to time of organization is also viewed as nonsubstantive. Its retention could only cause confusion when considered in conjunction with the recommendation for Section 8 of Article II that calls for two regular sessions of each General Assembly.

The second and third paragraphs of Section 7 are in capitals, indicating that they are new matter in this section. However, they represent in part a transfer of language from existing Section 8 of Article for purposes of rearrangement only, to give to the section and to Article II a more logical and consistent order. The transfer of the requirement that "each house shall choose its own officers" and the provision that "each house may determine its own rules of proceeding" come directly from present Section 8 because of their obvious relationship to the organization of each house. The remainder of present Section 8—having to do with the right to punish and expel members and setting forth powers to obtain information—are further powers of each house, the subject of present Section 6, and are in logical sequence to the present provisions of that section. The transfer of this portion of present Section 8 to proposed Section 6 is accordingly made a part of the Commission's recommendation.

Part of the new matter in proposed Section 7 is new. The Commission recommends expansion of the requirement that each house shall choose its own officers by defining officers as including "a presiding officer to be elected from its membership, who shall be designated in the Senate as President of the Senate and in the House as Speaker of the House of Representatives."

The Commission recommends that Article II be amended in such a way that the presiding officers of the General Assembly would have the authority to convene that body in special session. Such authority would be

in addition to the Governor's authority. A new Section 8, containing some present language of Section 25 on the subject matter of legislative sessions, conferring legislative power to convene in special session and placing the power to do so in "presiding officers" is therefore a corollary of this part of the recommended revision of Section 7. Section 7 would define the term "presiding officers" for the purposes of the power proposed in new Section 8.

Section 16 of Article III makes the Lieutenant Governor the President of the Senate, gives him a vote when the Senate is equally divided, and provides that in case of his absence or impeachment or when he shall exercise the office of Governor, the Senate shall choose a President pro tempore. The Commission recommends amendment of Section 16 of Article III to give the Lieutenant Governor duties in the executive rather than the legislative department of state government, as indicated in the recommendation affecting and commentary following Section 16 of Article III below.

In transferring that portion of Section 8 dealing with the authority of each house to choose its own officers, the proviso "except as otherwise provided in this Constitution" has been deleted by the Commission in this recommended revision of Section 7 because that proviso was intended to apply to the designation of the Lieutenant Governor as President of the Senate. Debates of the Convention of 1851 reveal that on January 3, 1851 the proviso was added by amendment, and the originator of the motion explained his motion as follows: "It was to avoid the inconsistency which would exist by the adoption of this Report, in view of a provision made in the Report of the Committee on the Executive Department, which had been agreed upon in Committee of the Whole, and probably would be agreed upon in the Convention, namely that the Lieutenant Governor would be president of the Senate, thereby constituting him one of the officers of the Senate, which might create some confusion." It was in order to avoid that confusion that he had offered the amendment. The amendment was adopted. 2 *Debates* 240 (January 3, 1851). The proviso should come out if the Commission's recommendations with regard to the Lieutenant Governor are followed.

Rationale of Change

Two reasons exist for the substantive change proposed for Section 7 of Article II. One relates to the ability of the legislative branch to control its own destiny. In the House of Representatives the membership selects the Speaker. Why should not the Senate select its presiding officer? For the Lieutenant Governor to play a legislative role is viewed as detracting from legislative independence of the executive branch of government. One commentator has written:¹

"The use of the Lieutenant Governor as the president of the state senate or of a unicameral legislature seems to be an imitation of the example of the national government. This intermingling of legislative and executive functions often has proven unsatisfactory, at both national and state levels. It should be clear that if the talents of an administrator are required, they will be found only by fortunate accident in one whose experience lies entirely outside of that field. On the other hand, the presidency of a legislative body requires legislative talents, and the president should be chosen by that body from among its own members by a majority vote."

A second reason for recommending that the presiding officer of the Senate be elected from its membership is the Commission's proposal for joint nomination and election of the Governor and Lieutenant Governor. In the Commission's view, election of the Lieutenant Governor with the

¹Walker, Harvey, "Office of the Lieutenant Governor: Authority and Responsibility," 42 *Social Science* 142 (June 1967)

Governor recognizes his position as an executive official of state government and supports its opposition to retaining administrative leadership by an executive official over one body of the legislative branch of government. The trend toward tandem election and toward greater recognition of the Lieutenant Governor as understudy of the Governor is discussed in the commentary following the Commission's corresponding recommendations for amendment of Article III.

Discussion about this amendment by the Committee disputed the long accepted parallel between state senates over which the Lieutenant Governor commonly presides and the United States Senate over which the Vice-President presides, noting the differences in make-up of the two bodies and the disparity of purpose served by the federal and state senates. Each state has two senators in the United States Senate, regardless of size; there is nothing equal about the constituency represented by any Senator. On the other hand, the Ohio Senate must be apportioned just as the Ohio House, and Senators must represent equal constituencies. Giving the executive a deciding vote in the Ohio Senate even though so circumscribed that it is seldom used, really means that the will of a majority of the people as represented in that body could be thwarted by an outside vote.

Intent of Commission

By its proposed amendments to the first and third paragraphs of Section 7 the Commission intends to make no substantive change in present practices. The third paragraph is transferred from present Section 8 with no change other than grammatical.

By its proposed amendment to the second paragraph of this section the Commission intends retention of the authority of each house to choose its own officers, but without exception in the Senate. Its rationale for recommending that the presiding officer be a member elected from that body is more fully developed in commentary following proposed new Section 8 that would allow presiding officers together to convene the legislature in special session. If the portion of Section 7 requiring that the presiding officer of the Senate be elected from its membership is not adopted, the Commission would recommend that Section 8 specify the officers by name.

ARTICLE II

Section 8

Present Constitution

Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds expel a member, but not the second time for the same cause; and shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

Commission Recommendation

The Commission recommends the repeal of present Section 8 and the enactment of a new Section 8 of Article II to read as follows:

Section 8. EACH GENERAL ASSEMBLY SHALL CONVENE IN FIRST REGULAR SESSION ON THE FIRST MONDAY OF JANUARY IN THE ODD-NUMBERED YEAR, OR ON THE SUCCEEDING DAY IF THE FIRST MONDAY OF JANUARY IS A LEGAL HOLIDAY, AND IN SECOND REGULAR SESSION ON THE SAME DATE OF THE FOL-

Commission Recommendation

Repeal and enact new section

Each general assembly shall convene in first regular session on the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year. The governor or the presiding officers of the general assembly may convene the general assembly in special session by a proclamation and shall state in the proclamation the purpose of the session.

LOWING YEAR. THE GOVERNOR OR THE PRESIDING OFFICERS OF THE GENERAL ASSEMBLY MAY CONVENE THE GENERAL ASSEMBLY IN SPECIAL SESSION BY A PROCLAMATION AND SHALL STATE IN THE PROCLAMATION THE PURPOSE OF THE SESSION.

History and Background of Section

This new Section 8 bears no resemblance to present Section 8 of Article II. Section 8 will be a vacant slot if the General Assembly adopts the Commission's recommendations to transfer the portions of existing Section 8 having to do with the right of each house to choose its own officers and determine its own rules of proceeding to Section 7 (see commentary following Section 7) and the portion having to do with punishment and expulsion of members and powers to obtain information, through committees or otherwise, to Section 6. Section 8 is presently composed of two widely differing subjects, and the disparity is removed by separating the two subjects and combining them with related provisions. The subject matter covered by proposed new Section 8 is partly covered by existing Section 25 of Article II, a section that calls for the commencement of regular sessions biennially.

1. Annual Sessions

The present provision for legislative sessions originated in Section 25 of Article I of the Constitution of 1802, which provided:

The first session of the general assembly shall commence on the first Tuesday of March next; and forever after, the general assembly shall meet on the first Monday of December, in every year, and at no other period, unless directed by law, or provided for by this constitution.

Innumerable pages of the Debates of 1851 were devoted to reporting discussion about the question of annual versus biennial sessions. Opponents of biennial sessions argued that the proposal before the Convention weakened too rapidly the powers of legislation, making the executive and judicial branches of government too strong and the legislative body entirely too weak. Proponents urged that the limitations adopted elsewhere in the legislative article empowered the legislature to enact only some general laws, and hence, "there is no necessity of meeting here every year, for they would not have a large amount of business to transact."¹ Public opinion, it was asserted, favored the change. Too much legislation and too frequent alterations of the law were evils that other delegates wanted to combat by adopting a biennial plan. Much of the general debate about restricting the legislature centered about the question of how frequently it should be empowered to assemble. The Convention adopted and the present Constitution carries the following provision:

Section 25. All regular sessions of the General Assembly shall commence on the first Monday of January, biennially. The first session, under this constitution, shall commence on the first Monday of January, one thousand eight hundred and fifty-two.

The General Assembly began meeting biennially in the odd-numbered years following a 1905 constitutional amendment which changed the election of state and county officers to even-numbered years. The Ohio Supreme Court held that by implication Article XVII amended the provision of Section 25 calling for regular sessions to begin in the even-numbered years. *State v. Creamer*, 83 Ohio St. 412 (1911). The new provision for biennial sessions was disregarded by the Ohio General Assembly from 1857 to 1895 by the use of the adjourned session or recess device.

One of the changes effected by state constitutional revision of the 19th century was the shift from annual to biennial sessions. By 1900 43 states, including Ohio, had abandoned annual sessions, most by constitutional

directive. Currently the pendulum is swinging the other way. The Book of the States for 1970-71 reported 26 states as meeting annually. By statute the Ohio General Assembly has provided for annual meetings since 1968.¹

2. Special Sessions

The only provision in the Ohio Constitution for the calling of a special session is Section 8 of Article III, empowering the Governor to convene the General Assembly in special session and limiting the business to be transacted to that named in the call or subsequent gubernatorial proclamation.

A number of states in recent years by constitutional amendment have allowed the legislature to call itself into session after adjournment. The Book of the States for 1970-71 reports 17 states as having such a provision. Both of the newest states in the union, Alaska and Hawaii, make provision for the legislature to convene itself in special session.

In its recent evaluation of the 50 state legislatures, the Citizens Conference on State Legislatures postulated that legislatures must be functional, accountable, informed, independent and representative as necessary conditions of fulfilling their responsibilities. On the criteria of independence Ohio received a rank of 40, putting it among the bottom 10 states in terms of the control of its legislature over its own activities and independence of the legislative branch from the executive branch of government. The C.C.S.L. Report points out: "At least 33 of the 50 state legislatures must be faulted on the question of independence because they lack the power to call a special session."²

Effect of Change

Proposed new Section 8 of Article II calls for annual sessions of the General Assembly and by calling for the convening in "first regular session" in the odd-numbered years and "in second regular session" in the following year specifies that *one* General Assembly convenes in *two* regular sessions. The practice of numbering General Assemblies would not be changed. The proposal does not restrict the subject matter of business to be transacted in either session.

Present Section 25 of Article II fixes the "first Monday of January" as the day for the commencement of regular sessions. Because New Year's Day periodically falls or could be celebrated on the first Monday of January, the proposed section authorizes a meeting on the succeeding day if the first Monday is a legal holiday. In such case the second session would commence on the same *date* in the following year.

Proposed new Section 8 also permits either the Governor or the presiding officers of the General Assembly to call a special session by proclamation and requires the purpose of the session to be set forth in the proclamation. By stipulating that the calling of a special meeting be by "proclamation" the Commission favors encouraging specificity in the call without constitutionally restricting the subject matter of business to be transacted.

Rationale of Change

1. Annual Sessions

The Commission favors constitutional recognition of annual sessions because it would conform the Constitution to current practice. Annual sessions are recommended by most authorities in state government and the legislature itself seems to recognize the necessity of meeting every year. The Commission regards the proposal as an important element in

¹Section 101.01 of the Revised Code

²Citizens Conference on State Legislatures, Report on an Evaluation of the 50 State Legislatures (1970) p. 23.

strengthening the power of the legislative branch and insuring its ability to deal with problems as they arise.

Constitutional recognition of annual sessions does not require that unfinished business carry over from the first to the second session of a single two-year legislature. The Commission confronted this question in its deliberations and concluded that the General Assembly would have the continued authority to determine its own policy on this matter. Whether the provision would require a *sine die* adjournment at the end of the first year and a new beginning in the second year was another point of inquiry. The section is regarded as sufficiently broad for the General Assembly to make the determination. Specifically rejected were suggestions to limit the second year session to fiscal or other matters. The Commission did not favor constitutional limits on time or subject matter.

Under present Section 25 regular sessions commence on the first Monday of January, and the Constitution makes no exception for the years in which New Year's Day is celebrated on the same day. The committee considered and rejected an alternative calling for session commencement on the second Monday in January to avoid the holiday meeting because the Constitution otherwise provides that the Governor and other state officers take office on the second Monday in January. In deference to the dignity of the separate branches the committee felt that the gubernatorial inauguration and convening of the legislature should not fall on the same day. If the legislature meets a week earlier, it is organized and ready to transact business on the day that the Governor takes office. From a practical standpoint joint convention and inauguration would cause problems of congestion and detract from public exposure and recognition of the legislature.

The committee preferred the certainty of setting a regular time for convening to the suggestion in the Model State Constitution and elsewhere that the legislature meet annually "as provided by law."

2. Special Sessions

Questions examined by the committee in its deliberations on this topic were the following: (1) Should the power to call a special session be exclusive for the Governor, be exclusive for the General Assembly, or be given to both? (2) Should the scope of a special session be limited? (3) If the General Assembly is to have the power to call a special session, by what means is the power to be exercised?

Some states require that a given percentage of the membership must sign a petition or otherwise call for or acquiesce in a request for a special session. Alaska and Hawaii permit the calling of special sessions upon request of two-thirds of the membership, and the Model State Constitution adopts such an approach by authorizing legislative leaders to call a session at the written request of a majority of the members of each house. Kansas, Maryland, and North Carolina adopted variations of this plan by amendments passed in 1970.

The new Illinois Constitution, effective July 1, 1971, allows leaders of the two houses to issue a proclamation for the calling of a special session and includes no petition or request requirements as a prerequisite for the call. This broad power had the greatest appeal to the committee, which reasoned that the power of the Governor and of the legislature through its leadership should be equal. The only limitation favored was that a proclamation be issued, stating the purpose of the call, and this was favored to encourage specificity.

The Commission discussed at length the term "presiding officers" to designate leadership for purposes of the call. The membership agreed that presiding officers of both houses would have to concur before the call could be made.

Upon re-referral of the special session proposal from the Commission to the committee to explore further the suggestion that a percentage of the membership rather than the leaders be entitled to call a special session, the committee reviewed the subject and rejected any such amendment. It reasoned that with constitutionally recognized annual sessions special sessions would tend to be even more extraordinary. The constant circulation of a proliferation of petitions requesting special sessions for various purposes could be an undesirable result of such a plan. At other times the necessity of obtaining enough signatures in a short period of time could unduly complicate or delay the call. For these reasons the committee upon reconsideration again favored permitting legislative leaders to act unrestricted by petition or request requirements. The Commission adopted the proposal when it was presented a second time, with the reservation understood that if the General Assembly does not adopt its recommendation concerning the election of the Senate's presiding officer from among its membership (See Section 7 of Article II), the provision in Section 8 for the calling of special sessions "by presiding officers" must be amended. The necessary amendment would authorize the convening of special sessions by the Speaker of the House of Representatives and the President pro tempore of the Senate.

Intent of Commission

The purpose of Section 8 is to combine the Commission's recommendation for constitutional recognition of annual sessions and to give the power to the General Assembly to convene itself in special session. The object of the section is to allow the General Assembly unlimited authority to deal with problems as they arise. The Commission does not necessarily contemplate any procedural revision of the present practice of meeting annually. Its recommendation allowing the legislature to convene should the need arise implements the Commission's thesis that the General Assembly should operate under powers that enable it to conduct its business in an orderly and efficient manner. The Commission acted upon the conviction that there are no well-founded arguments to support artificial restrictions on the legislature's ability to meet and consider the problems of the people of this state. The legislature no less than the Governor should have the power to assess the necessity of convening to act upon such problems.

ARTICLE II

Section 9

Present Constitution

Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either House, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed, in either House, without the concurrence of a majority of all the members elected thereto.

Commission Recommendation

The Commission recommends the amendment of Section 9 of Article II as follows:

Section 9. Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either House, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed, in either House, without the concurrence of a majority of all the members elected thereto.

Commission Recommendation

Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either House, the vote shall be taken by yeas and nays, and entered upon the journal.

The portion of this section which is stricken through is not recommended for repeal; rather, it is suggested that this portion be transferred to a new Section 15 which consolidates all the procedures for enactment of laws.

History and Background of Section

A journal keeping provision similar to that contained in Section 9 may be found in the constitutions of almost all of the states. The United States Constitution requires each house to keep a journal of its proceedings "and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal." U. S. Const. Art. I, Sec. V. Similarly, the Model State Constitution would allow a voice vote on the passage of bills unless a record vote is demanded by one-fifth of members present.

Some people favor adding a state equivalent of the Congressional Record because of the need for greater indicia of legislative intent. Debate transcripts meet such a need and allow the news media to report legislative activities more accurately. In the proposed New York Constitution of 1967 (not adopted) each House was to be required to keep a journal and a transcript of its debates, the former to be published and the latter to be available to the public. The Illinois Constitution of 1971 adopted this very plan. Ill. Const. Art. IV, Sec. 7 (b). Another approach is that taken by the Constitution of Puerto Rico, which requires the keeping of journals and, in addition, the publication of legislative proceedings "in a daily record in the form determined by law." P. R. Const. Art. III, Sec. 17.

However, in an annotation to the Illinois Constitution of 1870, prepared for the Illinois Constitution Study Commission, authors George D. Braden and Rubin G. Cohn caution: "It is certainly sound to advocate that verbatim transcripts of debates be made and, at the very least, that they be available to the public, but it should not be necessary to put the requirement into the Constitution."

The Commission has adopted this view in not proposing further revision of Section 9 of Article II to incorporate a provision mandating verbatim transcripts. Such a matter is considered to be more properly the subject of statute or rule. Such minute procedural details improperly clutter the fundamental law. The practice and mode of recording legislative intent are better governed by the needs and practices of a particular era.

The provision of Section 9 which reads "and no law shall be passed, in either House, without the concurrence of a majority of all the members elected thereto" is transferred to Division (A) of a new Section 15, and is discussed there.

Effect of Change

Section 9 calls for the keeping of legislative journals and in a second compound sentence provides for entering yeas and nays in the journal. The final portion of that sentence prohibits the passage of laws in either house without the concurrence of a majority of the members elected thereto. This final independent clause is clearly divisible from the provisions that precede it and relates more closely to the subject matter of proposed new Section 15, a composite of procedural rules governing the enactment of legislation. The effect of amending Section 9 is to transfer the majority vote requirement to Section 15 without change in substance. As amended, Section 9 will continue to require that journals be kept, that yeas and nays be entered therein at the desire of any two members, and that the yeas and nays on the passage of every bill be journalized.

Rationale of Change

The amendment proposed is one of rearrangement only, so that related procedural rules appear in one section of Article II. The deleted provision

is discussed in commentary following Section 15, where procedural rules are consolidated.

The remainder of Section 9 has to do with the keeping of journals and votes shown therein. According to the Book of the States for 1970-1971, in at least 40 states daily journals are required, and in seven of these states a daily journal is maintained in typed form, followed by the printing of a journal at the close of the session. This source also reveals that in most states with daily journals, the daily journal shows all votes taken. Some states reported a requirement that all votes on final passage be shown. Roll calls on final passage are shown as constitutionally mandated in most states. Some states call for a roll call on final passage at the request of a fraction of the members present in each house. Six states reportedly require the request of $\frac{1}{5}$ of the members present, two, $\frac{1}{10}$ of the members present, and one, $\frac{1}{6}$ of that number.

It is noted above that the Model State Constitution allows voice votes by providing, "A record vote, with yeas and nays entered in the journal, shall be taken, on any question on the demand of $\frac{1}{5}$ of the members present." M.S.C. Sec. 4.12. Five of the states that report a mandatory roll call on request of $\frac{1}{5}$ of members present are shown as also requiring the journalization of yeas and nays upon a $\frac{1}{5}$ demand.

Section 9, on the other hand, requires the taking of yeas and nays and their entry in the journal on the passage of every bill. The committee saw no reason to change the present rule. In its view, legislative records should minimally show roll call votes on legislation, and the rule is better maintained as a constitutional requirement than relegated to rule.

Intent of Commission

The intent of the Commission in recommending amendment of Section 9 is the consolidation of constitutional rules governing passage of bills in proposed Section 15. Such a consolidation necessitates moving a portion of Section 9 to the new section, and Section 9 is readily divisible for this purpose. No change in the meaning or application of Section 9 is intended.

ARTICLE II

Section 11

Present Constitution

A vacancy in the Senate, or a vacancy in the House of Representatives occurring after May 7, 1968, for any cause, including the failure of a member-elect to qualify for office, shall be filled by appointment by the members of the Senate or the members of the House of Representatives, as the case may be, who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant. A vacancy occurring before or during the first twenty months of a Senatorial term shall be filled by temporary appointment, as provided in this section, for only that portion of the term which will expire on the thirty-first day of December following the next general election occurring in an even-numbered year after the vacancy occurs, at which election the seat shall be filled by the electors as provided by law for the remaining, unexpired portion of the term, the member-elect so chosen to take office on the first day in January next following such election. No person shall be appointed to fill a vacancy in the Senate or House of Representatives, as the case may be, unless he meets the qualifications set forth in this Constitution and the laws of this state for the seat in which the vacancy occurs. An appointment to fill a vacancy shall be accomplished, notwithstanding the provisions of section 27, Article II of this Constitution, by the adoption of a resolution, while the Senate or the House of Representatives, as the case may be, is in session, with the taking of the yeas and nays of the members of the Senate or the House of Representatives, as

Commission Recommendation

A vacancy in the Senate or in the House of Representatives, for any cause, including the failure of a member-elect to qualify for office, shall be filled by election by the members of the Senate or the members of the House of Representatives, as the case may be, who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant. A vacancy occurring before or during the first twenty months of a Senatorial term shall be filled temporarily by election as provided in this section, for only that portion of the term which will expire on the thirty-first day of December following the next general election occurring in an even-numbered year after the vacancy occurs, at which election the seat shall be filled by the electors as provided by law for the remaining, unexpired portion of the term, the member-elect so chosen to take office on the first day in January next following such election. No person shall be elected to fill a vacancy in the Senate or House of Representatives, as the case may be, unless he meets the qualifications set forth in this Constitution and the laws of this state for the seat in which the vacancy occurs. An election to fill a vacancy shall be accomplished, notwithstanding the provisions of section 27, Article II of this Constitution, by the adoption of a resolution, while the Senate or the House of Representatives, as the case may be, is in session, with the taking of the yeas and nays of the members of the Senate or the House of Representatives, as the case may be, affiliated with the same political party as the person last elected

Present Constitution—Continued

the case may be, affiliated with the same political party as the person last elected to the seat in which the vacancy occurs. The adoption of such resolution shall require the affirmative vote of a majority of the members of the Senate or the House of Representatives, as the case may be, entitled to vote thereon. Such vote shall be spread upon the journal of the Senate or the House of Representatives, as the case may be, and certified to the Secretary of State by the clerk thereof. The Secretary of State shall, upon receipt of such certification, issue a certificate of appointment to the person so appointed and upon presentation of such certificate to the Senate or the House of Representatives, as the case may be, the person so appointed shall take the oath of office and become a member of the Senate or the House of Representatives, as the case may be, for the term for which he was so appointed.

Commission Recommendation

The Commission recommends the amendment of Section 11 of Article II as follows:

Section 11. A vacancy in the Senate, or a ~~vacancy~~ in the House of Representatives ~~occurring after May 7, 1968~~, for any cause, including the failure of a member-elect to qualify for office, shall be filled by ~~appointment~~ ELECTION by the members of the Senate or the members of the House of Representatives, as the case may be, who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant. A vacancy occurring before or during the first twenty months of a Senatorial term shall be filled TEMPORARILY by ~~temporary appointment~~ ELECTION as provided in this section, for only that portion of the term which will expire on the thirty-first day of December following the next general election occurring in an even-numbered year after the vacancy occurs, at which election the seat shall be filled by the electors as provided by law for the remaining, unexpired portion of the term, the member-elect so chosen to take office on the first day in January next following such election. No person shall be ~~appointed~~ ELECTED to fill a vacancy in the Senate or House of Representatives, as the case may be, unless he meets the qualifications set forth in this Constitution and the laws of this state for the seat in which the vacancy occurs. An ~~appointment~~ ELECTION to fill a vacancy shall be accomplished, notwithstanding the provisions of section 27, Article II of this Constitution, by the adoption of a resolution, while the Senate or the House of Representatives, as the case may be, is in session, with the taking of the yeas and nays of the members of the Senate or the House of Representatives, as the case may be, affiliated with the same political party as the person last elected to the seat in which the vacancy occurs. The adoption of such resolution shall require the affirmative vote of a majority of the members ~~of~~ ELECTED TO the Senate or the House of Representatives, as the case may be, entitled to vote thereon. Such vote shall be spread upon the journal of the Senate or the House of Representatives, as the case may be, and certified to the Secretary of State by the clerk thereof. The Secretary of State shall, upon receipt of such certification, issue a certificate of ~~appointment~~ ELECTION to the person so ~~appointed~~ ELECTED and upon presentation of such certificate to the Senate or the House of Representatives, as the case may be, the person so ~~appointed~~ ELECTED shall take the oath of office and become a member of the Senate or the House of Representatives, as the case may be, for the term for which he was so ~~appointed~~ ELECTED.

History and Background of Section

Prior to November 7, 1961 Section 11 read as follows:

All vacancies which may happen in either House shall, for the unexpired term, be filled by election, as shall be directed by law.

Commission Recommendation—Continued

to the seat in which the vacancy occurs. The adoption of such resolution shall require the affirmative vote of a majority of the members elected to the Senate or the House of Representatives, as the case may be, entitled to vote thereon. Such vote shall be spread upon the journal of the Senate or the House of Representatives, as the case may be, and certified to the Secretary of State by the clerk thereof. The Secretary of State shall, upon receipt of such certification, issue a certificate of election to the person so elected and upon presentation of such certificate to the Senate or the House of Representatives, as the case may be, the person so elected shall take the oath of office and become a member of the Senate or the House of Representatives, as the case may be, for the term for which he was so elected.

After November 7, 1961 and prior to May 7, 1968 the procedures set forth in the present section applied only to vacancies in the Senate. Vacancies in the House were to be "filled by election as shall be directed by law."

The section as it presently stands was adopted by the electorate on May 7, 1968 by a vote of 1,020,500 for and 487,938 against.

Effect of Change

This recommended revision of Section 11 of Article II is corrective only, to make the phraseology of the section consistent with other sections of the Constitution. The Ohio Constitution calls for various majorities for legislative action on specific matters. For example, passage of bills over gubernatorial veto, under Section 16 of Article II, calls for a vote of "three-fifths of the members elected" to each house. Emergency laws under Section 1d of Article II require a two-thirds vote. Most such provisions call for a specified vote of the members "elected" to each house. None takes into account the filling of vacancies by "appointment," a term used in present Section 11 of Article II. The "appointment" there provided involves action by the members of the house affiliated with the same political party as the person last elected to the vacant seat. The substitution of "election" for "appointment" and "elected" for "appointed," makes no substantive change in Section 11, calling for collective action by vote, and does eliminate possible conflict between the section as it stands and at least ten other constitutional provisions. See present sections 1d, 6, 9, 16, 23, and 29 of Article II, sections 15 and 17 of Article IV, and sections 1 and 2 of Article XVI. Some provisions make reference to a particular majority without specifying the number to which it applies, and the Commission has in such instances recommended change for further consistency. For example, Section 8 of Article II calls for concurrence of "two-thirds" of each house for expulsion of a member without specifying the number to which the two-thirds applies, and the Commission has recommended in the proposed new Section 6 (to which it recommends transfer of the provision) that the percentage apply to "members elected."

Rationale of Change

The purpose of this amendment is corrective. It is one of form, not substance, to eliminate inconsistencies between the definition of election and appointment by using a more precise term in the provision prescribing procedures for the filling of legislative vacancies, and to forestall litigation that could result from various conflicts in language. These possible conflicts result from an amendment of Section 11 in 1961 and 1968 that did not include other sections which make reference to "elected" members without taking into account the new procedures for filling of legislative vacancies by "appointment."

The Commission considered but rejected the less detailed approach of the Model State Constitution which would provide: "When a vacancy occurs in the legislature, it shall be filled as provided by law." M. S. C. Sec. 4.06. It concluded that because the voters of Ohio had upon two occasions so recently adopted the present procedures, the Commission could assume that they represent the wishes of the electorate.

Intent of Commission

By proposing the substitution of terms in Section 11 of Article II the Commission intends no substantive change in the procedures involved in filling legislative vacancies and regards the change as one of "house-keeping" only.

ARTICLE II

Section 14

Present Constitution

Neither House shall, without the consent of the other, adjourn for more than two days, Sundays excluded; nor to any other place than that, in which the two Houses shall be in session.

Commission Recommendation

Neither House shall, without the consent of the other, adjourn for more than five days, Sundays excluded; nor to any other place than that in which the two Houses are in session.

Commission Recommendation

The Commission recommends the amendment of Section 14 of Article II as follows:

Section 14. Neither House shall, without the consent of the other, adjourn for more than ~~two~~ FIVE days, Sundays excluded; nor to any other place than that in which the two Houses shall be ARE in session.

History and Background of Section

The only difference between the language of Section 14 of Article II and its predecessor provision found in Section 15 of Article I of the Constitution of 1802 is that the original provision did not exclude Sundays. The section without the exception was included verbatim in the original report of the 1851 Convention's Committee on the Legislative Department, and the amendment to insert the language "Sundays excluded" was adopted without recorded debate.

The prohibition against either house adjourning for more than a certain number of days without consent of the other is a common provision in state constitutions with time periods on adjournment varying. Of forty-nine states with bicameral legislatures, all but two limit the power of one house to adjourn without consent of the other. As in present Section 14 of Article II, three days is a common limitation. Such restrictions are apparently intended to preclude the leadership of either house from acting in an irresponsible manner with reference to adjournment.

Effect of Change

The proposed revision of Section 14 of Article II would expand from two to five days the time period for which either house of the General Assembly could adjourn without consent of the other house.

Rationale of Change

The reasons for recommending expansion of the constitutional time period for which either house may not adjourn without consent are twofold. In the first place, the practice is to meet in first formal session of the week on Tuesday. In order to comply with the constitutional rule both houses must hold "skeleton" sessions on Monday. Such sessions may include as few as two members, although the journal records a session and might be subject to challenge on this point. Moreover, a requirement that is being observed through the device of a technicality deserves reconsideration. When the general assembly adopts procedures to circumvent the literal language of the Constitution the credibility is affected. The pattern of Monday holidays further complicates this token compliance with the constitutional requirement.

Secondly, the Commission holds that each house ought to have greater flexibility in following its own schedule. In recent years legislative operations have illustrated the desirability of having one house in session for a period of time to consider a major issue while the other house may wish to recess for that time. With the legislature meeting annually, whether by adjourned sessions under the present provisions of Section 25 of Article II or in regular annual sessions as proposed in new Section 8 (which the Commission recommends as a substitution for present Section 25), separate

operations of the two houses without restrictive constitutional limitations appear more likely to be essential.

In its deliberations, the committee considered eliminating the section as archaic. However, it recognized some value to retention of the constitutional provision if revised to accord with practice. Relegation to rule would give more opportunities for irresponsibility.

The only other proposed change in the section, from "shall be" to "are" is not substantive. It is intended to make the section speak in the present tense and thus to conform with the drafting rules followed by the General Assembly.

Intent of Commission

The Commission views this proposed revision of Section 14 of Article II as purely administrative, to conform the Constitution to modern day practices. The General Assembly frequently adjourns on Thursday and does not wish to return until the following Tuesday. If the limit upon the time for which one house could adjourn without consent of the other were extended from two to five days the need for unnecessary skeleton sessions on Monday would be eliminated. The Commission favors reasonable limitation upon independent action and prefers constitutional certainty on this point to coverage by legislative rule.

ARTICLE II

Section 15

Present Constitution

Bills may originate in either House; but may be altered, amended, or rejected in the other.

Commission Recommendation

Repeal and enact a new section

(A) The general assembly shall enact no law except by bill, and no bill shall be passed without the concurrence of a majority of the members elected to each house. Bills may originate in either house, but may be altered, amended, or rejected in the other.

(B) The style of the laws of this state shall be, "Be it enacted by the general assembly of the state of Ohio."

(C) Every bill shall be considered by each house on three different days, unless two-thirds of the members elected to the house in which it is pending suspend this requirement, and every individual consideration of a bill or action suspending the requirement shall be recorded in the journal of the respective house. No bill may be passed until the bill has been reproduced and distributed to members of the house in which it is pending, and every amendment been made available upon a member's request.

(D) No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed.

(E) Every bill which has passed both houses of the general assembly shall be signed by the presiding officer of each house to certify that the procedural requirements for passage have been met and shall be presented forthwith to the governor for his approval.

Commission Recommendation

The Commission recommends the enactment of new Section 15 of Article II to read as follows:

Section 15. (A) THE GENERAL ASSEMBLY SHALL ENACT NO LAW EXCEPT BY BILL, AND NO BILL SHALL BE PASSED WITHOUT THE CONCURRENCE OF A MAJORITY OF THE MEMBERS ELECTED TO EACH HOUSE. BILLS MAY ORIGINATE IN EITHER HOUSE, BUT MAY BE ALTERED, AMENDED, OR REJECTED IN THE OTHER.

(B) THE STYLE OF THE LAWS OF THIS STATE SHALL BE, "BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO."

(C) EVERY BILL SHALL BE CONSIDERED BY EACH HOUSE ON THREE DIFFERENT DAYS, UNLESS TWO-THIRDS OF THE MEMBERS ELECTED TO THE HOUSE IN WHICH IT IS PENDING SUSPEND THIS REQUIREMENT, AND EVERY INDIVIDUAL CONSIDERATION OF A BILL OR ACTION SUSPENDING THE REQUIREMENT SHALL BE RECORDED IN THE JOURNAL OF THE RESPECTIVE HOUSE. NO BILL MAY BE PASSED UNTIL THE BILL HAS BEEN REPRODUCED AND DISTRIBUTED TO MEMBERS OF THE HOUSE IN WHICH IT IS PENDING, AND EVERY AMENDMENT BEEN MADE AVAILABLE UPON A MEMBER'S REQUEST.

(D) NO BILL SHALL CONTAIN MORE THAN ONE SUBJECT, WHICH SHALL BE CLEARLY EXPRESSED IN ITS TITLE. NO LAW SHALL BE REVIVED OR AMENDED UNLESS THE NEW ACT CONTAINS THE ENTIRE ACT REVIVED, OR THE SECTION OR SECTIONS AMENDED, AND THE SECTION OR SECTIONS AMENDED SHALL BE REPEALED.

(E) EVERY BILL WHICH HAS PASSED BOTH HOUSES OF THE GENERAL ASSEMBLY SHALL BE SIGNED BY THE PRESIDING OFFICER OF EACH HOUSE TO CERTIFY THAT THE PROCEDURAL REQUIREMENTS FOR PASSAGE HAVE BEEN MET AND SHALL BE PRESENTED FORTHWITH TO THE GOVERNOR FOR HIS APPROVAL.

This recommendation includes the repeal of present sections 15, 17, and 18 of Article II and the amendment of Sections 16 and 9 of Article II.

The proposed new section is a composite of the procedural requirements for bill passage as contained in existing sections 9, 15, 16, 17, and 18 of Article II. The format proposed follows modern constitutions in combining in one section all elements pertaining to enactment of legislation. *History and Background of Division (A)*

Division (A) contains the requirement not presently specifically enunciated in the Ohio Constitution that no law shall be enacted except by bill. Such a provision is commonly included in legislative articles. Its inclusion in division (A) represents the addition of new language, but the concept of enactment of laws by bills is not new. Present Section 16 of Article II refers to the passage of "every bill" and sets forth the procedure to be followed "before it becomes a law."

Present Section 9 of Article II is the source of the second clause of division (A) of Section 15 that "no bill shall be passed without the concurrence of a majority of the members elected to each house," and the corresponding amendment to remove this provision from Section 9 is included in the recommendations.

The portion of Section 9 relevant to this discussion originated in 1851. The purpose of prohibiting passage without majority concurrence was stated in debates:

"It would be potent to stop the absquatulation of members which had of late years been carried on to so great an extent under the name of 'pairing off.' The people lived for thirty years under the old Constitution without any necessity arising for a provision like this, requiring a majority of all the members elected to pass a bill, because, during all that time, members felt it to be their duty to be always in their seats attending to the interests of the State. But, within a few years past, 'reform' has been introduced into the modes of legislation as well as into social life, and that reform was, when a member wished to be absent, for his pleasure or on business, to 'pair off' by which means they have felt licensed to go home during a session and neglect their duties.¹

¹ *Debates* 229 (May 29, 1850)

Effect of Change

In the transfer of the clause from Section 9 to this new Section 15 a slight language change was made, for purposes of grammatical construction only. Section 9 provides, "no *law* shall be passed, in *either* House, without the concurrence of a majority of all the members elected thereto." As transposed, the provision reads: "no *bill* shall be passed without the concurrence of a majority of the members elected to *each* house." Emphasis added in both instances for the sake of comparison.) No change in meaning is effected.

Rationale of Change

The intent of moving the described clause from Section 9 to new Section 15 is to consolidate the constitutional provisions that affect legislative procedure in the enactment of legislation. Testimony considered by the committee suggested adding an exception to the provision calling for a majority vote to read "except as otherwise provided in this Constitution." The suggestion noted that Section 1(d) of Article II calls for a two-thirds vote of all members for the passage of emergency laws. However, in proposing the incorporation of language from present Section 9 to proposed Section 15 the committee intended no substantive change. Section 9 contains no exception for special majorities provided in other parts of the Constitution. The committee reasoned that Section 9 sets a minimum vote for the passage of bills and is not inconsistent with Section 1(d) and other special sections calling for extraordinary majorities in specific situations. The committee was reluctant to add exceptions to the language as it now stands. References to other parts of the Constitution are better made as specific as possible. The introduction of this exception could introduce an unintended ambiguity.

The second sentence of Division (A) of Section 15 comes without change from existing Section 15 of Article II.

The latter derived without alteration from Section 16 of Article I of the Constitution of 1802. The only recorded discussion of this section in the Debates of 1851 was of an amendment, adopted without dispute, that removed a proviso, initially offered to the delegates of the 1851 Convention, "that all bills providing for the raising of revenue or for any appropriation of public money, shall originate in the House of Representatives."

History and Background of Division (B)

Division (B) of Section 15 comes without change from existing Section 18 of Article II.

The latter came without change from Section 18 of Article I of the Constitution of 1802. Debates of 1851 reveal no discussion of its purpose or merits.

Effect of Change

No change in meaning results from the transposition.

Rationale of Change

The reason for transferring this language is to effect a consolidation of all bill enactment procedures into one section.

History and Background of Divisions (C) and (D)

Divisions (C) and (D) of proposed Section 15 are based on procedural requirements that are presently incorporated in Section 16 of Article II, but the revision in one instance represents a sweeping departure from the present constitutional rules, as explained below.

Section 16 as adopted in 1851 read as follows:

Section 16. Every bill shall be fully and distinctly read, on three different days, unless, in case of urgency, three-fourths of the house,

in which it shall be pending, shall dispense with this rule. No bill shall contain more than one subject, which shall be clearly expressed in its title; and no law shall be revived, or amended, unless the new act contains the entire act revived, or the section or sections amended; and the section or sections so amended, shall be repealed.

Amendments in 1903 and 1912 affected only the second paragraph of the section, having to do with gubernatorial veto, and are discussed in commentary following amended Section 16.

Like present Section 16 of Article II, predecessor Section 17 of Article I of the Constitution of 1802 required that every bill be read on three different days in each house unless a three-fourths vote dispensed with the rule. The Convention of 1851 added the one subject requirement and the provision that "no law shall be revived, or amended, unless the new act contain the entire act revived, or the section or sections amended; and the section or sections so amended, shall be repealed," the prohibition against re-enactment and repeal by reference.

Debates of the Convention of 1851 disclose that the object of the prohibition was to provide some means by which the people might know what was law and what was not law. Discussion alluded to the then common practice of repealing "at one general sweep" all laws coming within the purview of the repealing act, without specific reference.

Effect of Change

Divisions (C) and (D) of Section 15 are divisible into three discussion topics for purposes of explaining some changes made in the proposed procedural section. These topics are : (1) the Commission's recommended variant of the three-reading rule; (2) the Commission's recommended retention of the one subject rule; and (3) the Commission's recommended retention of the prohibitions against re-enactment and repeal by reference.

Division (C) of Section 15 represents a deliberate departure from the "three reading" rule. It substitutes a requirement that the bill be "considered" by each house on three different days, subject to a two-thirds rather than three-fourths vote to dispense with the requirement. Moreover, every individual "consideration" of a bill (or action suspending the requirement) would have to be recorded in the journal. The terms "considered" and "consideration" are necessarily ones for which the legislature must provide a definition, but the committee reasoned that the term "reading" raises a similar problem of interpretation. Division (C) does not attempt a detailed description of every legislative action taken because such a description would be not only difficult but would unduly restrict the legislature in its application of the requirement.

As an added restriction upon undue haste and as an added element of assuring that legislators be familiar with measures that they are voting upon, the Commission incorporated a corollary to its proposed new three day rule by providing:

"No bill may be passed until the bill has been reproduced and distributed to members of the house in which it is pending, and every amendment been made available upon a member's request."

The one subject rule and prohibitions against re-enactment and repeal by reference from present Section 16 have been transferred to Section 15 with but one inconsequential style change—to divide the compound sentence that contained both subjects into two sentences.

Rationale of Change

Division (C) of Section 15 rejects the traditional "three reading" rule because, like the drafters of the Model State Constitution, the Commission regards it as an archaism. The present requirement that bills be "fully and distinctly read" on three different days is virtually never observed in

Ohio. Constitutional provisions governing bill reading are standard in state constitutions. However, although they appear in varying forms in the constitutions of the 50 states, a 1970 report of the Council of State Governments reveals that the practice of reading bills in full is extremely rare.

The original reasons for the three reading rule appear to have been the absence of printing and the inability of some members of state legislatures to read and therefore become informed about matters on which they were obliged to vote. These reasons no longer exist, so that in the view of some, reading requirements could be removed entirely from state constitutions. Neither the United States Constitution nor the Model State Constitution mentions "reading." However, because of the desirability of maintaining safeguards against hasty consideration of legislation, the committee hesitated to recommend abandonment of a requirement calling for action upon three separate days.

To conform fundamental law with practice, a number of states have revised the requirement by specifying that the reading shall be "by title only." The committee rejected such a solution, however, as the continuation of an outmoded requirement in only slightly more palatable terms. The rationale for the original rule, in its view, is to check undue haste in the enactment of legislation, and it sought a more realistic provision for requiring that three days elapse between introduction of a bill and its passage.

The committee chose to require that the bill be "considered." This term was challenged in deliberations as being too broad. The committee's response, upon consideration of the objection, was that the term is one that will necessitate legislative interpretation, in much the same fashion as the term "reading" has required legislative application. The Constitution does not require that a bill be read before the full house, as opposed to a committee, and the legislature has had to make a determination by rule as to the meaning of the constitutional rule.

Another approach, adopted in New York and endorsed by the Model State Constitution, is to provide that no bill becomes law unless printed and available to members, in final form, three days prior to final passage. New York Const. Art. III section 14; Model State Constitution, section 4.15.

Comment attached to the 6th edition of the Model State Constitution provision notes that undue haste is checked by the requirement that the printed bill be on members' desks for three days before final legislative action. Such a rule, at first glance, has appeal. However, the M.S.C. solution ignores floor amendments, and the New York provision contains the specific prohibition that "upon the last reading of a bill, no amendment thereof shall be allowed." Floor amendments, for purposes of conforming bills with the rules of code revision, as well as for substantive purposes, are common in Ohio. To enable them to continue to be used would require some procedure for special leave to dispense with the requirements of such a provision as is incorporated in the Model State Constitution, and it is for this reason that the New York and Model approach were rejected. Instead, a modified form was proposed to the Commission as follows: "No bill may be passed until the bill and each amendment thereto has been reproduced and distributed to members of the house in which it is pending."

Some members of the Commission felt that as originally proposed the requirement was unnecessarily far-reaching in view of the number of amendments, corrective and otherwise, that might be involved, and that adequate protection for the right to be informed would be afforded by revising the language in the form proposed, guaranteeing reproduction and distribution of all bills before passage and the availability of every amendment upon a member's request.

The committee in its deliberations acknowledged that the bill distribution requirement could cause some delays. It concluded, however, that a minimum guarantee should be inserted in the Constitution to protect the right of a member upon demand to have before him the text of a measure under consideration. The relative ease with which material can be reproduced and distributed keeps such a requirement from being an unduly burdensome one. The frequency of large floor amendments is not great. Finally, the possibility of delay is a small price to pay for constitutional recognition of the right to be informed. As amended, the section limits amendment distribution to a member's request, and in this form the Commission views the requirement as both fair and feasible.

To the suggestion offered in submitted testimony that the same protection was better incorporated in legislative rule, the committee responded that if the protection is in the Constitution, it cannot be suspended, and a minority of one could always invoke the rule by raising a point of order.

The final substantive change has to do with the vote required to dispense with the constitutional requirement for consideration on three different days. The Ohio Constitution includes provisions for extraordinary majority votes for various specific purposes, including the requirement for a two-thirds vote to pass emergency bills and to dispense with public hearings, a three-fifths vote for overriding vetoes, and the three-fourths vote required in Section 16 to dispose with the complete reading of bills. The committee in its review of these various provisions considered recommending a standard or uniform extraordinary vote. The two-thirds vote comes close to a standard provision in Ohio and elsewhere. No justification was apparent for the larger percentage requirement that attaches to the three reading rule, and the committee decided to recommend its lowering to accord with other special majorities. See Section 16 for its rationale with respect to retaining the requirement for a three-fifths vote to override gubernatorial vetoes instead of recommending the raising of such a requirement to a two-thirds vote.

The requirement that no bill shall contain more than one subject which must be expressed in the title, as provided by present Section 16, has been retained in Division (D). This requirement can be found in most constitutions. The New England states are an exception to the general rule. Purposes of the rule, according to one commentator¹ are threefold: (1) to prevent logrolling, a practice in which unrelated matters are combined in one bill for the sole purpose of gaining the necessary support to secure their passage; (2) to prevent the attachment of "riders" to popular measures; (3) to facilitate legislative procedures. If only the third purpose were involved, suggests this author, the matter could clearly be relegated to legislative rule.

The commentator cited above points out that, while such provision has been invoked in hundreds of law suits across the country and over the years, only rarely has legislation been invalidated under the "one subject" or "title" provision. Courts have broadly construed "subject," finding that if an act has "unity," the purpose of the one subject rule is satisfied. Some courts have insulated laws from attacks on this score by invoking the "enrolled bill" theory, refusing to impeach a legislative act by extrinsic evidence. Ohio courts in many instances over the years have termed the "one subject" and "title" provisions as "directory" and not "mandatory" and have, in this manner, repudiated challenges to legislation based upon the requirements of Section 16. *State ex rel. Attorney General v. Covington*, 29 Ohio St. 102 (1876).

Testimony submitted to the Commission challenged the justification of retaining in the Constitution provisions which courts have termed "directory only." In *Gibson v. State*, 3 Ohio St. 475 (1854) the Ohio Su-

¹ Rudd, Millard H., "No Law Shall Embrace More Than One Subject," 42 Minn. L. Rev. 250 (1958)

preme Court refused to look behind an enactment to establish compliance with the three reading rule, holding the provision merely directory. The one subject rule was similarly classified in *Pim v. Nicholson*, 6 Ohio St. 176 (1876).

In considering various constitutional limitations on legislative procedure in the Ohio Constitution the committee did not reject *a priori* all provisions which the courts have labeled as directory. Courts have recognized some provisions as having been intended to operate upon bills in their progress through the General Assembly and have acknowledged that such rules are important as rules of proceeding although the only safeguard against their violation is regard for an oath to support the Constitution. The committee's response to suggested removal of such requirements was that in some instances they provide a minimum guarantee for an orderly and fair legislative process. Their inclusion in the Constitution instead of legislative rule is in part, at least, for the protection of a temporary minority whose rights may not be suspended by a majority willing to disregard traditional procedures.

Conceding that the one subject rule is indirect and partial in its effect upon logrolling (by not affecting the practice where two or more bills are used for the same purpose) the Minnesota commentary concludes that: "(1) the rule must still be considered a significant deterrent to successful logrolling because, by forcing a coalition to use more than one bill, the rule increases the probability that the coalition will not attain all its objectives; (2) there is greater strength to the rule when it is in the constitution and not merely the subject of rule; and (3) although involved in much litigation, the one subject rule has rarely been the sole issue and has succeeded in invalidating an insignificant amount of legislation." The Commission concluded that the rule should be retained for these reasons.

The requirement that the one subject of a bill "be clearly expressed in its title" is generally included with the one subject rule. Reportedly having its origin in a 1795 act of the Georgia legislature, deceptively titled and allowing substantial grants of public property to private persons, the rule has been said to serve two purposes. These are: (1) to prevent surprise and fraud; and (2) to invalidate all or portions of legislation misleadingly titled. The rule has been termed "directory" in Ohio and has not invalidated legislation. However, the Commission favored retention of the rule as a minimum guarantee of a fair legislative process.

Finally, the committee discussed at length the purpose served by the provision that "no law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed."

The purpose of such a provision is to prevent passing laws or repealing laws by reference only. The reader cannot know with certainty under such circumstances what is the law and what is not the law. The Debates of the 1851 Convention reveal a great deal of struggle over the phraseology. The object stated (see History and Background above) was to preclude uncertainty, particularly on the part of an inexperienced or untrained person. The first try was apparently not considered sufficiently explicit. It read, "no law shall be revised or amended, by reference to its title, but in such case the act or part of an act revised or amended, shall be engrafted into the new act and published at length."

Legislative draftsmen have come to understand the variety of purposes served by the final language, adopted in 1851 and retained in proposed Section 15. If a law has expired by its terms or has been repealed or declared unconstitutional, it cannot be made viable by referring to it without setting forth the exact language of the law or former

law. A question raised in committee discussion involved the possible inconsistency of using the term "law" and the term "act" in the same sentence. However, if the provision were changed to read "no act shall be revived" for purposes of consistency, an unintended result might follow. One meaning of the section is now regarded as clear—that it prevents the revitalizing of a lapsed appropriation item. A substitution of "act" for "law" could be interpreted as meaning that the prohibition would not continue to apply to the carrying forward of a particular appropriation item, prior to the lapsing of the appropriation "act." The revival portion of the section applies to appropriation acts and other special acts, in addition to acts containing codified sections, and it is for this reason that the prohibition on revival and amendment is written in terms of no "law." Moreover, the use of "act" in the existing section is considered similarly specific and unambiguous.

The required inclusion of the "section or sections amended" in the new act applies in some instances to Revised Code sections and in other instances to sections of special acts that carry no Revised Code sectional designations. For example, in an amendment to an appropriation act, the entire section that contains the item to be revised must be set forth in full. The same rule applies to an uncodified section in any special act. An act that enacts or amends Revised Code sections always contains a Section 1, or enacting section, in addition to the codified sections. A subsequent act that revises one or more of the Revised Code sections need not contain that Section 1. In such case the entire act is not being amended, but only the *law* which happens to be the Revised Code section or sections revised, and they must be repeated in full.

The committee concluded that interpretation problems relative to this provision have long been considered settled. Other state constitutions were examined, but none appeared to state the prohibitions with greater clarity. Therefore, the only change made in transposing the one subject rule and the reference by amendment provision is one of style, to divide the two thoughts into two separate sentences.

History and Background of Division (E)

The origin of the requirement that bills be signed is the provision in Section 17 of Article I of the Constitution of 1802 that "every bill having passed both houses, shall be signed by the speakers of their respective houses." The provision in its present form was embodied in Section 17 of Article II of the Constitution of 1851, reading as follows:

The presiding officer of each House shall sign, publicly in the presence of the House over which he presides, while the same is in session, and capable of transacting business all bills and joint resolutions passed by the General Assembly.

At one time the signing by presiding officers was regarded as essential to the bill's authenticity. *State v. Kiesewetter*, 45 Ohio St. 254 (1887) is still cited as authority for the proposition that Section 17 is mandatory, not merely directory, as Ohio courts have found other constitutional procedural limitations to be. The bill in question in that case had received the necessary majority and was intended to be passed. However, it had not been signed by either presiding officer nor filed with the Secretary of State. The Court viewed the signing of bills by presiding officers in open session as certifying procedural performance, and authenticating the act. Such a step was regarded as essential to reliance on the enrolled bill.

In the *Kiesewetter* case the Ohio Supreme Court distinguished cases from Kansas and Nebraska, where the enactment in question lacked the

required signature of a presiding officer but had been signed by the Governor and enrolled in the office of the Secretary of State. In Ohio, at that time, the Governor took no part in the approval or authentication of laws. The Nebraska case involved language identical with section 17 and achieved an opposite result. *Cottrell v. State*, 9 Neb. 125 (1879). The Kansas constitutional provision required that bills and resolutions passed by both houses "shall, within two days thereafter, be signed by the presiding officers and presented to the Governor." Noncompliance with this provision did not invalidate the statute challenged in *Leavenworth County v. Higgenbotham*, 17 Kan. 62 (1876). A contrary result, reasoned the court in the Kansas case, would mean that the "legislature may pass a bill over the veto of the Governor, but they cannot pass a bill over the veto (so to speak) of the Lieutenant Governor so as to make the bill become a valid law."

In *Ritzman v. Campbell*, 93 Ohio St. 245 (1915) the Ohio Supreme Court adopted the view that the enrolled bill is conclusive as to the contents of an act where a one word variance was claimed. The Court reiterated the rule that courts will consult the legislative journals as appropriate evidence whenever an issue of fact is raised as to whether any bill received less than the constitutional majority required. The latter requirement, said the Court, is a "mandatory" one. Refusing to look beyond the enrolled bill for the purpose of establishing the fact that a discrepancy in content existed between the enrolled bill and the bill as it might appear on inspection of the journals, the Court reasoned, in part, that an enrolled bill is accorded conclusive effect because of the attestation of the presiding officers of the General Assembly. Among constitutional provisions referred to in the opinion as mandatory were the requirements of Section 17 for the signing of bills by presiding officers.

Now, however, the Governor participates in the legislative process, and the *Ritzman* dicta does not take this into account. The preferable rule, in the Commission's view, is not one that invalidates legislation for failure of a presiding officer to sign, but one that uses the signatures of the presiding officers as a mere certificate to the Governor that the act has been considered the requisite number of times and been adopted by the constitutional majority. An incorporation of the requirements of Section 17 for the signing by presiding officers with provision for approval by the Governor (as is found in proposed Section 15) would vary the rule and rationale of the two cited cases.

Effect of Change

The Commission recommends the repeal of Section 17 of Article II and the enactment in its place of a provision, inserted as Division (E) of procedural Section 15, that calls for signing by presiding officers and specifies that the purpose of signing is "to certify that the procedural requirements for passage have been met."

Rationale of Change

The committee regarded the act of signing bills as essentially administrative in nature and not one that need be witnessed. At one time many provisions existed in the law requiring a ritual of execution—the sealing of contracts and other documents, for an example. They came into being at a time when few could read and have little validity today. Many have been eliminated as unnecessary.

Consequently, the committee recommended to the Commission the elimination of the provision for public signing before the house when in session and capable of transacting business. Present practices do not

accord with the requirements of Section 17 that the house before which bills be signed be "capable of transacting business" in that bills are routinely signed before a "skeleton" session. This means that frequently only one other member is present when the presiding officer signs bills.

Testimony given to the Commission agreed with the committee's thesis. Sections dealing with legislative procedure, said the League of Women Voters, are better stated in terms of broad principles with specifics left to statutory law. An out-of-date provision such as Section 17 should be revised or eliminated. Certainly a provision that is not being followed to the letter of the fundamental law deserves examination, and if the purposes for which it was adopted are no longer being met, it should be amended or eliminated.

The committee at first proposed to the Commission an amendment to Section 17 that would have simply allowed the presiding officer to sign a bill at any place and time during session. The provision for signing bills while the respective house "is in session" was retained for the purpose of requiring that all bills be signed before adjournment *sine die*. The committee pointed out that it sought to prevent the practice common elsewhere of delayed signing, where months may elapse after the end of a legislative session before bills are transmitted to the Governor for approval.

Some witnesses giving testimony to the Commission questioned the meaning of the term "session." A definition problem arises because "session" can refer to the daily assembly of a legislative body or it can mean anytime before adjournment *sine die*. The latter meaning was intended by the committee in its initial presentation. Wrestling with this dual meaning problem upon re-referral, the committee examined anew its view of the purpose of having bills signed. It was agreed that the act serves a certification and not an authentication function. Concern over the possibility that a bill might be lost in the legislative process suggested that a journalization requirement would be appropriate but that recording in the journal could be required regardless of whether the act of signing occurred in the chamber. The committee noted that such a ministerial act as the signing of legislation is not covered by the Model State Constitution.

The Commission agreed with the committee's second presentation of the provision governing signing, embodied in Section 15 and stating the purpose served by the act. References to "session" had been eliminated, and the Commission adopted an amendment calling for presentation "forthwith" to the Governor for his approval.

The signing of bills is regarded as the final step in the legislative process before an enacted bill is transmitted to the Governor. For this reason Section 15 ends with the provision for signing, and Section 16, with amendments proposed, covers the procedure involved after a bill has been so transmitted.

Intent of Commission

The intent of the Commission in proposing enactment of Section 15 is to consolidate procedural steps involved in the passage of legislation, modernize outdated requirements, improve style, clarify the purpose to be served by each step involved in the legislative process, and accord constitutional requirements with current practices.

The Commission does not contemplate drastic changes in procedure as the result of these changes. The presiding officer will be able to sign bills in his office instead of being required to sign them in chamber. From a practical standpoint, this is the only major change foreseen.

ARTICLE II

Section 16

Present Constitution

Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill.

Commission Recommendation

If the governor approves an act, he shall sign it, it becomes law, and he shall file it with the secretary of state.

If he does not approve it, he shall return it with his objections in writing to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to the house of origin vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to the second house vote to repass it, it becomes law notwithstanding the objections of the governor, and the presiding officer of the second house shall file it with the secretary of state. In no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all cases of reconsideration the vote of each house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal.

If a bill is not returned by the governor within ten days, Sundays excepted, after being presented to him, it becomes law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it becomes law unless within ten days after such adjournment, it is filed by him, with his objections in writing, in the office of the secretary of state. The governor shall file with the secretary of state every bill not returned by him to the house of origin that becomes law without his signature.

The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner prescribed by this section for the repassage of a bill.

Commission Recommendation

The Commission recommends the amendment of Section 16 of Article II as follows:

Section. 16. ~~Every bill shall be fully and distinctly read on three different days, unless in case of urgency three fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended, unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he~~ THE GOVERNOR approves AN ACT, he shall sign it, and thereupon it shall become a IT BECOMES law, AND HE SHALL FILE IT and be filed with the secretary of state.

If he does not approve it he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to ~~that~~ THE house OF ORIGIN vote to repass the bill, it shall be sent, with the objections of the

governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to ~~that~~ THE SECOND house vote to re-pass it, it shall become a BECOMES law notwithstanding the objections of the governor, ~~except that in~~ AND THE PRESIDING OFFICER OF THE SECOND HOUSE SHALL FILE IT WITH THE SECRETARY OF STATE. IN no case shall a bill be re-passed by a smaller vote than is required by the constitution on its original passage. In all ~~such~~ cases OF RECONSIDERATION the vote of each house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal.

If a bill shall IS not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a BECOMES law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a BECOMES law unless, within ten days after such adjournment, it shall be IS filed by him, with his objections in writing, in the office of the secretary of state. THE GOVERNOR SHALL FILE WITH THE SECRETARY OF STATE EVERY BILL NOT RETURNED BY HIM TO THE HOUSE OF ORIGIN THAT BECOMES LAW WITHOUT HIS SIGNATURE.

The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless re-passed in the manner ~~herein~~ prescribed BY THIS SECTION for the re-passage of a bill.

History and Background of Section

The portion of Section 16 of Article II prescribing the procedure to be followed by the Governor when bills are passed and presented to him and authorizing gubernatorial veto was adopted November 3, 1903.

The Commission has divided present Section 16 by deleting the first three sentences of the present section. These three sentences contain the requirements that bills be fully read on three different days, that bills be limited to one subject matter, and that after passage bills be presented to the Governor for his approval, along with the prohibition against re-enactment and repeal of laws by reference. These provisions have been re-written in part and transferred to Section 15 of Article II, the Commission's proposed new procedural section.

Effect of Change

Minor changes are made in the remainder of Section 16 as proposed. They are essentially nonsubstantive in effect. The "shall" construction when not used in a mandatory sense has been replaced with the present tense. This change reflects the Commission's policy decision to follow the rules of code revision for style and language. Thus in the first sentence of the section, the third sentence of the second paragraph, and the first sentence of the third paragraph the expression that a bill "shall become law" (upon gubernatorial signature, re-passage, or expiration of ten days) has been revised to provide that the bill "*becomes*" law at each such juncture. Similarly, the expression that if a bill "shall not be returned by the Governor" has been changed to "is not returned," and the clause that provides "unless within ten days . . . it shall be filed" would read as revised "unless within ten days . . . it is filed. . . ."

The Commission has attempted to remove slight ambiguities that arise from other references in the section by substituting language as follows:

Location	Expression	Changed to:
Second paragraph	reference to "that house,"	"house of origin"
	meaning house where bill originated	

Location	Expression	Changed to:
Second paragraph	“that house,” meaning house other than house of origin	“the <i>second</i> house”
Second paragraph	“such cases,” meaning when a bill is reconsidered	“cases of <i>reconsideration</i> ”
Fourth paragraph	“herein,” meaning this section, as opposed to article or constitution	“ <i>this section</i> ”

In its deliberations the committee took note of the fact that Section 1 (c) of Article II does not appear to have been coordinated with procedures set forth in Section 16. Section 16 declares that a bill becomes law when signed by the Governor. Section 1 (c) of Article II, the subject of which is the initiative and referendum, provides: “No law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the Governor in the office of the Secretary of State, except as herein provided.” Section 1 (c) by its terms does not appear to apply to a measure enacted over veto because, in that case, the bill is not filed by the Governor in the office of the Secretary of State. Section 16 is silent as to the procedural steps to be followed after repassage, and therefore Section 16 as proposed would fill the gap by requiring that the presiding officer of the second house file the bill with the Secretary of State. Section 1 (c) should probably be amended to eliminate any question about the effective date of a law passed over veto, and the committee decided to consider an amendment at the appropriate time. It is not regarded as essential to the change made in this section.

Another apparent gap in Section 16 is the failure to provide for the filing of bills with the Secretary of State when they become law without the Governor’s signature after the expiration of ten days. Section 16 as proposed provides that the Governor shall do such filing.

The committee also considered revising the Section 16 provisions which declare that a bill becomes “law” at specified points because of concern that one who is unfamiliar with the Constitution might assume by reading Section 16 that a bill goes into *effect* at that point. The suggestion was made that a reference within Section 16 to Sections 1 (c) and 1 (d) of Article II would warn the reader that a 90 day effective date provision might apply to a particular law. However, the committee concluded that such an amendment would be unwise because the initiative and referendum sections will be the subject of independent study. The effective date provisions will be examined with a view toward possible recommendation that they be revised. A future recommendation that Sections 1 (a) through 1 (g) be rewritten and renumbered is likely.

The committee also explored the question of conflict when two bills are passed at the same session of the legislature, both affecting the same Revised Code section. If two acts, A and B, enact a new section on the same subject or amend an existing section in differing ways, and act A, passed first, contains no emergency clause, the section in A becomes effective 90 days after filing. The same section in B, passed later as an emergency act, becomes effective before the section contained in A, and a difficult problem arises as to which version of the section prevails—the section in the bill with the later effective date (A), or the last expression of the legislature (B). In practice, the Legislative Service Commission and the Clerks’ offices attempt to call such situations to the attention of the General Assembly and

suggest conforming amendments to eliminate the conflict. The committee considered the questions involved in resolving problems of legislative intent in situations of this kind and concluded that it could not definitively settle all conflicts of this nature by adding provisions to the section on legislative procedure. The General Assembly by amendment may declare its intent in individual instances, or if it fails to do so, the intent in particular instances of possible conflict must be determined by court decision. Because the committee will at a later date consider the whole question of the effective or operative date of legislation, as contained in the sections on the initiative and referendum, further consideration of the conflict question was deferred until that time.

On the matter of gubernatorial veto of appropriations, the committee weighed the pros and cons of allowing the Governor to have the power to reduce items, in addition to the power to make item vetoes. The power to reduce appropriation items exists in Pennsylvania by judicial decision, and a number of other states have authorized item reduction by constitutional provision. Conditional veto or executive amendment is recognized in some other states as an alternative or supplement to item vetoes.

The committee discussed and rejected expanding the Governor's powers to include reduction of appropriation items, preferring to consider and broaden, if necessary, the Governor's budgetary controls.

The committee also pondered the question of legislative consideration of vetoes made after adjournment and the necessity of revising this provision to guarantee that the General Assembly have the final word. The committee concluded that the General Assembly can reserve opportunity to reconsider vetoed bills through its adjournment resolution. Moreover, if Section 8 is adopted, the General Assembly could convene a special session to pass new legislation to supplant the vetoed enactment. Such legislation would require only a simple majority in most instances whereas repassage over veto calls for a three-fifths majority.

Whether to recommend retention of this three-fifths majority requirement was also considered. The committee was reluctant to raise special majorities. An increase—to two-thirds, for example, for consistency with other provisions calling for extraordinary votes—was judged unwise. To require a two-thirds vote to override a veto, in the committee's view, could create problems because the state of Ohio is so evenly divided.

Rationale of Change

The Commission's purpose in proposing the revision of present Section 16 of Article II is to facilitate understanding of the procedural steps involved in the enactment of laws by fitting them all in one or two sections. In Section 16 the Commission recommends style changes in order to maintain a clear and readable Constitution. The Commission responded to gaps in procedure by supplying additional steps to be followed when bills are transmitted to the Governor and he does not sign and file them. Because the Constitution is silent as to the effective date of a measure enacted over a veto or one that becomes law without the Governor's signature, the Commission proposes to add provisions for the filing of such bills with the Secretary of State.

Intent of Commission

The changes in Section 16 are intended to be nonsubstantive. The Governor's role in the passage of legislation would not be affected by the adoption of this Section.

ARTICLE II

Section 17

Present Constitution

The presiding officer of each House shall sign, publicly in the presence of the House over which he presides, while the same is in session, and capable of transacting business, all bills and joint resolutions passed by the General Assembly.

Commission Recommendation

Repeal (provisions transferred)

Commission Recommendation

The Commission recommends the repeal of Section 17 of Article II because its provisions are transferred to and incorporated in Division (E) of Section 15. See the commentary to Section 15.

ARTICLE II

Section 18

Present Constitution

The style of the laws of this State shall be, "Be it enacted by the General Assembly of the State of Ohio."

Commission Recommendation

Repeal (provisions transferred)

Commission Recommendation

The Commission recommends the repeal of Section 18 of Article III because its provisions are transferred to and incorporated in Division (B) of Section 15. See the commentary to Section 15.

ARTICLE II

Section 19

Present Constitution

No Senator or Representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this State, which shall be created or the emoluments of which, shall have been increased, during the term, for which he shall have been elected.

Commission Recommendation

Repeal (provisions transferred)

Commission Recommendation

The Commission recommends the repeal of Section 19 of Article II because its provisions are transferred to and incorporated in Section 4. See the commentary to Section 4.

ARTICLE II

Section 25

Present Constitution

All regular sessions of the General Assembly shall commence on the first Monday of January, biennially. The first session, under this constitution, shall commence on the first Monday of January, one thousand eight hundred and fifty-two.

Commission Recommendation

Repeal (provision transferred)

Commission Recommendation

The Commission proposes the repeal of Section 25 and the transfer of its substance by enacting a new Section 8. See the commentary to Section 8.

ARTICLE II

Section 31

Present Constitution

The members and officers of the General Assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office.

Commission Recommendation

The members and officers of the General Assembly shall receive an annual salary and such allowances for reasonable and necessary expenses related to the performance of their duties as are provided by law; and no change in a member's salary shall take effect during the term for which he was elected.

Commission Recommendation

The Commission recommends amendment of Section 31 of Article II as follows:

Section 31. The members and officers of the General Assembly shall receive a ~~fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise~~ AN ANNUAL SALARY AND SUCH ALLOWANCES FOR REASONABLE AND NECESSARY EXPENSES RELATED TO THE PERFORMANCE OF THEIR DUTIES AS ARE PROVIDED BY LAW; and no change in ~~their compensation~~ A MEMBER'S SALARY shall take effect during ~~their~~ THE term ~~of office~~ FOR WHICH HE WAS ELECTED.

History of Section and Background of Section

Under Section 19 of Article I of the Ohio Constitution of 1802 no member of the legislature could receive "more than two dollars per day, during his attendance on the legislature, nor more for every twenty-five miles he shall travel in going to, and returning from, the general assembly." The original proposal before the 1851 Convention did not increase this limit very much. It provided: "Members of the General Assembly shall receive three dollars per day during the time they remain in session and three dollars for every twenty-five miles traveled in going to and returning from the place of their meeting."¹

Many amendments were immediately offered when the proposal was put before the Convention. An amendment to add a prohibition against any other compensation or perquisite except postage was the subject of lengthy debate. An opponent argued that members had a difficult time refusing the franking privilege to friends. He further opposed the postage allowance as unequal. Other amendments would have put compensation on a graduated scale, with three dollars per day for the first 30 days of the session and less for succeeding days. Some delegates favored setting minimum amounts only, and others argued strongly against setting limits in the Constitution because of the "mutations of things and the fluctuations of time." 1 *Debates* 211 (May 28, 1850). Later that year the debates on the matter of legislative compensation continued, and both opponents of fixing compensation in the Constitution and others concerned with the "evil growing out of the present system of charging postage and stationery accounts to the state" were equally vocal. 2 *Debates* 211-214 (December 31, 1850). The section in its present form, but for nonsubstantive changes made by the Committee on Revision, Arrangement and Enrollment, was agreed to on February 19, 1851. 2 *Debates* 663.

Modern constitutional authorities deplore the freezing of salary and compensation details in constitutional provisions. Such an obstacle is fortunately absent from the Ohio Constitution. The salary of Ohio legislators, as set by Section 101.27 of the Revised Code, is presently \$12,750 per year, payable in equal monthly installments. President pro tempore of the Senate and Speaker of the House receive \$16,750 per year. Senate minority leader, Senate Majority whip, House Speaker pro tempore, House majority floor

¹1 *Debates* 293 (June 4, 1850)

leader, and House minority leader receive \$14,750. House assistant minority leader receives \$13,750 annually.

The basic compensation figure of \$12,750 annually compares favorably with the 1970 national average of \$13,256 biennially, and the lower median compensation figure of \$10,637 biennially. Ohio rates seventh in the scale of legislative compensation as of May 1, 1970. States with greater compensation were, in descending order of compensation, California, New York, Michigan, Florida, Hawaii and Massachusetts. All of these states provide for expense allowance, including per diem, which were included in the compensation comparison.

Under Section 101.27 of the Revised Code each member of the Ohio General Assembly receives a travel allowance of 10 cents per mile each way for mileage once a week during the session from and to his place of residence.

The prohibition against "allowance or perquisites, either in the payment of postage or otherwise," under present Section 31 has resulted in some ambiguous and conflicting interpretations. An Ohio Court of Appeals has upheld statutory travel expenses for members of the General Assembly in spite of the prohibition, under the apparent holding that they constitute part of a legislator's "compensation." *State ex rel. Harbage v. Ferguson*, 68 Ohio App. 189 (1941) *dism'd* 138 Ohio St. 617 (1941) held that a fixed rate per mile "travel allowance for mileage each way once a week" is not "an allowance or perquisite" forbidden by Section 31 but is constitutional under at least one of two theories—that the travel expense payment is (1) reimbursement of an expense, impliedly not an allowance or perquisite or (2) as part of constitutional compensation. The opinion contains dictum to the effect that reimbursement for "hotel and living expenses" would be unconstitutional.

Several years earlier the Ohio Supreme Court invalidated a statute providing members of the General Assembly "room and board" for attendance at a special session but based its ruling upon the prohibition against *changing* compensation during term, thus implying that the room and board were provided constituted compensation and not an invalid "allowance."

As a result of these two cases the judicial fate of any per diem for members of the General Assembly is unpredictable. The prohibition against "postage" has been avoided by central mailing.

Effect of Change

The proposed revision of Section 31 removes a prohibition against the payment of allowance or perquisites to members and officers of the General Assembly.¹ It replaces the vague provision for a "fixed compensation" with provision for "an annual salary and such allowances for reasonable and necessary expenses related to the performance of their duties as are provided by law" and makes a language change in the second clause, prohibiting change in salary during term, that is intended to make the clause more readable. This bar on a change in salary, rather than compensation, during term does not extend to "allowances" under the section as proposed.

The committee explored a recent trend in various states to establish salary commissions, with authority to fix or propose salaries for legislators or elected state officers generally. Some states have adopted a constitutional provision for such a commission, either to be appointed by the Governor or by the Governor and legislative leaders, to make salary recommendations to the legislature. These recommendations in most cases become law unless rejected or reduced. Arizona, Maryland, West Virginia, Michigan and Hawaii have recently provided for such commissions by constitutional

¹The Citizens' Conference on State Legislatures said of Ohio: "Very few of the weaknesses are the product of constitutional restrictions, with the exception of the limitation on expense reimbursement of members." *The Sometime Governments*, op. cit. p. 280.

amendment and Idaho has done so by statute. Similar amendments were recently defeated in Nebraska, New Hampshire and North Dakota.

The committee discussed the desirability of establishing such a commission in Ohio. An advisory commission or a plan that requires an affirmative act by the General Assembly, it agreed, could be adopted by statute without constitutional amendment. The committee deliberately did not pursue the commission route, however, not having explored the question of what results would be sought by such a change and the broader policy questions involved in establishing compensation to attract people of particular professions and employments to legislative service. The concept of the citizen legislature is one to which the committee gave its continued support.

Rationale of Change

The purpose of amending Section 31 of Article II is to remove an obsolete and ambiguous prohibition against "allowance and perquisites." Ambiguity results from interpretations of two Ohio courts referred to above that taken together leave uncertain the meaning of the terms employed in the present Constitution. Furthermore, the revision proposed recognizes that legislators ought to be reimbursed for reasonable and necessary expenses incurred where such expenses are related to legislative duties. It is intended to supplant current circumvention of the bar against postage and perquisites (that conceivably could include secretarial services, which are made available) with a fair and realistic provision for compensating legislators.

Intent of Commission

The Commission intends by this proposal to recommend the elimination of obsolete terminology and removal of ambiguities that have resulted from 19th century language. It recognizes that the provision for legislative compensation should allow salary and reimbursement of necessary expenses in amounts sufficient to permit and encourage competent persons to undertake growingly important and time consuming legislative duties.¹ It acknowledges that the hours a legislature is in session represent a small fraction of the hours a conscientious legislator spends at his job and that research, investigation, study, hearings, both formal and informal, and constant demands of constituents consume much additional time.²

ARTICLE III

Section 1a

Present Constitution

Commission Recommendation

In the general election for governor and lieutenant governor, one vote shall be cast jointly for the candidates nominated by the same political party or petition. The general assembly shall provide by law for the joint nomination of candidates for governor and lieutenant governor.

Commission Recommendation

The Commission recommends the enactment of Section 1a of Article III, to read as follows:

Section 1a. IN THE GENERAL ELECTION FOR GOVERNOR AND LIEUTENANT GOVERNOR, ONE VOTE SHALL BE CAST JOINTLY FOR THE CANDIDATES NOMINATED BY THE SAME POLITICAL PARTY OR PETITION. THE GENERAL ASSEMBLY SHALL PROVIDE BY LAW FOR THE JOINT NOMINATION OF CANDIDATES FOR GOVERNOR AND LIEUTENANT GOVERNOR.

1. Committee on Legislative Processes and Procedures of the National Legislative Conference, Final Report of 1961

2. The Citizens' Commission on the General Assembly Reports to the Legislature and the People of Maryland, 1967.

History and Background of Section

The office of Lieutenant Governor was created by the Constitution of 1851. Section 12 of Article II of the prior Constitution had provided that in case of death, impeachment, resignation or removal of the Governor, the Speaker of the Senate would exercise the office of Governor until acquittal or another Governor was duly qualified. In case of impeachment of the Speaker of the Senate or his death, removal from office, resignation, or absence from state, the Speaker of the House was to succeed to the office and exercise the duties thereof until a Governor was elected and qualified.

Debates of the Convention of 1851 reveal that one reason advanced in favor of creation of the office was that the Lieutenant Governor could be designated "ex-officio presiding officer of the Senate," thus securing a prompt and effective organization of that body.¹ Past organizational difficulties were referred to in the debates over creation of the office and in debates concerning adoption of Section 7 of Article II, requiring the General Assembly to prescribe the mode of organizing the House of Representatives. Opponents to creation of the office favored "simplicity" in government, urged that Ohio had gotten along for some 40 years without the office, and claimed that the existing vacancy procedures were adequate.²

"Uncertainty and confusion"³ about the provision for succession to the office of Governor seemed to trouble delegates. One argued that the office of speaker of the senate was not an office that exists all year round but rather is one held by a person elected to serve during a legislative session only. The people ought to elect a full time officer for succession to the office of Governor in the event of a vacancy, he reasoned. The proponents prevailed, and the provision for a Lieutenant Governor was incorporated into the executive article of the new constitution, apparently for the chief purpose of providing a full-time stand-by for the Governor.

Effect of Change

This section would provide for the joint nomination and election of the Lieutenant Governor and the Governor. The General Assembly would be required to provide by law for the joint nomination of candidates for the two offices.

Under present Section 1 of Article II the Lieutenant Governor is designated as a member of the executive department. He is nominated and elected independently of the Governor and therefore need not have the same party affiliation as the Governor.

The Commission's proposal does not attempt to set out the details by which preprimary selection takes place. Section 7 of Article V provides in part: "All nominations for elective state, district, county, and municipal offices shall be made at direct primary elections or by petition as provided by law . . ." To require, as does proposed Section 1a, that the General Assembly provide by law for joint nomination of candidates is consistent with Article V and keeps the Constitution flexible and free of statutory matters.

Rationale of Change

In the Commission's view, joint nomination and election of the Lieutenant Governor with the Governor recognizes his position as an executive official of state government. Moreover, joint election preceded by preprimary selection of candidates serves the principal purpose for which the office of Lieutenant Governor was created — to provide an automatic

¹ *Debates* 300 (June 5, 1850)

² ¹ *Debates* 301 (June 5, 1850)

³ ¹ *Debates* 302 (June 5, 1850)

successor, elected state wide, to fill any vacancy which may occur in the office of the Governor.

In recommending joint nomination and election the Commission points out a trend in this direction. New York was the first state to provide for tandem election of the Governor and Lieutenant Governor in 1938. Today, the constitutions of at least the 15 states of Alaska, Colorado, Connecticut, Florida, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Michigan, Nebraska, New Mexico, New York, Pennsylvania, and Wisconsin provide for team election, and the Indiana legislature has passed such a proposal for submission to the people as a constitutional amendment. Alaska chose to drop the term "Lieutenant Governor" and provides that the Secretary of State be elected on a joint ballot with the Governor, to succeed him in case of vacancy. Joint nomination is specifically provided for in the new Illinois constitution which, like the section 1a proposed, gives the General Assembly responsibility for providing by law for the joint nomination of candidates.

Lieutenant Governor John W. Brown, in oral testimony before the Commission, stated that he is a strong advocate of team election and pre-primary selection of candidates for Governor and Lieutenant Governor by having them file joint candidacy petitions.

Governor John J. Gilligan communicated to the Commission his vigorous endorsement of this proposal. Specifically, he wrote:

"I am certain that any Governor would welcome the opportunity of having a Lieutenant Governor of his choice serve as his 'strong right arm.'

Moreover, it is the constitutional responsibility of the Lt. Governor to assume the duties of the Governor if the latter dies or becomes disabled. A close working relationship between the Governor and Lt. Governor will substantially ease the problems of the gubernatorial transition. I am certain that a Lt. Governor of the Governor's own party will play a major role in much of the discussion and decision making process in the Governor's office and will, therefore, be better equipped in an emergency to take over the duties of the State's Chief Executive."

The League of Women Voters, too, agreed with the proposal as one that will provide for more cohesion and continuity within the executive department.

Representative Keith McNamara, sponsor of House Joint Resolution 18 of the 109th General Assembly, which also proposes such a change in the Ohio Constitution, pointed out in a letter to the Commission:

"On nine occasions since the turn of the century Ohio has had a Governor of one political party and a Lieutenant Governor of a different party. These situations have occurred in 1902, 1906, 1909, 1919, 1925, 1927, 1952, 1954 as well as at the present time. On at least one occasion (1906) a Lieutenant Governor succeeded to the office of a Governor of a different party upon the death of the Governor during the middle of his term . . . The specific role which the Lieutenant Governor would play would, no doubt, depend upon the personalities of the two men. It is certain, however, that the Lieutenant Governor's role will always be minimized when he belongs to a different political party than the Governor."

The Commission finds merit in these statements of support in recommending the enactment of Section 1a of Article III.

Intent of Commission

In recommending joint election of the Governor and Lieutenant Governor the Commission intends to strengthen the executive role of the Lieutenant Governor and, by requiring political harmony between the two offices, insure continuity of public policy in the event of an abrupt transition of government.

ARTICLE III

Section 3

Present Constitution

The returns of every election for the officers, named in the foregoing section, shall be sealed up and transmitted to the seat of Government, by the returning officers, directed to the President of the Senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each House of the General Assembly. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest, and equal in votes, for the same office, one of them shall be chosen by the joint vote of both houses.

Commission Recommendation

The returns of every election for the officers, named in the foregoing section, shall be sealed up and transmitted to the seat of Government, by the returning officers, directed to the President of the Senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each House of the General Assembly. The joint candidates having the highest number of votes cast for governor and lieutenant governor and the person having the highest number of votes for any other office shall be declared duly elected; but if any two or more have an equal and the highest number of votes for the same office or offices, one of them or any two for whom joint votes were cast for governor and lieutenant governor, shall be chosen by the joint vote of both houses.

Commission Recommendation

The Commission recommends the amendment of Section 3 of Article III as follows:

Section 3. The returns of every election for the officers, named in the foregoing section, shall be sealed up and transmitted to the seat of Government, by the returning officers, directed to the President of the Senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each House of the General Assembly. **THE JOINT CANDIDATES HAVING THE HIGHEST NUMBER OF VOTES CAST FOR GOVERNOR AND LIEUTENANT GOVERNOR AND THE person having the highest number of votes FOR ANY OTHER OFFICE shall be declared duly elected; but if any two or more shall be HAVE AN EQUAL AND THE highest, and equal in NUMBER OF votes, for the same office OR OFFICES, one of them OR ANY TWO FOR WHOM JOINT VOTES WERE CAST FOR GOVERNOR AND LIEUTENANT GOVERNOR,** shall be chosen by the joint vote of both houses.

History and Background of Section

The predecessor of Section 3 of Article II was Section 2 of Article II of the Constitution of 1802. It related only to the disposition of the returns of election for Governor, as follows:

The governor shall be chosen by the electors of the members of the General Assembly, on the second Tuesday of October, at the same places, and in the same manner, that they shall respectively vote for members thereof. The returns of every election for governor, shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them, in the presence of a majority of the members of each house of the general assembly; the person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint ballot of both houses of the general assembly. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

The same procedure for transmitting returns and declaring the results was retained in the Constitution of 1851, which broadened the section to apply to the election of all officers.

Effect of Change

The proposed revision of Section 3 complements the enactment of Section 1a of Article III. Section 3 provides for the transmitting of election returns

to the President of the Senate, who is directed to open and publish them and declare results. The section provides that the person having the highest number of votes for an office is declared "duly elected" and establishes a procedure for determining the victor in case of a tie. The proposed revision of Section 3 is for the sole purpose of adding to the section a special provision for counting the votes cast for joint candidates for Governor and Lieutenant Governor, in addition to the procedure that applies to the declaration of the individual person who has received the highest number of votes for other offices.

Rationale of Change

The changes in Section 3 of Article III are necessary to provide for the disposition of returns of votes cast for Governor and Lieutenant Governor. Otherwise, the substance of Section 3 is not affected, and the Commission has not further reviewed the history of the section.

Intent of Commission

The sole intent of the Commission in recommending amendment of Section 3 of Article III is to avoid conflict that will result if Section 1a of Article III is enacted without changing Section 3 of Article III.

ARTICLE III

Section 16

Present Constitution

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

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.

Commission Recommendation

The Commission recommends the amendment of Section 16 of Article III as follows:

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 **PERFORM SUCH DUTIES IN THE EXECUTIVE DEPARTMENT AS ARE ASSIGNED TO HIM BY THE GOVERNOR AND EXERCISE SUCH POWERS AS ARE PRESCRIBED BY LAW.**

History and Background of Section

Comments following the proposals for Section 7 of Article II and 1a of Article III discuss the background and rationale of the 1851 Convention in establishing the office of Lieutenant Governor. One reason given in the debates of the convention for establishing the office was to designate the Lieutenant Governor President of the Senate in order to insure the expeditious organization of that body at the commencement of each session.

This proposal is intended to complement the Commission's recommended amendment of Section 7 of Article II to have the presiding officer of the Senate chosen by the members from among its membership. The proposal is also related to the Commission's proposal to amend Section 8 of Article II by allowing presiding officers of the General Assembly to convene a special session. The intent of the amendment to Section 8 is that the presiding officers be representatives of the legislative, not executive department of government. The power to call a special session under Section 8 would be coequal between executive department, represented by the governor, and the legislative department, represented by legislative leadership. The

Commission's intent would be thwarted if a member of the executive department of government were one of the presiding officers entitled to participate in the legislative convening of a special session.

Article III presently confers only two responsibilities upon the holder of the office of Lieutenant Governor. Section 15 directs that he exercise powers and duties of the office of Governor in the event of death, impeachment, resignation, removal or other disability of the governor, and Section 16 that he act as President of the Senate. Section 1 of Article III classifies the Lieutenant Governor as a member of the executive department of state government.

Effect of Change

The effect of the revision of Section 16 of Article III is to remove the Lieutenant Governor as President of the Senate, with authority to vote when the Senate is equally divided; delete the constitutional provision that calls for choice of a President pro tempore of the Senate in case of the absence or impeachment of the Lieutenant Governor; and require the Lieutenant Governor to perform such duties in the executive department as are assigned to him by the Governor and to exercise such powers as are prescribed by law.

Rationale of Change

Beyond complementing its recommendations affecting the presiding officers of both houses of the General Assembly, the Commission favors the revision of Section 16 of Article III as an elevation of the office of Lieutenant Governor. Not only does the amendment serve to promote independence of the legislative from the executive branch of government, but it also confers upon the Lieutenant Governor administrative and executive responsibilities, designed to better prepare him for the chief purpose he serves — that or understudy to the Governor.

In its review of the office throughout the states the Commission learned that 40 states have a Lieutenant Governor and that the office is established by the Constitution in 39 of these states. Without exception the creation of the office appears in the executive article of the state constitution, as it does in the Ohio Constitution.

The Commission found support for its position in the writings of two outstanding authorities on state government. Byron Abernathy, in a 1960 report on the state executive branch,¹ pointed out that the classification of the position as legislative or executive has not been clear cut, and termed it "hybrid." Specifically, he asked, "Can the office be justified in a capacity more useful than that of presiding over the senate?"

Abernathy's analysis deplores the dearth of political literature concerning the Lieutenant Governor and notes that "here is an office, the true nature and functioning of which has been obscured by its apparent 'spare tire' nature and which students of government have too long ignored."

Although most writers appear to speak of him primarily as an executive official, Abernathy asserts:

"The Lieutenant Governor does not normally carry a significant share of state executive and administrative responsibilities, while at the same time state governors are finding the burden of their offices increasingly overwhelming. They need assistance in their work, and students of state government have hit upon the idea that making the Lieutenant Governor a sort of assistant governor could relieve the governor of some of his duties and make better use than is now made of this office, and to relieve the governor from many onerous tasks so that he could be free to devote his efforts to the larger responsibilities of his office."

The Commission finds Abernathy's analysis relevant in Ohio.

¹ Abernathy, Bryon, *Some Persisting Questions Concerning the Constitutional State Executive*, University of Kansas publications, Governmental Research Series No. 23 (1960).

In a keynote address delivered at the fifth annual meeting of the National Conference of Lieutenant Governors in Cleveland in June 1966,¹ Harvey Walker traced the development of the office of Lieutenant Governor in America and urged its transformation. Specifically, he argued that the lieutenant governorship should be an executive office and a very busy one — not one of presiding over a legislative body. He emphasized the importance of training the Lieutenant Governor as a possible successor to the Governor. Full time employment in the executive branch of government is imperative, he urged, if the primary purpose for creating the office is to be served. Executive duties should permit him to enjoy a wide administrative experience to prepare him to assume the reins of state government in an emergency. Walker states:

“Another cogent reason for dedicating the office of Lieutenant Governor to executive duties is that, as the legislative process becomes more visible . . . he might well become a political rival of the Governor rather than his understudy . . . The Lieutenant Governor, if he is to be a worthy successor to the Governor, needs to be identified with the executive side of this debate, not the legislative side. His apprenticeship should follow his principal duty.”²

Dr. Walker reported a trend toward recognizing the Lieutenant Governor as understudy for the Governor. In a number of states, the constitution provides that the duties of office may be prescribed by law. In Colorado, where this provision appears in the constitution, the Lieutenant Governor is, by statute, a member of the governor's cabinet, as he is, reportedly by custom, in New York and Pennsylvania. By constitutional directive, he is a member of the equivalent (governor's council) in Massachusetts. In Louisiana he is chairman of the state advisory board and of the state voting registration board. In Pennsylvania he is chairman of the pardon board and state defense council. In Nebraska, by Constitution, the legislature may establish departments of government and place the Lieutenant Governor as department head, and he is a member of the board of pardon. In North Carolina, he serves on the state board of education. In Hawaii the constitution leaves the duties of office to be prescribed by law, and statutes make him Secretary of State. By statute in Indiana he is the Director of Commerce and Industry, and he serves ex officio on one or more administrative committees, boards or commissions in a large number of states.

Some commentators on the subject have taken the position that the administrative duties lieutenant governors perform are of so little importance that they could as well be exercised in other existing offices. The Model State Constitution eliminates the office. However, little support exists for proposals to abolish the office in states where it exists. Most of the literature of state government calls for the development of duties to make the holder of the office a kind of assistant to the Governor.

Such a solution is not without skeptics. What if the Lieutenant Governor becomes a hindrance, not a help? The Governor cannot remove a popularly elected official if the latter is an unsatisfactory assistant.

Team election is one solution to the problems involved in disagreement between the two officials. Another is to make it constitutionally possible for the Governor to use the Lieutenant Governor as an assistant but to leave to the discretion of the governor the extent to which he does so. The Commission endorses both in its specific proposals for Sections 1a and 16 of Article III. The added provision in Section 16 that the lieutenant governor shall “exercise such powers as are prescribed by law” insures flexibility.

¹ Reprinted as “Office of the Lieutenant Governor: Authority and Responsibility,” 42 Social Science 142 (June, 1967)

² *Ibid.*, p. 245

Intent of Commission

The Commission regards its proposal to give the Lieutenant Governor administrative and executive, instead of legislative, responsibilities, as enhancing the stature of that office. This change it regards as particularly appropriate if Governor and Lieutenant Governor are to be jointly nominated and elected. In the Commission's view, not only would an executive role better prepare the Lieutenant Governor for emergency assumption of gubernatorial duties, but an active role for the Lieutenant Governor in the executive department, as is envisioned by the Commission, will result in a more effective and efficient executive.

Furthermore, the amendment of Section 16 of Article II in the manner proposed is consistent with the Commission's commitment to a strong, independent General Assembly, with control over its own destiny.

ARTICLE IV

Section 15

Present Constitution

Laws may be passed to increase or diminish the number of judges of the supreme court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided.

Commission Recommendation

Repeal

Commission Recommendation

The Commission recommends the repeal of Section 15 of Article IV, which reads as follows:

Section 15. Laws may be passed to increase or diminish the number of judges of the supreme court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided.

History and Background of Section

The Constitution of 1851 vested the judicial powers of the state in the Supreme Court, District Courts, Common Pleas Courts, Probate Courts, and in Justices of the Peace and such other courts inferior to the Supreme Court as might be established from time to time by the legislature. The state was divided into nine judicial districts, which were in turn divided into smaller subdivisions for the purpose of election of judges of the common pleas courts or such other trial courts of general original jurisdiction as might be created by the legislature.¹ Under Section 5 of Article IV the District Court of each of the nine districts was comprised of one of the judges of the Supreme Court and two common pleas judges of a district in which sessions were held.

Section 15 as adopted in 1851 reads as follows:

The General Assembly may increase or decrease the number of the judges of the Supreme Court, the number of the districts of the Court of Common Pleas, the number of judges in any district, change the districts, or the subdivisions thereof, or establish other courts, whenever two-thirds of the members elected to each House shall concur therein; but no such change, addition or diminution shall vacate the office of any judge.

¹Hon. Lee E. Skeel, "History of Ohio Appellate Courts," 6 Cleve. Mar. L. Rev. 323 (1957)

The judicial article was amended in 1883 to replace the District Courts with a Circuit Court.

Constitutional amendments adopted in 1912 included changes in the judicial article. The Court of Appeals was created to succeed the Circuit Court, and a Common Pleas Court was provided for each county. Section 15 of Article IV was changed to accord with these amendments, and it is the 1912 version of the section, still in effect, that is proposed to be repealed.

In an early interpretation of Section 15 of Article IV the Supreme Court held that the Constitution does not limit the power of the General Assembly to abolish courts created by the legislature nor its power to vacate the office of judge of such courts. *State ex rel. Flinn v. Wright*, 7 Ohio St. 333 (1857). Section 15 of Article IV requires a two-thirds vote for the passage of laws to change the number of judges in the Supreme Court or Common Pleas Court or to establish courts other than the Supreme Court or Common Pleas Court. Legislation proposing to increase the number of judges of Courts of Appeals, Probate Courts, Municipal Courts, or County Courts requires only the concurrence of a majority of all members elected in each house. 1961 Ohio Atty. Gen. 2160.

The 1912 amendments to Section 15 of Article IV were proposed to maintain consistency in the judicial article as revised, but the basic question of requiring a two-thirds vote for the narrow purposes conceived was not the subject of recorded debate. Neither was the rationale for specifying a special majority for changes in some but not all constitutionally recognized courts in 1851.

Effect of Change

Repeal of Section 15 of Article IV eliminates the necessity of a two-thirds legislative majority to increase or decrease the number of judges of the Supreme Court and Court of Common Pleas and to establish other courts.

Rationale of Change

Section 15 is regarded by the Commission as an outmoded restriction, inconsistent with the power of the General Assembly to adopt enactments affecting courts specifically named in the Constitution or as may be established by law. The expansion of the monetary and subject matter jurisdiction of the municipal courts in recent years, in part to ease the case load of the courts of common pleas, has effectively raised the status of the municipal court, and the difference in treatment of the two courts is even less justifiable than it may have been in an earlier period of the history of the judiciary in Ohio, when municipal courts were not courts of record.

The Modern Courts Amendment of 1968 gave the Supreme Court "general superintendence over all courts in the state," required the high court "to prescribe rules governing practice and procedure in all courts of the state," and authorized creation of additional courts "inferior to the supreme court" rather than "to the courts of appeal," as under the 1912 amendments. These changes have been heralded as the first step in the creation of a unified court system.

Retention of the two-thirds majority for the narrow purposes set forth in Section 15 is without logical basis under the principles recognized by the Modern Courts amendment. Section 15 is regarded as a legislative limitation without reason today.

The Administrative Director of the Ohio Supreme Court transmitted to the Commission his endorsement of the repeal of Section 15 of Article IV as an outmoded provision.

Intent of Commission

The Commission intends by this amendment to remove a provision which has no current place in the Constitution. Whatever justification existed for requiring a special vote for changing the number of judges on two of the three constitutional courts is no longer consistent with contemporary thinking. On the contrary, years of study and work by groups studying the Ohio court system, or lack thereof prior to the Modern Courts Amendment of 1968 demonstrate the importance of legislative flexibility to meet demands for better court organization and administration.

ARTICLE IV

Section 22

Present Constitution

A commission, which shall consist of five members, shall be appointed by the Governor, with the advice and consent of the Senate, the members of which shall hold office for the term of three years from and after the first day of February, 1876, to dispose of such part of the business then on the dockets of the Supreme Court, as shall, by arrangement between said commission and said court, be transferred to such commission; and said commission shall have like jurisdiction and power in respect to such business as are or may be vested in said court; and the members of said commission shall receive a like compensation for the time being with the judges of said court. A majority of the members of said commission shall be necessary to form a quorum or pronounce a decision, and its decision shall be certified, entered and enforced as the judgments of the Supreme Court, and at the expiration of the term of said commission, all business undisposed of, shall by it be certified to the Supreme Court and disposed of as if said commission had never existed. The clerk and reporter of said court shall be the clerk and reporter of said commission, and the commission shall have such other attendants not exceeding in number those provided by law for said court, which attendants said commission may appoint and remove at its pleasure. Any vacancy occurring in said commission, shall be filled by appointment of the Governor, with the advice and consent of the Senate, if the Senate be in session, and if the Senate be not in session, by the Governor, but in such last case, such appointments shall expire at the end of the next session of the General Assembly. The General Assembly may, on application of the supreme court, duly entered on the journal of the court and certified, provide by law, whenever two-thirds of such house shall concur therein, from time to time, for the appointment, in like manner, of a like commission with like powers, jurisdiction and duties; provided, that the term of any such commission shall not exceed two years, nor shall it be created oftener than once in ten years.

Commission Recommendation Repeal

Commission Recommendation

The Commission recommends the repeal of Section 22 of Article IV, which reads as follows:

Section 22. A commission, which shall consist of five members, shall be appointed by the Governor, with the advice and consent of the Senate, the members of which shall hold office for the term of three years from and after the first day of February, 1876, to dispose of such part of the business then on the dockets of the Supreme Court, as shall, by arrangement between said commission and said court, be transferred to such commission; and said commission shall have like jurisdiction and power in respect to such business as are or may be vested in said court; and the members of said commission shall receive a like compensation for the time being with the judges of said court. A majority of the members of said commission shall be necessary to form a quorum or pronounce a decision, and its decision

shall be certified, entered and enforced as the judgments of the Supreme Court, and at the expiration of the term of said commission, all business undisposed of, shall by it be certified to the Supreme Court and disposed of as if said commission had never existed. The clerk and reporter of said court shall be the clerk and reporter of said commission, and the commission shall have such other attendants not exceeding in number those provided by law for said court, which attendants said commission may appoint and remove at its pleasure. Any vacancy occurring in said commission, shall be filled by appointment of the Governor, with the advice and consent of the Senate, if the Senate be in session, and if the Senate be not in session, by the Governor, but in such last case, such appointments shall expire at the end of the next session of the General Assembly. The General Assembly may, on application of the supreme court duly entered on the journal of the court and certified, provide by law, whenever two-thirds of such house shall concur therein, from time to time, for the appointment, in like manner, of a like commission with like powers, jurisdiction and duties; provided, that the term of any such commission shall not exceed two years, nor shall it be created oftener than once in ten years.

History and Background of Section

Section 22 of Article IV, added by constitutional amendment adopted October 12, 1875, provided for the appointment of a five member Supreme Court Commission to help dispose of the accumulated business of the Supreme Court. By specific provisions in Section 22, the terms of commissioners were set to expire three years "from and after the first day of February, 1876" and the Commission was given "like jurisdiction and power in respect to such business as are or may be vested" in the Supreme Court. Members were to receive "a like compensation for the time being, with judges of said court." Section 22 established commission quorum requirements, provided for certification and enforcement of commission decisions, authorized commission attendants, and required the filling of commission vacancies.

That portion of Section 22 which calls for the appointment of a commission to expire in 1879 is clearly obsolete. The remainder of the section authorizes the creation of further commissions with "like powers, jurisdiction and duties" on application of the Supreme Court, by a two-thirds vote of the General Assembly. Section 22 limits the term of any such commission to two years and prohibits its creation oftener than once in ten years. Only one additional commission has been appointed pursuant to Section 22. The second was appointed in 1883, for a two-year period.

Section 22 was adopted at a period in the history of the judicial article of the Ohio Constitution when a District Court was functioning in nine districts of the state, comprised of one of the judges of the Supreme Court and two Common Pleas judges of the district in which sessions were held. The late Judge Lee Skeel of the Court of Appeals, has described the operation of the District Court as follows:

"As thus constituted, such district court was required to hold stated sessions in at least three places within each of the districts each year. It was an appellate court, its jurisdiction being defined as the same as that of the Supreme Court. But of course its place in the judicial system was inferior to that of the Supreme Court. This was the first attempt in Ohio to create an intermediate reviewing court, albeit its members were taken in part from the court where the trial was had and in part from the court to which the final appeal could be taken."¹

¹Hon Lee E. Skeel, "History of Ohio Appellate Courts, 6 Cleve. Mar. L. Rev. 323 (1957)

The need for the commission created by Section 22, according to Judge Skeel, arose because the judicial system "where the session in banc in Columbus was followed by a long tour on the circuit, required judges to have not only profound knowledge of the law but also great physical stamina to withstand the hardships of travel of that day. An overcrowded condition of the docket was also being caused by increase in litigation as the State's industry grew, and by the fact that the then-judicial process was geared to a sparsely settled rural civilization, out of keeping with the rapid development of the State and its increasing population."¹

The failure of the District Court was ascribed to the breadth of its jurisdiction. The constitutional amendment of 1883 abolished the district courts and established a new intermediate appellate or reviewing court, the Circuit Court, presided over by judges elected to serve on that court. The number of Supreme Court judges was increased from four to five. According to Judge Skeel, although the Circuit Court did not relieve the Supreme Court of part of its heavy docket, it did relieve the judges of the Supreme Court from circuit duty. The 1912 amendments created the Court of Appeals, to succeed the Circuit court. The result of the 1912 revision of the judicial article was to make the Court of Appeals the court of last resort in most cases.

Effect of Change

Repeal of Section 22 of Article IV removes from the Constitution a provision already obsolete by its terms, specifically that portion of the section that established a three-year commission in 1876. It also removes an apparent delegation of the power to the General Assembly to create such a commission by a two-thirds vote, along with the limits on this power that restrict the term of any such commission to two years and its creation to once every ten years.

Rationale of Change

Delegation of the power to legislate in the manner prescribed has roots in history, when the District Court failed to meet the needs of intermediate retrial and review or to relieve the Supreme Court of the heavy burden imposed upon it by requirements that it meet in banc in Columbus and that its members attend district court around the state.

Problems to which Section 22 were addressed no longer persist. Such restrictions upon the General Assembly as requiring a special majority and a specific means of meeting the problems created by congested court dockets are completely inconsistent with contemporary views about the inherent authority of the legislature. The Commission views Section 22 as an unnecessary restraint upon legislative power. The recommendation to repeal it is one of others to modernize the fundamental law by deleting provisions that were relevant only to problems of an earlier day and attitudes about how they must be met. The Administrative Director of the Ohio Supreme Court concurs in the Commission's reasons for recommending repeal.

Intent of Commission

This recommendation is nonsubstantive in that deletion of the section is regarded neither as increasing nor decreasing the authority of the General Assembly to act upon proposals for improving the courts and the administration of justice. The provision is obsolete and is removed solely for purposes of updating the Constitution.

¹*Ibid.*, p. 328

ARTICLE V

Section 2a

Present Constitution

The names of all candidates for an office at any general election shall be arranged in a group under the title of that office, and shall be so alternated that each name shall appear (in so far as may be reasonably possible) substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs. Except at a Party Primary or in a non-partisan election, the name or designation of each candidate's party, if any, shall be printed under or after each candidate's name in lighter and smaller type face than that in which the candidate's name is printed. An elector may vote for candidates (other than candidates for electors of President and Vice-President of the United States) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate.

Commission Recommendation

The names of all candidates for an office at any general election shall be arranged in a group under the title of that office, and shall be so alternated that each name shall appear (in so far as may be reasonably possible) substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs. Except at a Party Primary or in a non-partisan election, the name or designation of each candidate's party, if any, shall be printed under or after each candidate's name in lighter and smaller type face than that in which the candidate's name is printed. An elector may vote for candidates (other than candidates for electors of President and Vice-President of the United States, and other than candidates for governor and lieutenant governor) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate.

Commission Recommendation

The Commission recommends the amendment of Section 2a of Article V as follows:

Section 2a. The names of all candidates for an office at any general election shall be arranged in a group under the title of that office, and shall be so alternated that each name shall appear (in so far as may be reasonably possible) substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs. Except at a Party Primary or in a non-partisan election, the name or designation of each candidate's party, if any, shall be printed under or after each candidate's name in lighter and smaller type face than that in which the candidate's name is printed. An elector may vote for candidates (other than candidates for electors of President and Vice-President of the United States, AND OTHER THAN CANDIDATES FOR GOVERNOR AND LIEUTENANT GOVERNOR) only and in no other way than by indicating his vote for each candidate separately from the indication of his vote for any other candidate.

History and Background of Section

Section 2a became effective as a part of Article V of the Constitution on December 8, 1949. By requiring the alternation of candidates' names in groups under the titles of offices they seek, Section 2a requires that votes for all candidates be registered by individual selection and prohibits a single straight party line vote. The Commission has not reviewed the history or background of the present section and proposes its amendment for the sole purpose of making the section compatible with changes proposed in Article III by the enactment of Section 1a, providing for the joint election of Governor and Lieutenant Governor.

Effect of Change

The proposed revision of Section 2a of Article V complements the enactment of Section 1a of Article III. The section calls for the rotation of names of candidates and party designation. Section 2a provides that an elector may vote for candidates only by individual selection. An exception is included for President and Vice-President of the United States. The amendment here proposed expands the exception to include candidates for Governor and Lieutenant Governor.

Rationale of Change

The changes in Section 2a of Article V are necessary to provide for the casting of joint ballots for Governor and Lieutenant Governor. In recommending a change in one part of the Constitution, the Commission considered that it had the responsibility to propose changes in other parts of the Constitution that would be affected by its recommendations. The inclusion of Section 2a avoids conflict and uncertainty.

Intent of Commission

The intent of the Commission in proposing amendment of Section 2a of Article V is solely to avoid conflict if Section 1a of Article III should be enacted without recognition of the new joint election provision in the Section 2a ballot provision.

APPENDIX A

The Ohio Constitutional Revision Commission was created by Am. Sub. H. B. 240 of the 108th General Assembly, effective November 26, 1969. Following is the text of the Revised Code sections enacted by that act:

Sec. 103.51. There is hereby established an Ohio constitutional revision commission consisting of thirty-two members. Twelve members shall be appointed from the general assembly as follows: three by the president pro tem of the senate, three by the minority leader of the senate, three by the speaker of the house of representatives, and three by the minority leader of the house. On January 1, 1970, and every two years thereafter, the twelve general assembly members shall meet, organize, and elect two co-chairmen, who shall be from different political parties. The members shall then, by majority vote, appoint twenty commission members, not from the general assembly. All appointments shall end on January 1 of every even-numbered year; and the commission shall then be re-created in the manner provided above. Members may be re-appointed. Vacancies in the commission shall be filled in the manner provided for original appointments.

The members of the commission shall serve without compensation but each member shall be reimbursed for actual and necessary expenses incurred while engaging in the performance of his official duties. Membership in the commission does not constitute holding another public office.

Sec. 103.52. The members of the Ohio constitutional revision commission shall meet for the purpose of:

- (A) studying the constitution of Ohio;
- (B) promoting an exchange of experiences and suggestions respecting desired changes in the constitution;
- (C) considering the problems pertaining to the amendment of the constitution;
- (D) making recommendations from time to time to the general assembly for the amendment of the constitution.

All commission recommendations must receive a two-thirds vote of the membership.

Sec. 103.53. The Ohio constitutional revision commission may receive grants, gifts, bequests, appropriations, and devises and may expend any funds received in such manner for the purpose of reimbursing members for actual and necessary expenses incurred while engaged in official duties, or for the purpose of meeting expenses incurred in any special research or study relating to the constitution of Ohio. The commission shall file annually with the auditor of state, on or before the fifteenth day of March, a full report of all grants, gifts, bequests and devises received during the preceding calendar year, stating the date when each was received and the purpose for which such funds were expended.

Sec. 103.54. The Ohio constitutional revision commission may employ such research assistants and other personnel as may be required to carry out the purposes of the commission. Funds for the compensation and reimbursement of such employees shall be paid from the state treasury out of funds appropriated for such purpose. All disbursements of the commission shall be by voucher approved by one of the co-chairmen of the commission.

Sec. 103.55. The Ohio constitutional revision commission shall make its first report to the general assembly no later than January 1, 1971. Thereafter, it shall report at least every two years until its work is completed.

Sec. 103.56. The Ohio constitutional revision commission shall complete its work on or before July 1, 1979, and shall cease to exist at that time. The terms of all members shall expire July 1, 1979.

Sec. 103.57. In the event of a call for a constitutional convention, the Ohio constitutional revision commission shall report to the general assembly its recommendations with respect to the organization of a convention, and report to the convention its recommendations with respect to amendment of the constitution.

APPENDIX B

LOCAL GOVERNMENT IN OHIO: CONSTITUTIONAL ASPECTS

Date: November 18, 1971
Place: Center for Tomorrow
2400 Olentangy River Road, Columbus
Time: 9:15 a.m. - 4:30 p.m.
Cost: \$3.75 per person, including lunch
Sponsored by: Ohio Constitutional Revision Commission
Ohio State University College of Law
Ohio Municipal League
Open to the Public

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- 9:15 Registration: Lobby, Center for Tomorrow
9:45 Opening Remarks: Richard H. Carter, chairman, Constitutional Revision Commission
9:55 Introduction of Keynote Speaker: James C. Kirby, Jr., dean, College of Law
10:00 Jefferson B. Fordham, Keynote Speaker
10:45 Coffee Break
11:00 Municipal Home Rule in Ohio: Oliver Schroeder, Jr., chairman
Home Rule Today: John Gotherman, Ohio Municipal League
Municipal Tax and Debt Limits: Richard K. Desmond, Squire, Sanders and Dempsey
The Incorporated Municipality: Should it be preserved? Howard Fink, College of Law
12:30 Lunch
1:45 Urban Area Problems: Does the Constitution Hinder Solutions?
Urban Transportation: Fredric L. Smith, Dunbar, Kienzle & Murphey
Land Use Planning and Zoning: Peter Simmons, College of Law
Environmental and Pollution Problems: Robert E. Holmes, judge Tenth District Court of Appeals.
3:00 Coffee Break
3:15 Obstacles to County Reform: Constitutional Aspects—W. Donald Heisel, director, Institute of Governmental Research, University of Cincinnati, chairman
Iola O. Hessler, senior research associate, Institute of Governmental Research
Discussants: Frances McGovern, Ohio Edison Company, Akron
Seth Taft, Cuyahoga County commissioner
4:00 New forms of Urban Area Government:
Norman Elkin, director, Illinois Governor's Commission on Urban Area Government

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